



ALBEMARLE COUNTY
STAFF REPORT

Project Name: Special Exception for disturbance of critical slopes and modification of a building site for B2019-01427-SF on TMP 63-19E	Staff: Tori Kanellopoulos, Planner
Planning Commission Hearing: November 19 th , 2019	Board of Supervisors: December 18 th , 2019
Owner: Lawrence Marshall	Applicant: Tommy Dobson, Dobson Homes Inc.
Acreage: 55.10 acres	By-right use: RA Rural Area - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)
TMP: 06300-00-00-019E0	Location: Parcel is located approximately 980 feet south of the end of State Route 621 (Wolf Trap Road).
Magisterial District: Rivanna	Proffers: None
Proposal: Special Exception for disturbance of critical slopes and modification of a building site to construct a single-family residence per §18-4.2.3(a).	Requested # of Dwelling Units: 1
DA: ☐ RA: ☒	Comp. Plan Designation: Rural Area - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources; residential (0.5 unit/ acre in development lots)
Character of Property: Partially-wooded parcel located past the end of State Route 621. Northern portion of property contains two streams identified on GIS. The southern portion of the property contains a large hill where logging activities have recently occurred. An access road used for logging has been constructed from the northern entrance to the parcel to the top of the hill.	Use of Surrounding Properties: Surrounding properties are also zoned Rural Area. Adjacent properties are either undeveloped or contain a single-family residence.
Factors Favorable: 1. Disturbance of the critical slopes has already occurred.	Factors Unfavorable: 1. None identified.

2. Alternative building sites are limited and adjacent to streams and possible wetland areas. 3. The alternatives proposed by the applicant satisfy the intent and purpose of the ordinance.	
RECOMMENDATION: Staff recommends approval of the special exception request with conditions.	

STAFF PERSON:

Tori Kanellopoulos

PLANNING COMMISSION:

November 19th, 2019

BOARD OF SUPERVISORS:

December 18th, 2019

PETITION:

PROJECT: Special Exception for disturbance of critical slopes and modification of a building site for B2019-01427-SF on TMP 63-19E

MAGISTERIAL DISTRICT: Rivanna

TAX MAP/PARCELS: 06300-00-00-019E0

LOCATION: Parcel is located approximately 980 feet south of the end of State Route 621 (Wolf Trap Road).

PROPOSAL: Special Exception request for disturbance of critical slopes and modification of a building site to construct a single-family residence per §18-4.2.3(a).

ZONING: RA Rural Area

OVERLAY DISTRICTS: None

COMPREHENSIVE PLAN: Rural Area - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources; residential (0.5 unit/ acre in development lots)

CHARACTER OF THE AREA

This property is located approximately 980 feet south of the end of State Route 621 (Wolf Trap Road). Parcels to the east, west, and south of this property are largely wooded and undeveloped. Parcels to the north of this property have been developed with single-family residences. Several streams are located on this property. The Southwest Mountain Range and the Wolfpit Mountain ridgeline are located south of this property.

PLANNING AND ZONING HISTORY

This parcel was created in 1984 and no changes in the boundary area have occurred. When this parcel was created, there was no water protection ordinance (WPO) buffer. The critical slopes ordinance was in place. When the parcel was subdivided and approved in 1984, a building site existed. Since then, the adoption of the WPO and establishment of stream buffers have reduced the buildable area significantly and no building site, as defined by the ordinance, exists.

Below is additional history and background:

- The critical slopes ordinance in 1980 did not allow building on critical slopes. This ordinance was in place at the time this parcel (TMP 63-19E) was created. Therefore, there was buildable area in what is now the WPO buffer area.
- May 17, 1984: The parcel (TMP 63-19E) was created and had a building site. Subsequent ordinance amendments establishing the WPO buffer resulted in the loss of that building site.
- The County Code change in 1998 establishing the WPO buffer severely restricted the buildable area on this property. Additionally, on an August 15, 2019 site visit, staff found that even the area adjacent to and outside of the WPO buffers appeared saturated. The applicant's soil consultant has also noted that this area is prone to saturation and is not suitable for a drainfield.
- The property was recently timbered for logging (between October 2015 and February 2018). An access road was constructed for this forestry operation. This was a permitted disturbance of critical slopes. The applicant is proposing to use the existing access road to build a house in a cleared space on the top of the hill, in the location shown in Attachment C. The applicant stated that the house area does not contain critical slopes: *"There is no need for anymore disturbance of critical slopes to complete the building of the Marshall's new home."* The County's GIS does show critical slopes within part of the proposed building site, and staff has not field-verified that these are not critical slopes.
- A Building Permit Application has been submitted under B2019-01427-SF and has not yet been approved.
- The Health Department has approved a drainage field for the proposed single-family residence. Thomas G. Hogge of Blue Ridge Soil Consulting, Inc. states in the application that the drainfield is not on critical slopes (field-verified): *"As part of my work for the permit, I measured the slopes where the proposed drainfield is going, and also where the home is proposed, and the slopes did not exceed 25%, although they were very close to that. Therefore, it is my professional opinion that the building site does not exceed critical slope, even though the area may be shown as being critical slope on the County GIS system."* Staff has not been able to field verify the slopes. (Attachment E) (and new Attachment F, dated Nov 4)

