

## **Attachment A - Staff Analysis**

**STAFF PERSON:** Bart Svoboda, Zoning Administrator  
Lisa Green, Manager of Code Compliance

**BOARD OF SUPERVISORS:** April 17, 2024

**PROJECT:** SE202300036 Orchard Acres Lots 37 & 38 - Clean Earth Fill

**PROPERTY OWNER:** Orchard Acres Inc c/o Richard L. Nunley

**LOCATION:** Orchard Acres Lots 37 & 38

**PARCEL ID(s):** 055C0-00-0A-03700 and 055C0-00-0A-03800

**MAGISTERIAL DISTRICT:** White Hall

### **APPLICANT'S PROPOSAL:**

Pursuant to County Code § 18-5.1.28(d), the applicant is seeking special exceptions to waive two regulations pertaining to clean earth and inert waste fill activity on Parcels 055C0-00-0A-03700 and 055C0-00-0A-03800:

1. County Code § 18-5.1.28(a)(7), which otherwise requires a minimum setback of 75 feet from all property lines in residential zoning districts and a 100-foot minimum setback from dwellings on adjacent properties.
2. County Code § 18-5.1.28(a)(9), which otherwise requires a minimum lot size of five acres.

The disturbed area would be approximately one acre, distributed between the two parcels. The improvements proposed are to create two single-family building sites. (Attachment B)

The applicant has submitted a Water Protection Ordinance (WPO) plan (Attachment C), which was originally denied, and a grading permit, which is pending approval. Clean earth fill activity is allowed by right in County Code § 18-4.3.1 as long as it is compliant with County Code § 18-5.1.28 (Attachment D) and all other applicable regulations.

### **CHARACTER OF THE PROPERTY AND AREA:**

The two subject parcels (Parcels 055C0-00-0A-03700 and 055C0-00-0A-03800) are zoned R- 2 Residential and located on Orchard Drive approximately 600 feet south of the intersection of Lanetown Road and Orchard Drive. One parcel contains 0.54 +/- acres, and the other 0.46 +/- acres. The two parcels are vacant of any structures, but are within the Orchard Acres Subdivision, an established residential neighborhood in the Crozet development area. The subject parcels also contain an intermittent stream.

### **PLANNING AND ZONING HISTORY:**

The follow is the brief relevant history of the subject parcels:

- The Orchard Acres rezoning was approved on October 9, 1974. The two parcels involved in the request have historically been vacant wooded land.
- An erosion and sediment control complaint was received on August 17, 2023. After an investigation, a stop work order was issued on August 23, 2023 by County Engineering staff.
- A WPO Plan was submitted on September 22, 2023. The current status of the plan is "under review."
- The Department of Environmental Quality (DEQ) investigated the site on October 18, 2023, and observed no wetlands on the property (Attachment E).

- This request, SE202300036 Orchard Acres Lots 37 & 38 for Clean Earth Fill, was submitted on October 24, 2023.
- A zoning complaint was received on January 11, 2024. After an investigation, a notice of violation was sent on March 15, 2024 for non-compliance with Section 5.1.28 (Clean earth and inert waste fill activity) of the Zoning Ordinance.
- If this special exception were granted, the WPO plan could be approved and the Notice of Violation abated.

#### **ABUTTING PROPERTY OWNER COMMENTS:**

A notice was originally sent to the abutting property owners on January 26, 2024. In response to that initial notice, staff received at least two comments (Attachment F). A second notice to abutting property owners was mailed on March 26, 2024.

#### **COMPREHENSIVE PLAN:**

The subject property is primarily designated Neighborhood Density Residential in the Comprehensive Plan. This designation includes low-density residential development patterns with neighborhood-scale commercial, retail, and institutional uses. Staff does not believe that the proposed special exceptions would conflict with these goals of the Comprehensive Plan.

#### **FACTORS TO CONSIDER**

The topography poses a challenge to the development of these two parcels as the elevations indicate an approximately 8-10 foot drop from the road to the buildable areas. The stream runs parallel to the road, which hinders access to the building site.

The plan calls for one joint access for both parcels, with the fill area adjacent to the road, keeping the building sites close to the road and minimizing the disturbed area in the buffer.

County Code § 17-604(F) (Attachment D) allows sole building sites on pre-existing lots (lots of record prior to February 11, 1998), if the stream buffer would result in the loss of a building site, and there are no other available building sites outside the stream buffer on the lot, or to allow redevelopment as permitted in the underlying zoning district. Because these lots have existed since 1974, if a building permit application were submitted, this type of activity would be reviewed and approved administratively through the building permit review process. A special exception would not be required in that case.

#### **ANALYSIS OF THE SPECIAL EXCEPTION REQUEST:**

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 exceptions, 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.”

County Code §18-5.1.28(d)(1) also identifies the following specific factors for consideration:

- (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) *the variation or exception is supported by the abutting owners impacted by the variation or exception;*
- (iv) *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;*
- (v) *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.*
- (vi) *There is no detriment to any abutting lot; and*
- (vii) *There is no harm to the public health, safety, or welfare.*

In staff's opinion, factors (iv), (v), (vi), and (vii) above support permitting clean earth fill activity on these two parcels. Specifically, the proposed clean earth fill activity would further the goal of achieving neighborhood residential density by creating a pad ready site on each of the vacant parcels.

#### **RECOMMENDATION:**

Staff recommends that the Board adopt the attached resolution (Attachment G) to approve the special exceptions for the proposed clean earth fill area on Parcels 055C0-00-0A-03700 and 055C0-00-0A-03800, provided that placement of any fill on these Parcels must be in general accord with either the Water Protection Ordinance (WPO) plan dated February 9, 2024 (Attachment C) or a duly-issued building permit.

#### **ATTACHMENTS**

- A. Staff Analysis
- B. Application and Information SE202300036 Orchard Acres Lots 37 & 38
- C. WPO2023-052 Orchard Acres Lots 37 & 38 – VESCP
- D. County Code § 18-4.3.1 – Fill areas, waste areas  
§ 18-5.1.28 – Clean Earth and Inert Waste Fill Activity Regulations  
§ 17-604(F) – Types of structures, improvements and activities which may be allowed in a stream buffer by program authority.
- E. DEQ Investigation Report 2023-10-18
- F. Abutting Owner Notice Comments
- G. Resolution