

**Department of Community Development
Staff Report**

PROPERTY OWNERS: William and Janet Peters
APPLICANT(S): William and Janet Peters
LOCATION: Living Water Lane
DISTRICT: Cedar Run
PIN(S): 7839-11-5835-000
ACREAGE: 18.0000
ZONING: Rural Agricultural (RA)
LAND USE: Agriculture
MEETING DATE: November 3, 2016

REQUEST: WAIV-16-005916: The Applicants are seeking a waiver of the Zoning Ordinance private street limitations, specifically Section 7-302.1.A.2, in order to construct a new section of private street that does not connect directly to a state maintained street.

OUTSTANDING ISSUES: The Board of Supervisors needs to consider whether this application meets the standards found in Section 7-302.2 for granting a waiver.

RECOMMENDATION: Staff recommends that the Board of Supervisors approve the applicants' request to waive the private street limitations as found in Section 7-302 of the Zoning Ordinance, subject to the conditions contained in the attached Resolution.

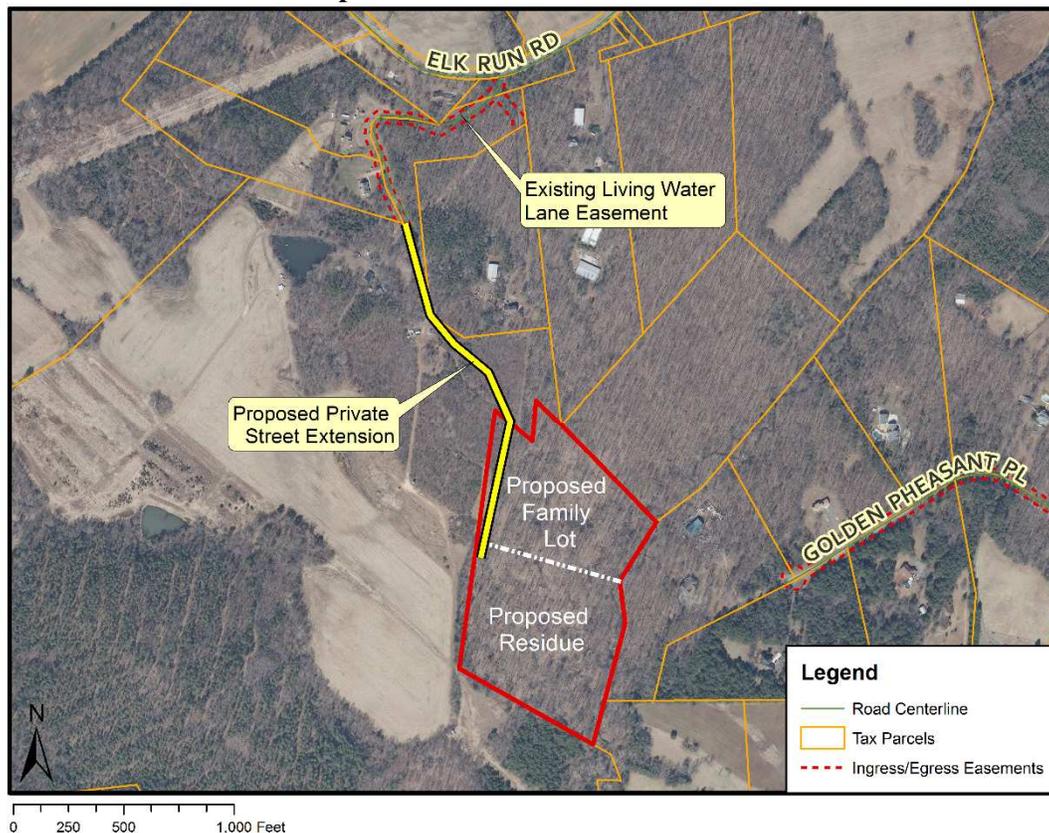
Topic Description:

The Owners and Applicants, William and Janet Peters, are requesting a waiver of Section 7-302.1.A.2 of the Zoning Ordinance related to limitations on private streets. The waiver request involves extending the existing private street easement, Living Water Lane, to provide frontage and access to a proposed Family Subdivision lot and a Residue lot. The statement of justification submitted by the co-applicant, Mr. William Peters, states that the purpose of the waiver is to create and gift a lot to his son and daughter-in-law; the statement of justification has been included as an attachment.

