

**Bart Svoboda**

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**From:** Stanley Tolman <stanrt5@vt.edu>  
**Sent:** Monday, February 12, 2024 5:18 PM  
**To:** Frank Pohl  
**Cc:** Vanderploeg, Steven A CIV USARMY CENAO (USA); Bart Svoboda; Ann Mallek  
**Subject:** Re: Orchard Acres

**CAUTION: This message originated outside the County of Albemarle email system. DO NOT CLICK on links or open attachments unless you are sure the content is safe.**

Frank,

Thanks for your email.

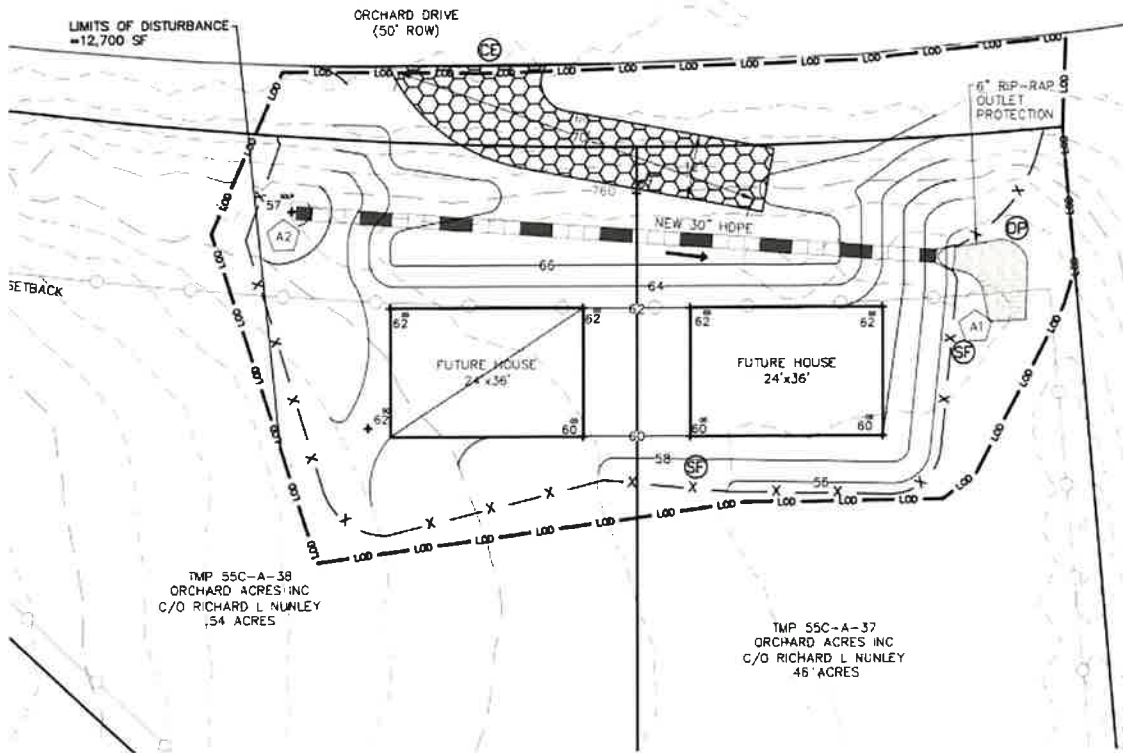
The silt fence marked with the line with Xs on the soil erosion control plan corresponds fairly closely with the white flags on the trees which are likely the rough boundaries for the limits of disturbance (LOD) on the plan.

As can be seen in the pictures below, boulders have been placed and trees knocked down over 50' beyond the limits of disturbance.

Can you have the soil erosion plan revised to show the actual limits of disturbance and survey stakes put out where the limit of disturbance is?

Also, Is it an acceptable practice to leave downed trees in the stream?





Thanks,

Stan Tolman  
 (434) 962-5777

On Sun, Feb 11, 2024 at 5:13 PM Frank Pohl <[fpohl@albemarle.org](mailto:fpohl@albemarle.org)> wrote:

Please refer below.

