

MEMORANDUM

September 8, 2016

TO: Planning, Housing and Economic Development Committee
FROM: Jeffrey L. Zyontz, Senior Legislative Analyst
SUBJECT: **Worksession:** Expedited Bill 34-16, Streets and Roads - Design

Expedited Bill 34-16, Streets and Roads - Design, sponsored by Lead Sponsor Planning, Housing and Economic Development Committee, was introduced on August 2. A public hearing is tentatively scheduled for September 13 at 1:30 p.m. If the Council receives unanticipated testimony at the public hearing, the Committee may wish to reconsider any recommendations that it makes on September 12.

Bill 34-16 would define certain terms in Chapter 49, establish a permit requirement for closing a private road, clarify provisions for permanent structures approved in a site plan and establish road design criteria. These changes proposed are initiated by revisions proposed in Subdivision Regulation Amendment (SRA) 16-01 and provides better coordination with Planning Board approvals.

Closing Private Roads

SRA 16-01 would specifically allow private roads under certain circumstances. Private road closures become a matter of public concern when the road provides the only means of access for emergency vehicles or when the closure by one owner of the road denies access to other properties. This is a current problem. As the potential for private roads increases, the need for a permit to close a private road increases. This a particular problem with urban roads.

Bill 34-16 would require a permit for the closure of any portion on the road. This would include lane closures.

Staff recommends revising Bill 34-16 to require a permit submitted by the road owner (not any person) for closure for all urban private roads (not any private road).

DPS recommends allowing a fee for such a permit to be established as a method 3 regulation.

Lane closures do not require an extensive temporary traffic control plan reviewed by the Department of Transportation and the Bill should be revised to reflect that.

Before the Director of Permitting Services issues a permit to close a private road in whole or in part under this Section, the Director of Transportation must review or waive review each application to ensure that closure will not adversely impact the use of connecting public roads. The Director of Transportation may recommend permit conditions to the Director of Permitting Services. The owner of a private road must submit a temporary traffic control plan that requires signage during closure to inform pedestrians about the duration of the closure, the permit number, and the owner's contact telephone number to call that address conditions of closure as may be required by the Director of Permitting Services.

Permanent structures in the right-of-way

The Planning Board has approved site plans that have required such structures as retaining walls, steps, and plazas in the right-of-way. Currently, there is not a clear mechanism to allow these structures without a franchise agreement. Staff recommends providing a method to accommodate these structures to avoid another reason to make a street private (which would have no public right-of-way).

Road Design

SRA 16-01 refers to design criteria in Chapter 49. Bill 34-16 as introduced provided detailed design specifications. Staff had thought that these standards were generally accepted but that does not appear to be the case. In any event, the Department of Transportation now recommends deleting the detailed specification. This would require deleting lines 62-64 and lines 72-122 in Bill 34-16 as introduced.

SRA 16-01 (starting at line 1386) has the following standards:

Private roads must be built to the construction specifications of the corresponding public road concerning paving detail and design data, including surface depth and structural design. The road must be designed in accordance with sound engineering principles for safe use including horizontal and vertical alignments for the intended target speed, adequate typical sections for vehicles, pedestrians, and bicyclists, compliance with the Americans with Disabilities Act, drainage and stormwater management facilities, intersection spacing and driveway locations, parking, lighting, landscaping or street trees, and utilities. The width and cross section of a private road must meet the right-of-way specified in a master plan or be equal to the corresponding public road standard unless modified by the Board. Private roads must conform to the horizontal alignment requirements of this Chapter.

Under SRA 16-01 (starting at line 1441), a private engineer would be required to certify that the standards for a private road have been met.

Before the Board may approve a preliminary plan, the subdivider must have an engineer certify that each private road has been designed to meet the standards required by this Section. The subdivider must then certify to the Department of Permitting Services that all construction complies with the design before release of the surety for the road.

Public Hearing

The Council scheduled a public hearing on September 13, 2016. If the Committee makes recommendations on September 12, it may reconsider those recommendations if unanticipated testimony is submitted at the public hearing on September 13.

The attachments to this packet include the Bill as introduced and also the Bill as recommended by staff to the PHED Committee.