The subject parcel PIN 7839-11-5835-000 does not have frontage on a public road, nor does the property have a deeded access easement; in order to provide access to the property for the purpose of subdivision, an ingress-egress easement must be provided. The applicants are proposing to extend the existing private street Living Water Lane by recording a new section of ingress-egress easement to reach the subject property, and provide required frontage for the Family Lot and Residue Lot.

Family Subdivision and Boundary Line Adjustment applications that show the subdivision and adjustment of the subject property so as to divide the parcel into one new Family Lot and a Residue parcel are currently under review by the County (Case numbers ADIV-16-005914 and PLAT-16-005915). The proposed subdivision will also require an administratively-approved waiver of the private street length per Section 7-450.1, because the street length exceeds 1,320 feet.

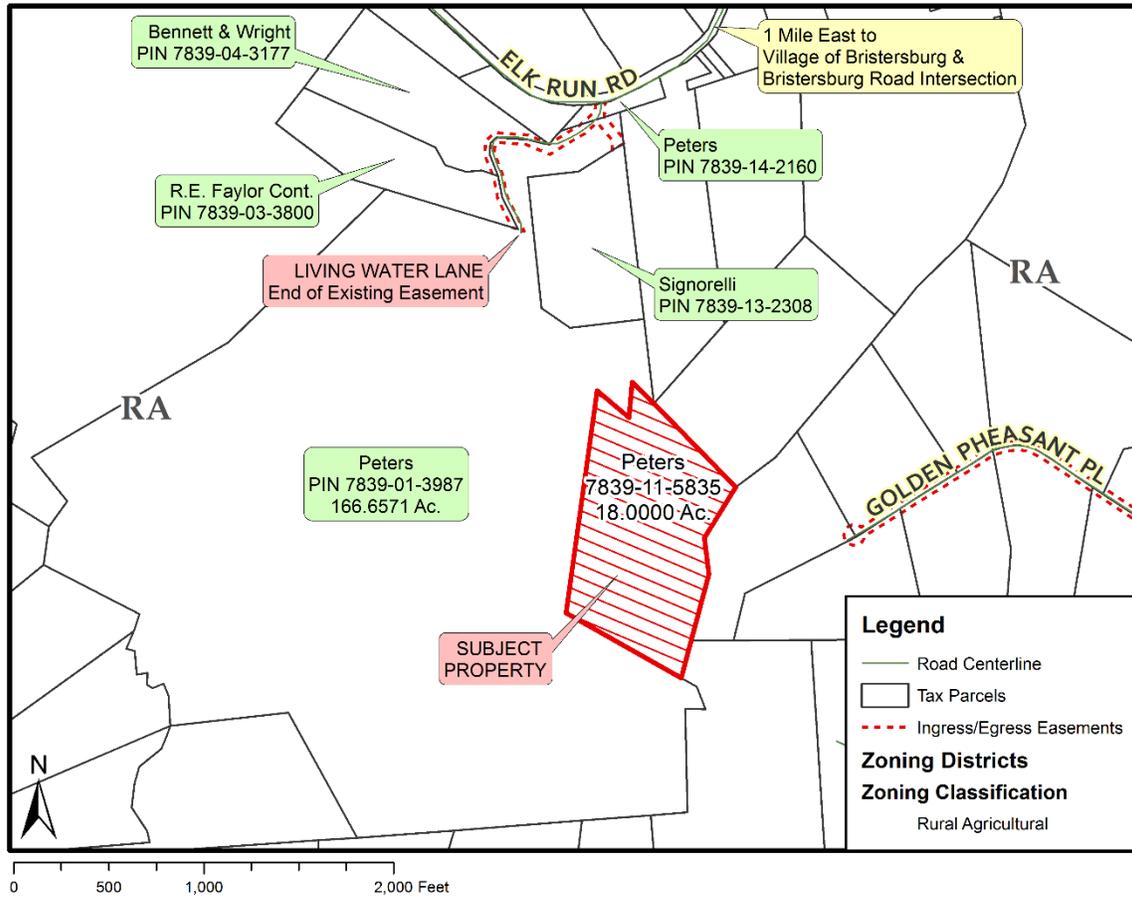
Proposed Private Street Connection



Location, Zoning and Current Land Use:

