

ATTACHMENT A

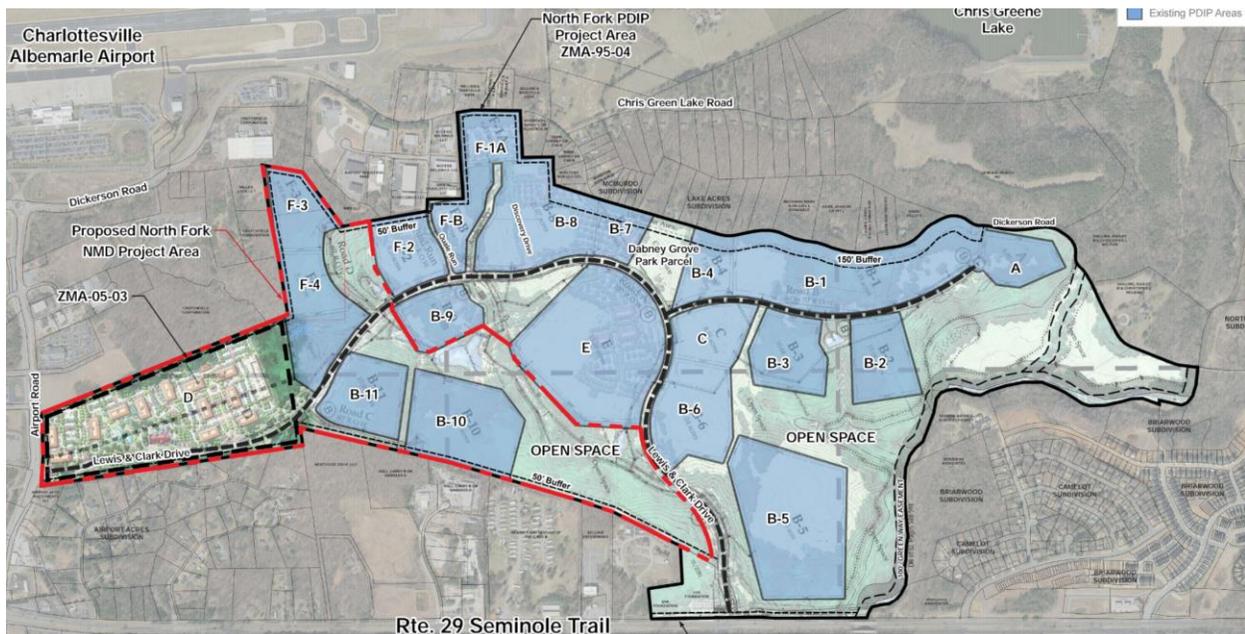
SE 2023-12 North Fork UVA Discovery Park - Critical Slopes Special Exception

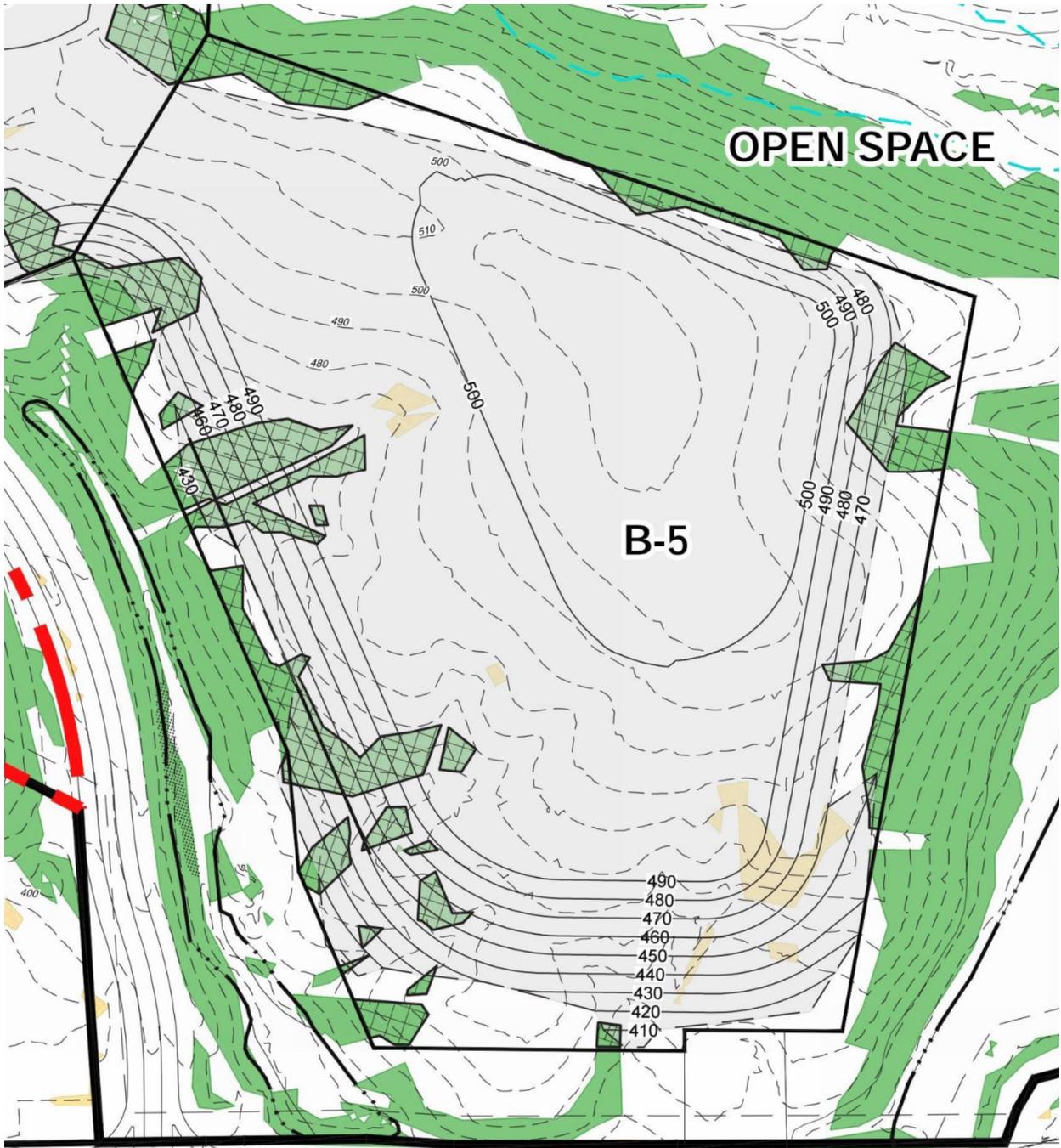
The North Fork UVA Discovery Park is zoned Planned Development Industrial Park (PD-IP). The original approval for the park was granted by the Board of Supervisors in 1993. The Board has approved multiple amendments to the original plan, with the most recent approval on March 10, 2010.