This packet contains:

Expedited Bill 34-16

Legislative Request Report

Bill Draft with Staff Amendments

Circle #

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Expedited Bill No. 34-16
Concerning: Streets and Roads – Design
Revised: 7/27/2016 Draft No. 1
Introduced: August 2, 2016
Expires: February 2, 2018
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Planning, Housing, and Economic Development Committee

AN EXPEDITED ACT to:

- (1) clarify that certain permanent, nonstandard structures may be installed in the public right-of-way under certain circumstances;
- (2) require a permit to close any portion of a private road;
- (3) define certain terms;
- (4) establish road design criteria; and
- (5) generally amend County law regarding rights-of-way and streets and roads.

By amending

Montgomery County Code
Chapter 49, Streets and Roads
Sections 49-1, 49-11, 49-26 and 49-33

And adding

Section 49-11A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 49-1, 49-11, 49-26 and 49-33 are amended as follows:

49-1. Compliance with standards; regulations; penalty for violations.

* * *

(b) The closure of any private road must meet the standards and requirements of Chapter 22, and a person must obtain a permit from the Department of Permitting Services under Section 49-11A.

(c) The County Executive may issue regulations under method (2) to implement this Chapter, except where a different method is specified.

[(c)] (d) Any violation of this Chapter or any regulation issued under it is a Class B violation, except when expressly provided otherwise.

49-11. Permit to obstruct public rights-of-way.

(a) Unless this Section prohibits the issuance of a permit, the Director of Permitting Services may issue a permit to:

* * *

(3) install a temporary, removable obstruction or occupation of a right-of-way; [or]

(4) close a curb lane, sidewalk, or shared use path in conjunction with the construction or reconstruction of an abutting structure[.]; or

(5) install permanent, nonstandard structures in the right-of-way that were approved as a site element of streetscape under Chapter 59, Section 7.3.4. The permit applicant must execute a declaration of covenants that runs with the land to perpetually maintain the permanent, nonstandard structure in a good and safe condition; return the right-of way to its condition before the nonstandard structure was installed if the nonstandard structure is removed; and indemnify the County from any cost or liability associated

28 with the construction, maintenance, use or removal of the
 29 nonstandard structure.

30 * * *

31 **49-11A. Permit to obstruct private roads.**

32 (a) A person must not close any portion of a private road without a permit
 33 from the Director of Permitting Services.

34 (b) The Director of Permitting Services may issue a permit for the complete
 35 or partial closure of a private road if the closure does not:

36 (1) violate Chapter 22;

37 (2) unreasonably impede the use of the private road by persons in
 38 wheelchairs;

39 (3) unreasonably impede or endanger the users of any building or
 40 structure adjacent to or abutting the private road; or

41 (4) adversely impact the area transportation network.

42 (c) A person must apply for a permit on a form prescribed by the Director
 43 of Permitting Services, submit detailed plans and specifications,
 44 including the locations and use and occupancy of all buildings or
 45 structures adjacent to or abutting the private road, and any additional
 46 information as the Director may require.

47 (d) The Director of Permitting Services must include conditions in each
 48 permit that provide for the safety of any user of a building or structure
 49 adjacent to or abutting the private road, including providing for safe
 50 alternate access to and egress from any building or structure.

51 (e) Before the Director of Permitting Services issues a permit to close a
 52 private road in whole or in part under this Section, the Director of
 53 Transportation must review and approve each application for closure of
 54 a private road to ensure that closure will not adversely impact the area

55 transportation network. The Director of Transportation must approve a
 56 temporary traffic control plan that requires signage during closure to
 57 inform pedestrians about the duration of the closure, the permit number,
 58 and the contact telephone number to call.

59 **49-26. Definitions.**

60 In this Chapter, except where specified otherwise, the following words and
 61 phrases have the meanings indicated:

62 AASHTO: The American Association of State Highway and Transportation
 63 Officials. The guidelines in the 2011 (6th edition) of “A Policy on Geometric
 64 Design of Highways and Streets” manual, as revised from time to time.

65 * * *

66 Private Road: Any street, highway, avenue, lane, alley, or viaduct, or any
 67 segment of any of them, including any pedestrian walkway adjacent to the
 68 private road that has not been deeded, dedicated or otherwise permanently
 69 appropriated to the public for public use.

70 **49-33. Road Design and Construction requirements.**

71 * * *

72 (n) Requirements for Profiles Submitted for Approval to the Department of
 73 Permitting Services. Design requirements are:

74 (1) An applicant must use the vertical curve guidance in the current
 75 edition of the AASHTO, as modified below, for designing
 76 roadway profiles.

77 (2) The “Target Speed” for the proposed road as determined by this
 78 Chapter, Executive Regulation, or the applicable master plan,
 79 must be used as the “Design Speed” referred to in AASHTO.
 80 Unless otherwise specified in a master plan or the approved

81 capital improvements program, the maximum target speed for a
82 road in an urban area is 25 mph.