**Frank V. Pohl, PE, CFM**

*County Engineer*

[Albemarle County](#)

[fpohl@albemarle.org](mailto:fpohl@albemarle.org)

434-296-5832 x7914

401 McIntire Road, North Wing, Charlottesville, VA 22902

12 February 2024

**TO: Lisa Green**

c/o Albemarle County Board of Supervisors

**RE: SPECIAL EXCEPTION FOR A ZONING CLEARANCE SE202300036 ORCHARD ACRES – CLEAN EARTH FILL**

FROM: Sara Rynders, adjacent landowner

Dear Members of the Albemarle County Board of Supervisors,

This letter is in response to a request for **SPECIAL EXCEPTION FOR A ZONING CLEARANCE SE202300036 ORCHARD ACRES – CLEAN EARTH FILL** scheduled for review at the Board of Supervisor's meeting on Wednesday February 21, 2024.

This is the first time I have ever written to a County Board of Supervisors. But the more I learned about what has transpired on this development site since August of 2023 (and how it is reminiscent of the turn of events on the Montclair project site—Same Engineering Firm consulting), the more I become compelled to research and speak out.

I am writing to voice my concerns, on record, about the special exception request for clean fill at this development site. Furthermore, I request a motion to deny the request base on the following information:

**The engineering firm hired on the Orchard Acres development project has demonstrated a blatant and REPEATED disregard for county code and policies since the outset of this project. If the repeal of yet another layer of county code protections are obliged under the guise of a special exception, it will not only look bad on behalf of The Board, but it will continue to feed the narrative that this Board favors the goals of land developers over local environmental preservation in addition to its sworn duty to uphold county code and policies.**

**YOU DO NOT *HAVE* TO GRANT THIS CLEAN FILL EXCEPTION.  
IT IS JUST THAT SIMPLE.**

Based on my queries and conversations with county staff it has become my understanding that you probably *CAN* approve this special exception, if certain requirements are met. But that doesn't mean that you *SHOULD*. And here is a list of reasons why:

1) **There is a stream running across the entrance to both parcels 05C0-00-00A-03700 and 05C0-00-00A-03800 that does not appear on the Albemarle County GIS map (Figure 1A-C).**

a. **The stream remains free-flowing** and supports aquatic life to this day. (Figure 1D).

b. **The stream drains into a wetlands ecosystem** on land owned by Grayrock Community. (Figure 1E & 1F)

c. **The stream drains into the lower retention pond maintained by the Grayrock Community** and placing clean fill and potential dwellings on these sites will have an impact on run-off, erosion, and retention pond fill that the owner has not accounted for.

d. But best I can tell, this stream was on usgs maps in some variation dating as far back as 1892 (Figure 1G), and continues to appear on usgs topographical maps in 1931, 1935 and 1956. (REF <https://ngmdb.usgs.gov/topoview>). Is the stream that should be grandfathered, here, not the parcels.

e. The stream disappears from the USGS maps in 1965 to coincide with the development of the retention ponds and the future site of Orchard Acres Development (and to be fair, the Grayrock neighborhood later on). (Figure 1H.)

f. **BUT THE STREAM REMAINS.** And its ecologic impact on the area cannot be ignored.

2) **Mr. Nunley's development team started clearing land on these parcels in August of 2023 AND PLACED CLEAN FILL OVER THE STREAM BEFORE they had consulted with the County Engineering or Zoning and the DEQ and BEFORE they had obtained any necessary permits.** (See Erosion Control Plan dated and signed 9/22/23).

a. This is not simple oversight. Shimp Engineering, a renowned local engineering firm, demonstrated a similar pattern of disregard for county code during its work on the Montclair Project where it filled the stream with clean fill prior to obtaining proper permits from the county. This engineering firm has developed a blue print to circumnavigate county code and continues to strategically disrupt land unmonitored and unregulated.

b. Shimp Engineering claims on their website to “... *apply practiced knowledge of locality processes, and our relationships with local planners and inspectors helps us navigate municipal systems with ease. As a local presence for the last decade, we strive to continue growing as practitioners, community members, and responsible influencers of local development.*”

3) **Parcels 05C0-00-00A-03700 and 05C0-00-00A-03800 were considered WETLAND HABITAT up until the Fall of 2023 when a consultant from the DEQ was called in and determined that samples from the parcels did not meet wetlands standards. THIS CONSULTATION WAS CONDUCTED AFTER THE LAND WAS CLEARED AND CLEAN FILL WAS PLACED.** Wetland habitat still remains on the downstream side of the parcels on land owned by Grayrock Community. (Figure 1E.)