This special exception request was considered on the Board of Supervisor's consent agenda on October 16th, 2019. The Board took the action to remove this item from the consent agenda for discussion. After discussion of the item, the Board took the action to send this item to the Planning Commission for their review and recommendation. The Board specifically asked for the following information to be provided in this updated staff report:

- A clearer timeline of when the recent logging activities occurred
- More information on the drainfield feasibility of the two possible locations (the original and proposed building sites)
- More information on mountain protection and mountain resources, per the Comprehensive Plan
- Whether or not the proposed building site is on a designated mountain resource in the Comprehensive Plan

See Attachment G for detailed responses and updated information.

SPECIFICS OF THE PROPOSAL

The applicant is requesting a special exception to allow disturbance of critical slopes to construct a single-family residence. This property does not contain a building site meeting the County's Zoning Ordinance standards per §18-4.2. Disturbance of the critical slopes has already occurred for permitted logging activities.

The disturbance of critical slopes is prohibited by County Code §18-4.2.3(b):

No structure, improvement, or land disturbing activity to establish the structure or improvement shall be located on critical or preserved slopes except as otherwise permitted under sections 4.2.5, 4.2.6, 4.3.1, and 30.7.4.

This project qualifies for exception under §18-4.2.5(a). Staff's analysis is included below.

ANALYSIS OF THE SPECIAL EXCEPTION

Engineering and Planning staff review is included in the following sections.

Review of the request by Engineering Staff:

Critical slopes on this parcel were impacted during an exempt logging operation. A logging road was constructed to driveway standards and all grading has been completed for the driveway, including the installation of the erosion and sediment control measures, except possibly for the installation gravel. Installing gravel is not a land disturbing activity. The area where the home is proposed was also impacted during the logging operation to create a laydown area. Since the grading occurred as part of an exempt activity and no further grading is proposed, except to remove sediment traps, approval of this waiver will result in no additional impacts to critical slopes or stream buffers. For these reasons staff has no objections to this request.

Compliance with Zoning Ordinance §18-4.2:

The applicant has submitted a request addressing the provisions of §18-4.2.5 (Attachment E). This includes addressing:

... how the modification or waiver, if granted, would address the rapid and/or large-scale movement of soil and rock, excessive stormwater run-off, siltation of natural and man-made bodies of water, loss of aesthetic resources, and, in the event of septic system failure, a greater travel distance of septic effluent (collectively referred to as the "public health, safety, and welfare factors") that might otherwise result from the disturbance of critical slopes.

Staff has reviewed the applicant's submittal and offers the following comments.

Disturbance of the critical slopes has already occurred, and the trees on the hillside have already been removed for permitted logging activities. The application includes erosion and sediment control measures which have already been installed. The applicant voluntarily installed these erosion control measures, as they are not required for forestal activities. The applicant has also stated that they are planting on the hillside: "We are 3/4 of the way

finished putting seed and matting down on all the slopes and the growth is coming in nicely so far.” An approved VESCP (Virginia Erosion and Sediment Control Program) Plan is required prior to building permit approval for the single-family residence. Engineering staff approved the VESCP on November 6th, 2019. Given that the disturbance has already occurred, that the applicant has already provided voluntary erosion and sediment control measures, and that the Health Department has approved a drainfield adjacent to the proposed building site, staff supports this request.

