

## ATTACHMENT C

### STAFF ANALYSIS

**STAFF PERSON:** Rebecca Ragsdale, Planning Manager  
**BOARD OF SUPERVISORS:** June 3, 2026, Deferred May 20, 2026  
**PROJECT:** SE-2025-00040 – 528 Clarks Tract  
**PARCEL ID:** 08100000011A3

### PROPOSAL

The applicant is requesting a special exception to waive the requirement that structures and improvements must be located within a building site. Building site requirements are found in County Code §18-4:

#### **Sec. 4.2.1 Building site required.**

No lot other than a special lot shall have less than one building site, subject to the following:

- a. *Composition of building site.* A building site shall be composed of a contiguous area of land and may not contain any area of land that is: (i) in critical or preserved slopes; (ii) within the flood hazard overlay district; (iii) under water during normal hydrological conditions; (iv) within 200 horizontal feet of the 100-year flood plain of any public water supply reservoir; and (v) within a stream buffer under chapter 17 of the Code, provided that nothing contained herein shall be deemed to prohibit or impair the program authority from exercising its discretion as authorized in chapter 17.
- b. *Special exception.* Notwithstanding section 4.2.5, any requirement of section 4.2.1(a) may be waived or modified by special exception under section 33.5 upon the board of supervisors' consideration of whether (i) the parcel has an unusual size, topography, shape, location or other unusual physical condition; or (ii) development in a stream buffer on the parcel was authorized as provided in section 17-321 of the Code.

County Code §18-4.2.3 specifies that no structure or improvement shall be located on any lot or parcel in an area other than a building site. County Code §18-4.2.4 specifies that any onsite sewage system shall be within a building site.

The applicant has made this special exception request to allow an existing accessory structure (a 3-car garage with finished space above it), that was constructed without a building permit, and its associated driveway to remain within a stream buffer.

### CHARACTER OF THE AREA

The subject property is approximately 7.86 acres with a single-family home, pool, pool house, gazebo, and three-car garage with finished space above it. There is a pond located on the property and associated stream buffer, along with stream buffer associated with a stream on the abutting property to the east. The property is located on Clarks Tract Road in the Rural Area and is zoned Rural Areas. Adjacent properties are also within the Rural Area and are zoned Rural Areas. The adjacent property to the south is under conservation easement. (See Location Map with Stream buffers provided as Attachment B)

### BACKGROUND

The 7.86 acre subject parcel was created by a boundary line adjustment plat recorded December 8, 1992. The parcel retains one development right, cannot be further divided, and is limited to one dwelling unit. The single-family dwelling was constructed on the

property with a building permit in 2001-2002 (B200100348SF). The current owners purchased the property on May 13, 2022. The prior owners constructed the home and accessory structures on the property.

**B201202038NNR** A building permit was submitted for the 3-car garage with finished space above it in October 2012. The permit was denied because staff noted that its proposed location was within a stream buffer, not within a building site.

**ZVIO202400165** Concerns were received about the property hosting weddings and homestay uses in 2024. A notice of zoning violation was issued on September 18, 2024 for multiple structures constructed on the property without permits and other violations. That included a pool, a pool house, gazebo, fishing shack, and a three-car garage with space above it constructed without permits. (Also reference BVIO202400030). It was at this time that the unpermitted 3-car garage with finished space above it was discovered.



The special exception under review is to allow the three-car garage with finished space above it to remain (see photo below). Based on aerial imagery and County records, the structure was constructed between 2012-2013.



### **ANALYSIS OF SPECIAL EXCEPTION REQUEST**

The applicant's request is to allow all existing improvements to remain in the stream buffer, outside a building site. This includes the 3-car garage, parking and driveway, and septic line serving the structure. County Code § 18-4.2.1 (a) prohibits building sites within a stream buffer pursuant to Chapter 17 of the County Code.

County Code § 18-4.2.5(a) allows for a waiver as indicated below. Staff has included the applicable criteria and code sections, followed by staff comment.