The subject property, consisting of 18.00 acres zoned to the Agriculture (RA) District, is located 1,500 feet south of Elk Run Road (Route 806), approximately one mile west of Bristersburg Road (Route 616) and the Village of Bristersburg. The parcel is separated from the public street by adjacent properties, with no direct access. The subject property is wooded, with no existing structures or other improvements located within the parcel boundaries.

Location and Zoning Map



Surrounding Zoning and Current Land Use:

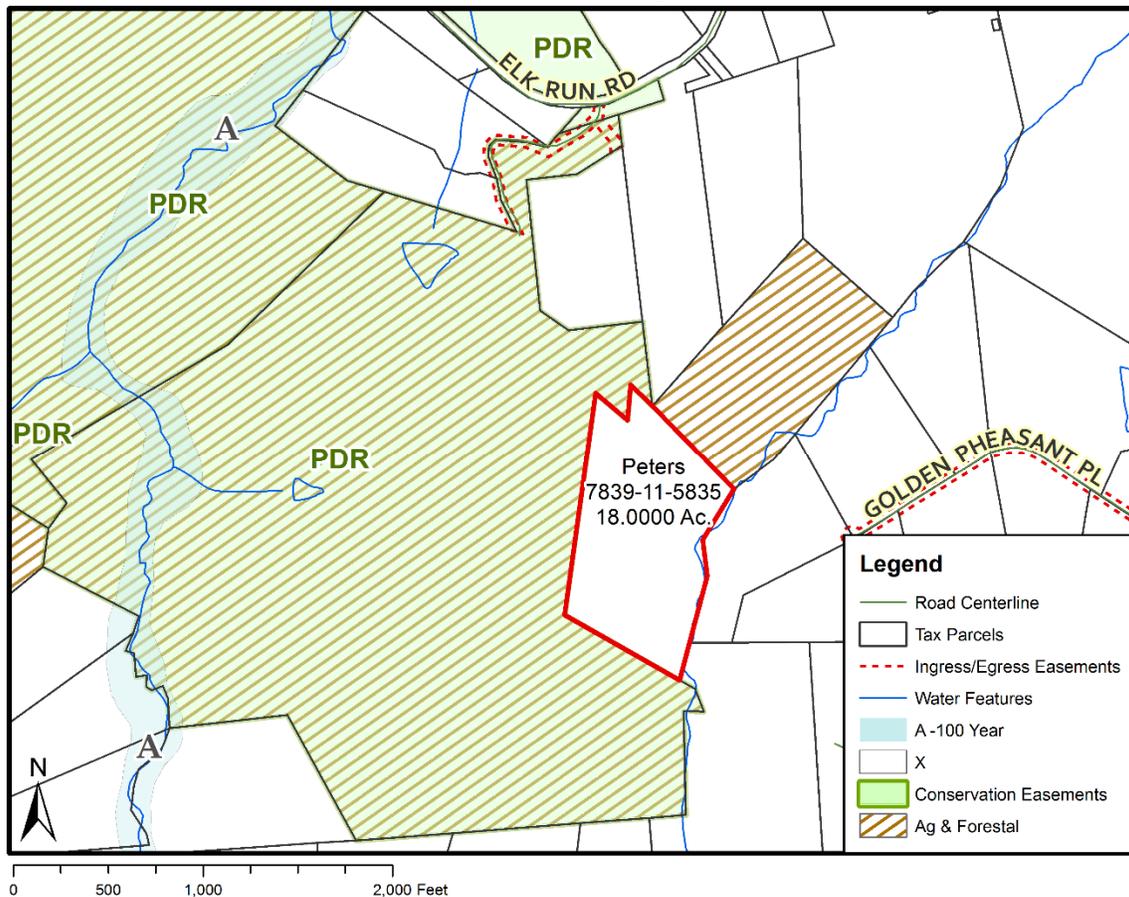
Neighboring properties are all zoned to the Agriculture (RA) District, and are either in residential or agricultural use. The applicants own an adjacent 166-acre property subject to a Purchase of Development Rights conservation easement and also located within the Southern Fauquier Agricultural and Forestal District. An adjacent 17-acre property to the northeast is also part of the Southern Fauquier Agricultural and Forestal District.