County Code § 18-8.5.5.2 authorizes site plans in Planned Districts to be reviewed under the ordinance in effect at the time of either the submittal of a site plan or the establishment of the district. The applicant has chosen to have the application reviewed under the ordinance in effect at the time of the establishment of the district, which in this case is March 10, 2010.

The ordinance in effect in 2010 did not include the Steep Slopes Overlay District (now County Code § 18-30.7). However, the ordinance at the time did include provisions limiting the disturbance of critical slopes (specifically, County Code § 18-4.2). The applicant has submitted a special exception request for the disturbance of critical slopes in area B-5, as shown below. The request to disturb critical slopes has been reviewed in accord with County Code § 18-4.2 as it existed in 2010.

The critical slopes proposed for disturbance are in area B-5 of the North Fork UVA Discovery Park. This area is located on the northwest corner of the intersection of Lewis and Clark Drive and Route 29. Below are maps taken from the plans prepared by Timmons Group and LPDA titled "North Fork ZMA", dated 2/3/2023. *Note: on the plans below, north is to the right.*





The project proposes to disturb the critical slopes located within the boundaries of area B-5, as shown above. These areas are noted in both light yellow and green with crosshatching. These critical slopes are located in multiple groupings ranging in size from 404 square feet to 35,500 square feet (0.8 acres). The procedure and criteria for evaluation of the special exception are contained in County Code § 18-4.2.5.

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,

Prior to any disturbance, an applicant is required to obtain both site plan and grading plan approvals. The approval of these plans would include provisions to minimize stormwater run-off and the movement of soil and rock. During the review of the site plan, including proposed grading, the ordinance requires measures to minimize the adverse impacts caused by grading.

siltation of natural and man-made bodies of water,

During construction, erosion control measures are required to minimize siltation. Post construction, the areas would be stabilized and stormwater management systems would be installed and required to be maintained. This project is not located within a reservoir watershed and no stream buffer is adjacent to the slopes to be disturbed. As stated above, the ordinance requires mitigation measures to address the impacts of the proposed activity.

loss of aesthetic resources,

The slopes do not currently represent an aesthetic resource. A forested buffer would remain around the project site along all boundaries.

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.

No drainfields are proposed.

1. 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.](#)

The property is not in a water supply watershed. The slopes to be disturbed are not in a floodplain or stream buffer. As previously stated, a site plan and grading plan would be required. These plans must comply with State and local regulations. The County Engineer has stated that the required plans must address the provisions of all State and local erosion and sediment control regulations. The slopes do not contain any unusual or unique characteristics that would prevent compliance with the regulations or that would result in excessive erosion, sedimentation, or water pollution.

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:*

The site plan review process would verify and require that the proposed grading minimizes soil erosion and stormwater runoff. With the approval of a site plan, sound engineering practices would be satisfied and the public health, safety, and welfare would be protected. The areas of slope to be disturbed would not impact any adjacent properties.

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 has reviewed the purposes of this chapter contained in section 1.4. Application of the regulations limiting disturbance of critical slopes does not conflict with the purposes stated in the ordinance. The application does not meet this criterion for granting a modification or waiver.

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 project would meet all requirements of State and local regulations for the disturbance of soils. These provisions would satisfy the intent and purpose of the ordinance to at least an equivalent degree. The application does meet this criterion for granting a modification or waiver.