#### **Sec. 4.2.5 Modification or waiver.**

Any requirement of section 4.2.1, 4.2.2, 4.2.3 or 4.2.4 may be modified or waived by special exception of the Board of Supervisors as provided in section 33.5 and herein:

- a. *Modification or waiver generally.* The Board of Supervisors may modify or waive any requirement as provided in subsection (b), as follows:
  1. *Request.* A developer or subdivider requesting a modification or waiver shall file a written request in accordance with section 32.3.5 of this chapter and identify and state how the request would satisfy one or more of the findings set forth in subsection 4.2.5(a)(3). If the request pertains to a modification or waiver of the prohibition of disturbing slopes of 25 percent or greater (hereinafter, "critical slopes"), the request also shall state the reason for the modification or waiver, explaining 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 comment:** The applicant filed a written request and provided an exhibit showing existing improvements requested to remain. The structure and improvements have not

impacted critical slopes. However, approximately 0.268 acres of stream buffer, as established by Chapter 17 of the County Code (the "Water Protection Ordinance") has been impacted. The applicant provided a mitigation plan showing existing improvements, disturbance calculations, and proposed mitigation areas with plantings and grasses. Approximately one-third of the structure is within the buffer along with paved driveways surrounding and leading to the structure.

2. *Consideration of recommendation; determination by county engineer.* In reviewing a request for a modification or waiver, the Board of Supervisors shall consider the recommendation of the agent as to whether any of the findings set forth in subsection 4.2.5(a)(3) can be made by the commission. If the request pertains to a modification or waiver of the prohibition of disturbing critical slopes, the Board of Supervisors shall consider the determination by the county engineer as to whether the developer or subdivider will address each of the public health, safety and welfare factors so that the disturbance of the critical slopes will not pose a threat to the public drinking water supplies and flood plain areas, and that soil erosion, sedimentation, water pollution and septic disposal issues will be mitigated to the satisfaction of the county engineer. The county engineer shall evaluate the potential for soil erosion, sedimentation and water pollution that might result from the disturbance of slopes of 25 percent or greater in accordance with the current provisions of the Virginia Department of Transportation Drainage Manual, the Commonwealth of Virginia Erosion and Sediment Control Handbook and Virginia State Water Control Board best management practices, and where applicable, Chapter 17, Water Protection, of the Code.

Staff comment: This request has been reviewed by the County Engineer, with consideration of soil erosion, sedimentation, and water pollution, the site is stabilized and no land disturbance is proposed with this request. Regarding septic disposal, there is one drainfield located on the property near the front of the property. The structure is served by a lift station (grinder pump) that is pumped through a forcemain from the garage structure to the drainfield. The property owner that built the garage structure did not obtain Health Department approval of the new system. The current owners have pursued Health Department approval of the sewer extension to serve the garage structure.

3. *Findings.* The Board of Supervisors may grant a modification or waiver under this subsection (a) 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:

- 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;

Staff comment: The purpose of the regulation is to guard the public, health, safety and welfare, requiring structures to be built in building sites. Adherence to the regulations forwards this purpose.

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

Staff comment: The owner hasn't proposed relocating the structure outside of the stream buffer and into a building site. However, the owner proposes an alternative to mitigate impacts of impervious areas within the stream buffer by planting native trees, shrubs and grasses at a 2:1 ratio, which meets the minimum mitigation standards in the Water Protection Ordinance.

- 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

Staff comment: This request does not include critical slopes disturbance. However, the 7.86-acre parcel is not of an unusual shape or size, there are no topographic issues, or other physical conditions that would prevent such a structure from being located in a building site. The dwelling and other accessory structures on the property were constructed in building sites.

- 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.

Staff comment: This requirement is not met. A greater public purpose is not served by allowing the structure and improvements to remain in the stream buffer.

4. *Conditions.* In granting a modification or waiver, the Board of Supervisors may impose conditions deemed necessary to protect the public health, safety or welfare and to insure that the development will be consistent with the intent and purposes of section 4.2.

Overall, this request does not meet the necessary findings of the ordinance. However, approval of it would abate a violation and require conditions to mitigate impact of the stream buffer to a greater standard than could be required if the structure and improvements are removed.

### **RECOMMENDATION:**

Staff has attached two possible motions for the Board, one to deny the request and one to approve with conditions. If the Board approves the SE staff recommends the following conditions:

1. A VESMP application with a mitigation plan must be submitted within 30 days from approval of this special exception request.
2. Stream buffer mitigation plantings must be in substantial accord with the plan titled "VSMP Plan 528 Clarks Tract" prepared by Shimp Engineering, last revised April 23, 2026.
3. Stream buffer mitigation plantings must be bonded prior to plan approval and installed within 6 months of plan approval.
4. The structure and improvements are limited to what is shown on the plan ("VSMP Plan 528 Clarks Tract" prepared by Shimp Engineering, last revised April 23, 2026"). No extension or enlargements are permitted of the structure or driveway and no additional structures or improvements are permitted within the stream buffers.
5. The structure must not be used for any home occupation or homestay uses.