The existing private street easement (Living Water Lane) is a Type III street, and lies across four parcels:

- PIN 7839-14-2160-000 and PIN 7839-01-3987-000, owned by the co-applicant William Peters;
- PIN 7839-04-3177-000 created by the co-applicant in 1999 as an administrative division and now owned by Roberta Bennett and Jeffrey Wright; and
- PIN 7839-03-3800-000 created by the co-applicant in 1999 as an administrative division and now owned by R.E. Faylor Contracting, Inc.

A portion of the private street provides access to one additional parcel, PIN 7839-13-2308-000, created by the co-applicant in 1994 and now owned by Joseph Signorelli. No evidence of a recorded road maintenance agreement was found in the land records for the existing private street.

Land Use Map



Comprehensive Plan:

Chapter 4: Zoning and Land Use of the Comprehensive Plan defines the Agriculture District as generally containing “those areas where agriculture and forestry are the predominant uses or where significant lands or large lot farmette type residential development exists. The regulations are designed to assist in the protection and preservation of the agricultural uses and to mitigate land use conflicts between agricultural and appropriately limited residential development.”

Zoning Ordinance Waiver Provisions:

Section 7-302.1 of the Zoning Ordinance requires that all private streets must connect directly to a state maintained street. However, the Board of Supervisors has the authority to modify this limitation. The specific language of the Zoning Ordinance is:

The private street must connect directly to a state maintained street. In reviewing applications for a waiver of this limitation, the Board may consider as an additional factor in granting such waiver the development limitations which are imposed on the subject property because the proposed division is either (1) a family transfer pursuant to 2-39 of the Fauquier County Subdivision Ordinance, or (2) a large lot subdivision pursuant to 2-310 of this Ordinance provided that the parent property

is subject to a conservation easement held by a body politic or a political subdivision of the State.

The Board may modify the foregoing limitations in conjunction with a request for a special exception permit, site plan approval or subdivision plan approval provided that the applicant can show that no other remedy is realistically feasible, that plausible alternatives have been exhausted, that to not so modify the applicable limitation(s) would place an unreasonable restriction on the use of the property and that properties through which access is planned will not be unreasonably affected.

Staff Analysis:

Living Water Lane currently serves four residential-use parcels, all of which were created in the 1990s by the co-applicant, Mr. Peters, with access via the private Living Water Lane. If approved, the requested waiver would increase the lots served by the private street by two, to consist of the new Family Lot and the Residue Lot. Current daily traffic for the existing private street totals forty trips per day (40 VPD), calculated as 10 vehicle trips per residential-use lot. Extending the private street to serve the subject property and proposed Family Lot would increase daily traffic on Living Water Lane by twenty trips per day (20 VPD) for a total of sixty vehicles per day (60 VPD) using the private street to access Elk Run Road (Route 806). Increased traffic on the private street caused by providing a means of ingress and egress to an existing parcel of record, as well as one additional residential lot, would not unreasonably affect existing property owners using Living Water Lane.

Of the six lots that would be served by the private street if this waiver is approved, only one parcel has future development rights; two additional lots are allowed to be created from the 166-acre parcel in the PDR easement, currently owned by the co-applicant, Mr. Peters. These future lots created from the 166-acre parcel would most likely seek to utilize Living Water Lane in conjunction with any subdivision, as there is no other apparent access point. Such additional use of Living Water Lane would require Special Exception approval unless the lots are created as family lots, and would also require additional private-to-private street and street length waivers, so the potential impact of such additional lots could be evaluated at that time.