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

A strict application of the regulations would not prevent use of the property. Application of the regulations would prevent use of some but not all of block B-5, which was indicated as a developable area in prior rezonings. The application does not meet this criterion for granting a modification or waiver.

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.

The applicant has stated, "The granting of this modification will enable the development of an industrial site that has significant economic development importance at a local and state level".

Block B-5 was identified as an area of development in prior rezoning approvals. The Places29 Master Plan (page 4-19) directly addresses the North Fork property with the following:

"The University of Virginia Research Park will continue to develop as a major employment center. This Plan offers the University of Virginia Research Park the opportunity to include a more integrated amount of residential and commercial uses. The land uses in the Research Park that are shown on the Future Land Use Map are consistent with the University of Virginia Foundation's long-term conceptual site plan. Future development within the Research Park may continue to develop in a campus-style form and with building footprints that are consistent with the existing zoning."

The Virginia Economic Development Partnership has confirmed that the site meets the Tier 4 designation under the Virginia Business Ready Sites Program. The Comprehensive Plan and Virginia Economic Development Partnership recognize that this area plays an important role in the economic development of Albemarle County and the Commonwealth. A stated purpose of the Zoning Ordinance is to "Encourage economic development activities that provide desirable employment and enlarge the tax base". (Reference Chapter 18, Section 1.4(G) of the Code of Albemarle)

The application does meet this criterion for granting a modification or waiver.

Additional Analysis

In evaluating this request, staff has considered (but not been bound by) the provisions of subsequently-adopted Chapter 18, Section 30.7 Steep Slopes Overlay District. In adopting this district, the County evaluated critical slopes in the development area and distinguished between Managed Slopes (which may be disturbed and Preserved Slopes (which should remain undisturbed). The Board adopted characteristics of these two types of slopes to help determine which slopes may be disturbed. Staff has used this provision to evaluate the public purpose to be served by approving or denying the request. Under County Code § 18-30.7.3, the characteristics of the two types of slopes are:

Managed slopes. The characteristics of managed slopes are the following: (i) the contiguous area of steep slopes is limited or fragmented; (ii) the slopes are not associated with or abutting a water feature, including, but not limited to, a river, stream, reservoir or pond; (iii) the slopes are not natural but, instead, are manufactured; (iv) the slopes were significantly disturbed prior to June 1, 2012; (v) the slopes are located within previously approved single-family residential lots; or (vi) the slopes are shown to be disturbed, or allowed to be disturbed, by a prior county action.

Preserved slopes. The characteristics of preserved slopes are the following: (i) the slopes are a contiguous area of 10,000 square feet or more or a close grouping of slopes, any or all of which may be less than 10,000 square feet but whose aggregate

area is 10,000 square feet or more; (ii) the slopes are part of a system of slopes associated with or abutting a water feature including, but not limited to, a river, stream, reservoir or pond; (iii) the slopes are part of a hillside system; (iv) the slopes are identified as a resource designated for preservation in the comprehensive plan; (v) the slopes are identified as a resource in the comprehensive plan; (vi) the slopes are of significant value to the entrance corridor overlay district; or (vii) the slopes have been preserved by a prior county action, including, but not limited to, the placement of an easement on the slopes or the acceptance of a proffer or the imposition of a condition, restricting land disturbing activity on the slopes.

The area in critical slopes is contiguous or a close grouping of slopes. Some of the slopes do abut an intermittent stream, though without a buffer. A stream with a buffer is located to the west (top of map). However, the proposed area of disturbance would be minimal and approximately 350 beyond the buffer (450 feet from the stream). The slopes are not designated for protection by any prior County action.

Staff considered if disturbance of these slopes was shown by a prior County action. If staff had determined that they were shown for disturbance, this special exception would not be necessary, as disturbance would be permitted by the regulations of the Steep Slopes Overlay District. Staff has taken a conservative approach when determining if a prior County action allows disturbance of the slopes. Only those approvals that contain a conceptual grading plan that clearly shows disturbance of critical slopes have been determined to allow disturbance of slopes. In the case of the North Fork UVA Discovery Park, the previous approvals showed blocks of development and not grading. Staff has researched the previous zoning approvals for the Discovery Park and believe it was the intent to allow full development of the blocks. Staff has also considered the historical actions of the County to grant special exceptions for disturbance of critical slopes within planned developments prior to the adoption of the Steep Slopes Overlay District. The County routinely approved disturbance of critical slopes if they were consistent with the application plan. Staff believes that proposed development is generally consistent with the original planned development approval and that approval of this request would be consistent with the practices of the County at the time the North Fork UVA Discovery Park was approved. Based on this, staff opinion is that it would be appropriate to state that disturbance of the slopes was contemplated in prior County actions.

Special Exception Summary

In staff opinion, the request to allow disturbance of critical slopes does meet at least one of the criteria for granting a modification or waiver, allowing the Board to grant a modification or waiver.

Staff's opinion is that approval would serve the public purpose of providing industrial land for development consistent with the application plan for the North Fork UVA Discovery Park and the comprehensive plan.

Based on the analysis of the request, staff recommends approval of the request to disturb critical slopes, with conditions.