4) **The wrong ACE permit was submitted to the DEQ and County in the Fall of 2023.**

a. It is my very basic understanding that Shimp Engineering obtained and submitted either a nationwide permit or a self-certifying TMDL-RGP permit - a non-reporting army corps of engineers (ACE) permit. **BUT, the parcels should have qualified for the more stringent ACE-verified TMDL-RGP permit.** It is my understanding that ACE had not been notified by the DEQ or Albemarle County about the permit submitted to DEQ last fall, or of the change in wetlands designation.

**5) There are more people and environmental impacts that stand to be negatively impacted by this clean-fill exception than will benefit from it:**

List of people this project may benefit:

- 1) Mr. Nunley
- 2) Shimp Engineering
- 3) Two potential new families to inhabit the future dwellings

List of people environments that may be negatively impacted by this project:

- 1) The free-flowing stream on these parcels
- 2) An adjacent neighbor whose home lies within about 25 feet of the clean fill area
- 3) Storm water drainage from Orchard Dr, Cling Ln, Lanetown Rd, Gala Ct, Stayman Ct.
- 4) Wetlands habitat downstream from the development sites
- 5) Grayrock Community retention ponds
- 6) Wildlife currently supported by the stream and wetlands

In summary, there are many concerns about this project that support a motion to deny the clean fill exception. Please, stop rewarding bad behavior by owners and developers and send a message that this will not be tolerated in Albemarle County. Then, work to close the loopholes in the Water Protection Ordinance (WPO) that these developers are exploiting.

In closing, I appreciate the work that The Board of Supervisors does to keep Albemarle County a beautiful place to live and work. I look forward to attending the upcoming Board of Supervisors meeting and hearing more about this measure.

Respectfully,

Sara D. Rynders

**FIGURES:**

Figure 1A. Approximate location of the free-flowing stream on the parcels in question.

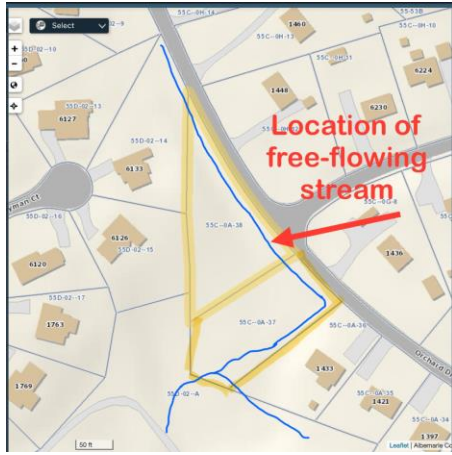


Figure 1B. 2/4/24. Stream coming out of the southeast corner of parcel 55C-0A-37. The clean fill area on Orchard Rd. can be seen in the background.





Figure 1C. 2/4/24. Looking downstream from the Pedestrian Bridge over the stream in Grayrock Community. This is located directly downstream from parcel 55C-0A-37.



Figure 1D. 2/4/24. Aquatic life in the stream. Photo taken at the boundary of parcel 55C-0A-37.



Figure 1E. Wetlands Habitat (Source: National Wetlands Inventory, accessed 2/12/2024)

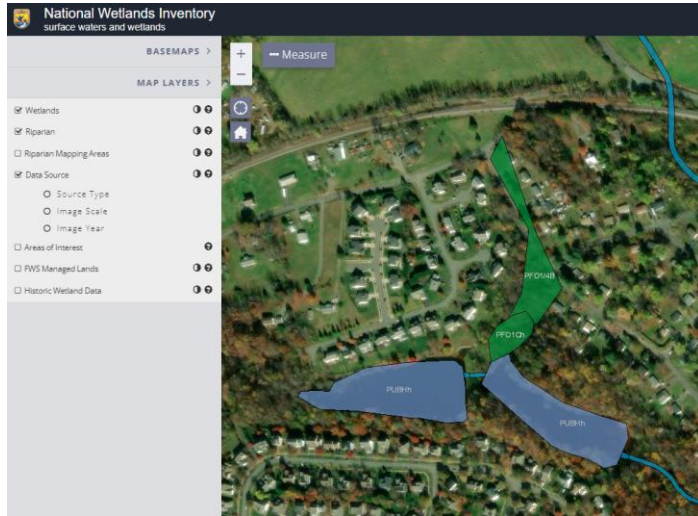


Figure 1F. Wetlands Habitat on 1/28/24. Looking from the end of the stream into the retention pond in the distance.



Figure 1G. 1892 Map of area in question with branch of creek clearly recorded.



Figure 1H. 1965 topographical map displays new retention ponds and the stream has been removed from the map.