No road maintenance agreement was found within the land records as a part of staff review of the waiver request and proposed Family Subdivision. Increased use of Living Water Lane by the subject property and proposed Family Lot will increase maintenance requirements for the private street. A maintenance agreement establishing responsibility for maintenance, repair and snow removal for the private street, Living Water Lane, recorded as a part of the Family Subdivision, would mitigate negative impacts to existing property owners along the private street easement. The maintenance agreement should require the applicant and any future lot owners of record to maintain the entire portion of the proposed extension of the private street easement and roadway that lies within PIN 7839-01-3987-000. Additionally, staff is recommending as a condition of the waiver that the applicant be responsible for a proportionate share of all maintenance responsibilities and costs for the existing portion of Living Water Lane that serves PIN 7839-03-3800-000, PIN 7839-04-3177-000 and PIN 7839-13-2308-000.

Living Water Lane is a fifty-foot (50') wide private street and ingress-egress easement. As a Type III street, neither the existing street nor its extension have construction standards. The proposed

location of the private street easement through the adjacent 166-acre property (PIN 7839-01-3987-000) is plotted to lie generally along an existing farm access road, minimizing potential land disturbance for roadway improvements. Use and extension of the existing private street, Living Water Lane, avoids crossing stream channels or floodplain areas that would be required to provide an access connection to other existing private street easements or to make a direct connection to Elk Run Road. In order to avoid adversely impacting the property owners and residents currently using the existing portion of Living Water Lane, the applicants should be required to improve the existing and proposed portions of the roadway, so as to provide an erosion-resistant gravel surface of at least ten feet (10') in width. The gravel surfacing should be installed prior to issuance of an occupancy permit for the proposed Family Lot or Residue Lot created from the subject property PIN 7839-11-5835-000, with the gravel surfacing installed with whichever lot is developed first.

Specific standards for the waiver are set forth in Section 7-302.2; each standard is evaluated below.

Standards: *No other remedy is realistically feasible; plausible alternatives have been exhausted.*

The subject property has no frontage on a public street, nor is there an existing private street or ingress-egress easement that provides access to the property.

Standard: *To not modify the applicable limitations would place an unreasonable restriction on the use of the property.*

Approval of the proposed Family Subdivision and private street dedication requires approval of the requested waiver by the Board. While the 18-acre subject property could continue as undeveloped land in agricultural use, or could be developed with one residential dwelling, subdivision of the property into a Family Lot and Residue Lot would not be possible without some other accommodation for access and frontage.

Standard: *Properties through which access is planned will not be unreasonably affected.*

Extension of the private street easement and addition of one new lot plus a residue lot will increase daily traffic through lots that currently have frontage onto the existing section of Living Water Lane. The proposed easement section that lies through the 166-acre property owned by the co-applicant has been plotted to lie for the most part along an existing farm access road, minimizing impacts and land disturbance to this property. A road maintenance agreement establishing responsibility for maintenance and repair of the private street will help to mitigate potential impacts to the properties through which the easement lies.

Public Comment:

Staff has received one letter from a property owner along the private street, Living Water Lane, expressing concern regarding maintenance and repair responsibilities for the private street. The letter has been included as an attachment.

Staff Conclusion and Recommendation:

Based upon the evaluation of standards, staff is recommending approval of the proposed waiver subject to the conditions contained in the attached Resolution. The connection of the private street easement to the existing private street, Living Water Lane, will provide deeded access to an existing parcel of record, and will avoid other potential means of access which would require greater lengths of roadway disturbance, and potentially crossing of stream channels and floodplain area. Provision of a road maintenance agreement recorded with the Family Subdivision plat, and improvement of the roadway surface with gravel, will mitigate potential adverse impacts on property owners along Living Water Lane. A Resolution of approval to waive the private street limitations as found in Section 7-302 of the Zoning Ordinance has been included for your consideration.