



**ALBEMARLE COUNTY**  
**STAFF REPORT**

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| <b>Project Name:</b> Special Exception for disturbance of Critical Slopes for B2019-01427-SF on TMP 63-19E                                                                                                                                                                                                                                                                                                                                                                   | <b>Staff:</b> Tori Kanellopoulos, Planner                                                                                                                                                         |
| <b>Planning Commission Hearing:</b> N/A                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>Board of Supervisors:</b> October 16 <sup>th</sup> , 2019                                                                                                                                      |
| <b>Owner:</b> Lawrence Marshall                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>Applicant:</b> Tommy Dobson, Dobson Homes Inc.                                                                                                                                                 |
| <b>Acreage:</b> 55.10 acres                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>By-right use:</b> RA Rural Area - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)                                                            |
| <b>TMP:</b> 06300-00-00-019E0                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>Location:</b> Parcel is located approximately 980 feet south of the end of State Route 621 (Wolf Trap Road).                                                                                   |
| <b>Magisterial District:</b> Rivanna                                                                                                                                                                                                                                                                                                                                                                                                                                         | <b>Proffers:</b> None                                                                                                                                                                             |
| <b>Proposal:</b> Special Exception request for disturbance of Critical Slopes to construct a single-family residence.                                                                                                                                                                                                                                                                                                                                                        | <b>Requested # of Dwelling Units:</b> 1                                                                                                                                                           |
| <b>DA:</b> <input type="checkbox"/> <b>RA:</b> <input checked="" type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                                           | <b>Comp. Plan Designation:</b> Rural Area - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources; residential (0.5 unit/ acre in development lots) |
| <b>Character of Property:</b> Partially-wooded parcel located past the end of State Route 621. Northern portion of property contains two streams identified on GIS, and one additional intermittent stream identified during a site visit. 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. | <b>Use of Surrounding Properties:</b> Surrounding properties are also zoned Rural Area. Adjacent properties are either undeveloped or contain a single-family residence.                          |
| <b>Factors Favorable:</b> <ol style="list-style-type: none"> <li>1. Disturbance of the critical slopes has already occurred.</li> <li>2. Alternative building sites are limited and adjacent to streams and possible wetland areas.</li> </ol>                                                                                                                                                                                                                               | <b>Factors Unfavorable:</b> <ol style="list-style-type: none"> <li>1. None identified.</li> </ol>                                                                                                 |

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| 3. The alternatives proposed by the applicant satisfy the intent and purpose of the ordinance.     |  |
| <b>RECOMMENDATION:</b> Staff recommends approval of the special exception request with conditions. |  |

**STAFF PERSON:** Tori Kanellopoulos  
**PLANNING COMMISSION:** N/A  
**BOARD OF SUPERVISORS:** October 16<sup>th</sup>, 2019

**PETITION:**

PROJECT: Special Exception for disturbance of Critical Slopes for B2019-01427-SF  
 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: Disturbance of critical slopes for the construction of a single-family dwelling.  
 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 Wolfpit Mountain 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 field verified an additional stream on this parcel not shown on GIS. Since this is an intermittent stream in the Rural Area, the WPO buffer applies. (Attachment F)
- The property was recently timbered for logging. 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 house area does not contain 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). (Attachment E)

### **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 has voluntarily installed erosion control measures, as they are not required for forestal activities. Erosion and sediment control measures and an approved WPO Plan will be required prior to building permit approval for the single-family residence. Given that the disturbance has already occurred, that the applicant has provided an adequate erosion and sediment control plan, 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 allows the Board to approve a special exception to disturb critical slopes if it finds that the special exception *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 has provided an erosion and sediment control plan that adequately addresses the provisions of § 18-4.2.5. The disturbance of the critical slopes has already occurred.

*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 250 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 the stream buffer and to affect the streams on the property.

Engineering staff does not have any objections to the erosion and sediment control plan provided by the applicant.

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 in the WPO buffers or on potential wetlands. Attachment F shows the location of the critical slopes and WPO buffers, including the intermittent stream field located by staff during the August 15, 2019 site visit. The areas in white are not in critical slopes or WPO buffers. 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 within 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 the WPO buffers. Adequate erosion and sediment control measures will be required to ensure public health, safety, and welfare prior to the construction of the proposed single-family residence. Voluntary erosion and sediment control measures have already been put in place for the road that was constructed for forestal activities (logging).

*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 proposed site for the house is not within critical slopes. The proposed drainfield for the house also is not within critical slopes. It would be more detrimental for the protection and health of the steep hillsides and water supplies to construct a residence in the WPO buffers, as opposed to 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. 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 within 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.

*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 critical slopes and WPO buffers 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 the WPO buffer for the intermittent stream. 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.

## **APPLICANT'S JUSTIFICATION FOR THE REQUEST**

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

## **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.

## **BOARD OF SUPERVISORS POSSIBLE MOTIONS for Special Exception Request:**

A. Should a Board Member **choose to approve** this special exception request:

**I move that the Board adopt the resolution in Attachment G, for the Special Exception request for disturbance of Critical Slopes for B2019-01427-SF, with conditions as stated in the staff report.**

B. Should a Board Member **choose to deny** this special exception request:

**I move to deny the Special Exception request for disturbance of Critical Slopes for B2019-01427-SF, for the following reasons. *State reasons for denial.***

## **ATTACHMENTS FOR THE SPECIAL EXCEPTION REQUEST:**

Attachment A: Staff Report [this document]

Attachment B: Vicinity Maps

Attachment C: Proposed location of the single-family house

Attachment D: Erosion and Sediment Control Plan

Attachment E: Application and Justification

Attachment F: GIS map showing critical slopes and WPO buffers (including field located stream)

Attachment G: Resolution