83 (3) Landing grades must be provided at all arterial roads and primary
84 residential streets, using a 2% slope down from the center line of
85 the road intersected to a point along the gutter line, then a 2%
86 slope up, providing a low point at the gutter line of the intersected
87 arterial road or primary residential street and a short tangent
88 grade of 2% rising to the point of tangent for the fillet curve at
89 the intersection.

90 (4) Landing grades to secondary residential roads may be provided
91 with a cross slope of 4% or less. Landing grades to tertiary
92 residential roads may be provided with a cross slope of exceed
93 6% or less.

94 (5) The grades for arterial roads and primary residential streets must
95 be 4% or less at any intersection with other roads.

96 (6) The grades for arterial roads and primary residential roads must
97 be 8% or less, except where short theoretical tangent projections
98 for vertical curves require a greater grade.

99 (7) The grades for secondary residential streets must be 10% or less,
100 except where short theoretical projections for vertical curves
101 require a greater grade.

102 (8) Maximum grades for tertiary residential streets are as follows:

103 (A) Where parking abuts the road - 10%

104 (B) In any case - 14%

105 (C) Elsewhere, for a length of 200 feet or less (but not within
106 200 feet of a secondary or primary residential street nor
107 within 250 feet of arterial or higher classification) - 12%”

108 (9) The minimum length for any crest or sag vertical curve is 50 feet.

109 (10) The calculated minimum curve lengths may be adjusted, with
110 approval from the Department of Permitting Services, to satisfy
111 unique site conditions or design constraints.

112 * * *

113 **Sec. 2. Expedited Effective Date.**

114 The Council declares that this legislation is necessary for the immediate
115 protection of the public interest. This Act takes effect on the date on which it becomes
116 law.

117 *Approved:*

118

119

Nancy Floreen, President, County Council Date

120 *Approved:*

121

Isiah Leggett, County Executive Date

122 *This is a correct copy of Council action.*

123

Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 34-16
Streets and Roads - Design

- DESCRIPTION:** Expedited Bill 34-16 would define certain terms in Chapter 49, establish a permit requirement for closing a private road, clarify provisions for permanent structures approved in a site plan and establish road design criteria.
- PROBLEM:** Proposed changes in Subdivision Regulation Amendment (SRA) 16-01 require amending Chapter 49. The current chapter lacks provisions for closing private roads, road design standards, and permanent structures in the public right of way.
- GOALS AND OBJECTIVES:** The goal of Bill 34-16 is to coordinate proposed changes to Chapter 50 and Chapter 59.
- COORDINATION:** Department of Transportation, Department of Permitting Services, and the Planning Department
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** To be researched.
- SOURCE OF INFORMATION:** Department of Transportation, Department of Permitting Services, and the Planning Department
- APPLICATION WITHIN MUNICIPALITIES:** To be researched.
- PENALTIES:** Violations of Section 49-11 are treated as a class A violation.

Expedited Bill No. 34-16
Concerning: Streets and Roads – Design
Revised: 9/7/2016 Draft No. 3
Introduced: August 2, 2016
Expires: February 2, 2018
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Planning, Housing, and Economic Development Committee

AN EXPEDITED ACT to:

- (1) clarify that certain permanent, nonstandard structures may be installed in the public right-of-way under certain circumstances;
- (2) require a permit to close any portion of a private road;
- (3) define certain terms; and
- (4) ~~[[establish road design criteria; and]]~~
- (5) generally amend County law regarding rights-of-way and streets and roads.

By amending

Montgomery County Code
Chapter 49, Streets and Roads
Sections 49-1, 49-11, 49-26 and 49-33

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The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 49-1, 49-11, 49-26 and 49-33 are amended as follows:

49-1. Compliance with standards; regulations; penalty for violations.

* * *

(b) The closure of any private road must meet the standards and requirements of Chapter 22, and a person must obtain a permit from the Department of Permitting Services if required under Section 49-11A.

(c) The County Executive may issue regulations under method (2) to implement this Chapter, except where a different method is specified.

[(c)] (d) Any violation of this Chapter or any regulation issued under it is a Class B violation, except when expressly provided otherwise.

49-11. Permit to obstruct public rights-of-way.

