

Attachment A - Staff Analysis

STAFF PERSON: Bart Svoboda, Zoning Administrator
BOARD OF SUPERVISORS: July 20, 2022
PROJECT: SE202200018 (4394 Carriage Hill Drive, Earlysville) Kindrick Fill Area
PROPERTY OWNER: Kindrick, Alan, and Ada Joint Trust C/O Timothy K Kindrick
LOCATION: 4394 Carriage Hill Drive
TAX MAP PARCEL: 03200-00-00-00100 and 03200-00-00-00200
MAGISTERIAL DISTRICT: White Hall

APPLICANT'S PROPOSAL:

Pursuant to County Code § 18-5.1.28(d), the applicant has applied for an exception from all requirements of County Code § 18-5.1.28 on Parcels 03200-00-00-00100 and 03200-00-00-00200. The applicant is currently operating a two-acre clean earth fill activity on each parcel, as allowed by right in County Code § 18-4.3.1, with an approved zoning clearance (Attachment B) issued on May 24, 2022. The activity is required to be compliant with County Code § 18-5.1.28 (Attachment C) and all other applicable requirements.

CHARACTER OF THE PROPERTY AND AREA:

The property is located at 4394 Carriage Hill Drive, Earlysville (Attachment D). The request involves two parcels (TMP 03200-00-00-00100 and 03200-00-00-00200) that are zoned Rural Areas. One parcel contains 155 +/- acres, and the other is 77 +/- acres. The two parcels are mostly open fields with about 1/3 in trees or brush. The property borders Chris Greene Lake Park on its eastern side.

PLANNING AND ZONING HISTORY:

The two parcels involved in the request have historically contained agricultural use. No dwelling units are located on the parcels. As of the date of this report, there is no record of any zoning violation on either parcel.

ABUTTING PROPERTY OWNER COMMENTS

Notices to abutting property owners were mailed on July 7, 2022.

COMPREHENSIVE PLAN:

The property is designated as Rural Area in the Comprehensive Plan. This designation includes preservation and protection of agricultural, forestal, open space, and natural, historic, and scenic resources, as discussed in the Rural Area chapter of the Comprehensive Plan. Staff recognizes that care must be taken not to overwhelm or negatively affect the resources that make rural Albemarle attractive to residents and tourists. Staff does not believe that this proposal contains sufficient information to determine how it complies with the overall goals of the Comprehensive Plan.

ANALYSIS OF THE APPLICATION FOR EXCEPTION:

Special exceptions are subject to County Code § 18-33.5, under which the Board may either approve or deny an application, defer action to allow for changes before final action or refer the application to the Planning Commission.

To grant the requested special exception, the Board is required to make both general and specific findings in support of its action. To waive or modify any supplementary zoning regulation generally, County Code § 18-5.1 requires a finding that the applicable requirement “would not forward the purposes of [the Zoning Ordinance] or otherwise serve the public health, safety, or welfare or that a modified regulation would satisfy the purposes of [the Zoning Ordinance] to at least an equivalent degree as the specified requirement.”

Regarding the Zoning Ordinance’s fill requirements specifically, County Code §18-5.1.28(d)(1) provides that a variation or exception from any requirement of this section may be approved upon a finding that any of the following factors are satisfied:

- (i) *the proposed fill activity would further agricultural use of the property,*
- (ii) *the variation or exception would allow for a more natural appearance of the site after the fill activity has occurred,*
- (iii) *a reduction in setback from the entrance corridor is recommended by the Architectural Review Board;*
- (iv) *the variation or exception is supported by the abutting owners impacted by the variation or exception;*
- (v) *approval of any variation or exception is consistent with an approved and valid initial or preliminary site plan or any other land use decision of the County;*
- (vi) *the proposed fill activity will be of limited duration (less than 90 days) and involve not more than 10,000 cubic feet of fill within any 12 months.*

Staff acknowledges that the proposed clean earth fill activity may (i) further the agricultural use of the property and (ii) present a more natural appearance when the fill activity has ceased.

However, staff is unable to support a finding under County Code § 18-5.1 that a modified regulation (or in this case, the complete lack of regulation under County Code § 18-5.1.28) would satisfy the purposes of the Zoning Ordinance to at least an equivalent degree as the applicable requirements. No plan has been provided or proposed that outlines the duration of the clean earth fill activity, identifies the finished grades once the project is complete, or ensures that the amount of soil would be limited to 10,000 cubic feet within any 12 months. Also, 40 +/- acres of the proposed fill area (Attachment F) is located along Jacobs Run directly upstream of Chris Greene Lake, potentially negatively impacting those water bodies and downstream properties. Finally, the subject property is under an ACE conservation easement, co-owned by the County, that strictly limits grading, blasting, earth removal, and mining.

RECOMMENDATION:

Staff recommends that the Board adopt the attached resolution (Attachment G) to deny the application for an exception.

ATTACHMENTS

- A. Staff Analysis
- B. CLE2022-037 Kindrick Fill Area Approved Zoning Clearance
- C. County Code § 18-5.1.28 - Clean Earth and Inert Waste Fill Activity Regulations
- D. Location Map
- E. Special Exception Application and Information
- F. SE202200018 Proposed Fill Area
- G. Resolution