Review of §18-4.2.5(a)(3):

The County Code states the following:

§18-4.2.5(a)(3): Findings. *The commission may grant a modification or waiver if it finds that the modification or waiver would not be detrimental to the public health, safety or welfare, to the orderly development of the area, or to adjacent properties; would not be contrary to sound engineering practices; and at least one of the following:*

Staff will address each provision below:

The modification or waiver would not be detrimental to the public health, safety or welfare;

Staff has found that this waiver would not be detrimental to public health, safety, or welfare. The applicant provided a VESCP that meets County standards. The disturbance of the critical slopes has already occurred, and the applicant states that further disturbance will not be needed for the proposed building site or the drainfield. Staff has not been able to field verify the slopes.

The modification or waiver would not be detrimental to the orderly development of the area, or to adjacent properties;

The proposed single-family home is no closer than approximately 200 feet to the nearest boundary line (adjacent parcel). Staff did not find detrimental impacts to adjacent properties, especially as the disturbance has already occurred. This application for a single-family home (by-right use) would not be detrimental to the orderly development of the area.

The modification or waiver would not be contrary to sound engineering practices;

Engineering staff has reviewed this application and does not have any objections. The disturbance of the slopes has already occurred, and it would be more detrimental to locate the proposed house within or adjacent to the stream buffer and to affect the streams on the property.

Based on staff review of the provisions of §18-4.2.5(a)(3) granting this modification would not be detrimental to the public health, safety or welfare, to the orderly development of the area, or to adjacent properties and would not be contrary to sound engineering practices.

a. Strict application of the requirements of section 4.2 would not forward the purposes of this chapter or otherwise serve the public health, safety or welfare;

This parcel does not have alternative locations that would allow for construction of a house without disturbing critical slopes, except adjacent to the WPO buffers or on potential wetlands. County Code §17-604(F) allows for building within WPO buffers if the parcel existed prior to February 11, 1998, and there are no alternative building sites on the parcel. This ordinance provision would permit the applicant to construct a single-family residence that impacted the WPO buffers on this parcel. However, given that the disturbance of critical slopes has already occurred, and the importance of protecting streams and keeping development out of WPO buffers, staff opinion is that it would be less detrimental to allow the development to occur within the critical slopes (as the applicant has proposed), instead of within or adjacent to the WPO buffers. Voluntary erosion and sediment control measures have already been put in place for the road that was constructed for forestal activities (logging), and a VESCP has been approved.

b. Alternatives proposed by the developer or subdivider would satisfy the intent and purposes of section 4.2 to at least an equivalent degree;

The purpose of §18-4.2 reads in part:

...implement the comprehensive plan by protecting and conserving steep hillsides together with public drinking water supplies and flood plain areas because of the increased potential for soil erosion, sedimentation, water pollution and sewage disposal problems associated with the disturbance of critical slopes.

The alternatives proposed adequately satisfy the intent of §18-4.2 while permitting reasonable use of the property. The Virginia Department of Health (VDH) has approved the proposed drainfield adjacent to the proposed building site. The disturbance of critical slopes has already occurred, and what would become the driveway for the house has already been constructed (formerly the access road for the logging). The road required disturbance of critical slopes, however the applicant states that the proposed site for the house and drainfield is not within critical slopes. Staff has not been able to verify these slopes. It would be more detrimental for the protection and health of the steep hillsides and water supplies to construct a residence in or adjacent to the WPO buffers, as opposed to adjacent to or within critical slopes that have already been disturbed.

c. Due to the property's unusual size, topography, shape, location or other unusual conditions, excluding the proprietary interest of the developer or subdivider, prohibiting the disturbance of critical slopes would effectively prohibit or unreasonably restrict the use of the property or would result in significant degradation of the property or adjacent properties; or

This property does not contain a building site meeting the County's Zoning Ordinance standards per §18-4.2. Specifically, there is no building site that is a rectangular shape and that has an adequate area for drainfields. The property existed prior to the water protection ordinance (WPO) buffer. At the time the parcel was created, there was an adequate building site outside of the critical slopes, as there were no WPO buffers. With the critical slopes and WPO regulations, there is no longer a building site.

Additionally, the applicant has concerns with construction of a drainfield in the area of the property outside of the critical slopes, as it is adjacent to the WPO buffers. The applicant provided the following statement from Thomas G. Hogge of Blue Ridge Soil Consulting, Inc., which reads in part:

“I designed a sewage disposal system (SDS) for the property, and on June 18, 2019, VDH approved the permit...I would like to point out that the area where the proposed SDS has been approved is really the only area on the property where a drainfield can be approved, in my opinion.”