(a) Unless this Section prohibits the issuance of a permit, the Director of Permitting Services may issue a permit to:

* * *

(3) install a temporary, removable obstruction or occupation of a right-of-way; [or]

(4) close a curb lane, sidewalk, or shared use path in conjunction with the construction or reconstruction of an abutting structure[.]; or

(5) install permanent, nonstandard structures in the right-of-way that were approved in a site plan as a site element of streetscape [[under Chapter 59, Section 7.3.4]]. Streetscape includes street furnishings, fixtures and elements in connection with public use of the right-of-way but does not include enclosed structures or vaults or improvements for private use. The permit applicant must execute a declaration of covenants that runs with the land on which the project associated with the streetscape is being

28 developed to perpetually maintain the [[permanent, nonstandard
 29 structure]] permitted streetscape in a good and safe condition;
 30 return the right-of way to its condition before the [[nonstandard
 31 structure]] permitted streetscape was installed if the nonstandard
 32 [[structure]] permitted streetscape is removed; and indemnify the
 33 County from any cost or liability associated with the
 34 construction, maintenance, use or removal of the nonstandard
 35 [[structure]] permitted streetscape.

36 * * *

37 **49-11A. Permit to temporarily obstruct private roads.**

- 38 (a) A person must not close any portion of a private road that is an urban
 39 road as defined in Section 49-32 without a permit from the Director of
 40 Permitting Services.
- 41 (b) The Director of Permitting Services may issue a permit for the complete
 42 or partial closure of a private road on a temporary basis if the closure
 43 does not:
- 44 (1) violate Chapter 22;
- 45 (2) unreasonably [[impede the]] interfere with use of the private road
 46 by persons [[in wheelchairs]] with disabilities;
- 47 (3) unreasonably impede or endanger the users of any building or
 48 structure adjacent to or abutting the private road; or
- 49 (4) adversely impact the [[area transportation network]] use of
 50 connecting public roads.
- 51 (c) [[A person]] An application to close a private road may only be made
 52 by the owner of the private road. The owner must apply for a permit
 53 on a form prescribed by the Director of Permitting Services, submit
 54 detailed [[plans and specifications]] information, including the

55 locations to be closed, duration of closure, location of required
 56 temporary closure signs, purpose of closure, and use and occupancy of
 57 all buildings or structures adjacent to or abutting the private road, and
 58 any additional information as the Director may require.

59 (d) The Director of Permitting Services [[must]] may charge a fee, set by
 60 Method 3 regulation, for the permit application and may include
 61 conditions in each permit that provide for the safety of any user of a
 62 building or structure adjacent to or abutting the private road, including
 63 providing for safe alternate access to and egress from any building or
 64 structure.

65 (e) Before the Director of Permitting Services issues a permit to close a
 66 private road in whole or in part under this Section, the Director of
 67 Transportation must review [[and approve]] or waive review each
 68 application [[for closure of a private road]] to ensure that closure will not
 69 adversely impact [[the area transportation network]] the use of
 70 connecting public roads. The Director of Transportation may
 71 recommend permit conditions to the Director of Permitting Services.
 72 [[approve]] The owner of a private road must submit a temporary traffic
 73 control plan that requires signage during closure to inform pedestrians
 74 about the duration of the closure, the permit number, and the owner's
 75 contact telephone number to call that address conditions of closure as
 76 may be required by the Director of Permitting Services.

77 * * *

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87 private road that has not been deeded, dedicated or otherwise permanently
88 appropriated to the public for public use.

89 * * *

90 **49-33. Road [[Design]] and Construction requirements.**

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101 capital improvements program, the maximum target speed for a
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122 (8) Maximum grades for tertiary residential streets are as follows:

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124 (B) In any case - 14%; and

125 (C) Elsewhere, for a length of 200 feet or less (but not within
126 200 feet of a secondary or primary residential street nor
127 within 250 feet of arterial or higher classification) - 12%”.

128 (9) The minimum length for any crest or sag vertical curve is 50 feet.

129 (10) The calculated minimum curve lengths may be adjusted, with
130 approval from the Department of Permitting Services, to satisfy
131 unique site conditions or design constraints.]]

132 * * *

133 **Sec. 2. Expedited Effective Date.**

134 The Council declares that this legislation is necessary for the immediate
135 protection of the public interest. This Act takes effect on the date on which it becomes
136 law.

137 *Approved:*

138

139

Nancy Floreen, President, County Council

Date

140 *Approved:*

141

Isiah Leggett, County Executive

Date

142 *This is a correct copy of Council action.*

143

Linda M. Lauer, Clerk of the Council

Date