After the Board of Supervisors meeting on October 16th, 2019, Thomas G. Hogge provided an updated statement (Attachment F), which reads in part:

“The report that I prepared on May 30, 2019 was based on a thorough site and soil evaluation that I performed on April 10, 2019. I evaluated the property in its entirety. I chose the site that I used for the report after eliminating all other areas on the property. The reason the other areas were eliminated was because they either exceeded critical slopes or they were concave/low-lying areas that would be subject to flooding/saturation. The area where I proposed the septic to be installed is the only place on the entire property, in my opinion, that meets both VDH’s regulations for the installation of sewage disposal systems and Albemarle County’s ordinances pertaining to SDS installations.”

d. Granting the modification or waiver would serve a public purpose of greater import than would be served by strict application of the regulations sought to be modified or waived.

Given the environmental constraints on this property, there are no locations on this property that contain a building site. To build a single-family residence, either the WPO buffers or the critical slopes must be disturbed. Activity has already occurred on the critical slopes for logging activities. Therefore, there is less of an impact to natural resources to build the single-family residence in the critical slopes, as opposed to in or adjacent to the WPO buffers. The requirements of the County’s zoning ordinance limit this property to one dwelling unit, unless another exception is applied for and approved. This special exception request for disturbance of critical slopes does not alter this ordinance requirement.

To determine if the public purpose is served by granting a special exception, staff looks at past actions of the County and to the Comprehensive Plan. Staff is unable to identify guidance from the Comprehensive Plan. Staff is unable to identify the specific project but is aware of a situation where disturbance on critical slopes was approved to allow development farther from streams and possible wetlands. Staff memory is that this application was processed 15 to 20 years ago. Each application is reviewed based on the unique character of each property. Approval of critical slopes disturbance in prior applications or in this instance does not set a precedent. Staff opinion is that the features and the prior activity on this property are such that approval of this request would serve the public purpose by allowing reasonable use of the property and protection of water resources.

To summarize: Even though staff has not field-verified the slopes, staff still recommends approval of the special exception request. Staff treated the slopes, for the purpose of this review, as if they are still critical slopes. Field-verification may prove otherwise. Regardless of the exact slope measurement of these slopes, staff still recommends approval for the reasons stated in the staff report and the factors favorable.

APPLICANT'S JUSTIFICATION FOR THE REQUEST

See Attachment E for the applicant's justification for the request.

COMPREHENSIVE PLAN

Based on direction provided by the Board of Supervisors at the October 16th, 2019 meeting, additional information on the Comprehensive Plan (specifically, mountains and mountainous areas identified as important resources) has been provided. Staff's analysis is provided in Attachment G.

SUMMARY

Staff has identified the following factors which are favorable to this request:

1. Disturbance of the critical slopes has already occurred.
2. Alternative building sites are limited and adjacent to streams and possible wetland areas.
3. The alternatives proposed by the applicant satisfy the intent and purpose of the ordinance.

Staff has identified the following factors which are unfavorable to this request:

1. None identified.

RECOMMENDATION

Based on the findings contained in this staff report, staff recommends approval of the special exception request with the following conditions:

1. The area of land disturbance on critical slopes must be in general accord with the application plan, as shown on the plan entitled "Erosion and Sediment Control Plan TMP 06300-00-00-019E0", prepared by G.V. "Kirk" Hughes of Kirk Hughes and Associates, and dated May 24, 2019 (revised October 31, 2019).

PLANNING COMMISSION POSSIBLE MOTIONS for Special Exception Request:

- A. Should a Planning Commissioner **choose to recommend approval** of this special exception request:

Move to recommend approval of the Special Exception request for disturbance of critical slopes and modification of building site for B2019-01427-SF, with conditions as stated in the staff report.

- B. Should a Planning Commissioner **choose to recommend denial** of this special exception request:

Move to recommend denial of the Special Exception request for disturbance of critical slopes and modification of building site for B2019-01427-SF, for the following reasons. *State reasons for denial.*

ATTACHMENTS FOR THE SPECIAL EXCEPTION REQUEST STAFF REPORT:

Attachment A1: Vicinity Map

Attachment A2: Critical Resources Map (Critical Slopes and WPO Buffers, as shown in the County's GIS).

Attachment A3: Proposed location of the single-family house

Attachment A4: Erosion and Sediment Control Plan, dated May 24, 2019 (revised October 31, 2019)

Attachment A5: Original Special Exception application and justification, received July 24, 2019

Attachment A6: Updated letter from the soil consultant, dated November 4, 2019

Attachment A7: Updated information requested by the Board of Supervisors during their October 16, 2019 meeting