

**COUNTY OF ALBEMARLE****APPLICATION FOR A SPECIAL EXCEPTION**

- ☒ Request for a waiver, modification, variation or substitution permitted by Chapter 18
- ☐ Variation to a previously approved Planned Development rezoning application plan or Code of Development

OR

**Provide the following**

- ☐ Relief from a condition of approval

**Provide the following**

- 1 copy of a written request specifying the section or sections being requested to be waived, modified, varied or substituted, and any other exhibit documents stating the reasons for the request and addressing the applicable findings of the section authorized to be waived, modified, varied or substituted.
- 1 copy of the existing approved plan illustrating the area where the change is requested or the applicable section(s) or the Code of Development. Provide a graphic representation of the requested change.
- 1 copy of a written request specifying the provision of the plan, code or standard for which the variation is sought, and state the reason for the requested variation.

**FEE = 523.12****Application \$503 + Technology surcharge \$20.12****Project Name :** Orchard Acres Lots 37 & 38 Erosion Control Plan**Current Assigned Application Number (HS, HO, CLE, SDP, SP or ZMA)** WPO-202300052**Tax map and parcel(s):** 055C0-00-0A-03800, 055C0-00-0A-03900**Applicant / Contact Person** Shimp Engineering, PCAddress 912 E High Street City Charlottesville State VA Zip 22902Daytime Phone# ( 434 ) 2275140 Fax# (        ) Email chrisw@shimp-engineering.com**Owner of Record** Orchard Acres IncAddress 405 Oak Circle City Charlottesville State VA Zip 22901Daytime Phone# ( 434 ) 989-5552 Fax# (        ) Email munley8682@comcast.net

County of Albemarle  
 Community Development Department  
 401 McIntire Road Charlottesville, VA 22902 Voice: (434) 296-5832 Fax: (434) 972-4126

**COUNTY OF ALBEMARLE****APPLICATION FOR A SPECIAL EXCEPTION****APPLICATION SIGNATURE PAGE**

If the person signing the application is someone other than the owner of record, then a signed copy of the "CERTIFICATION THAT NOTICE OF THE APPLICATION HAS BEEN PROVIDED TO THE LANDOWNER" form must be provided in addition to the signing the application below. (page 3)

**Owner/Applicant Must Read and Sign**

By signing this application, I hereby certify that I own the subject property, or have the legal power to act on behalf of the owner of the subject parcel(s) listed in County Records. I also certify that the information provided on this application and accompanying information is accurate, true, and correct to the best of my knowledge. By signing this application, I am consenting to written comments, letters and or notifications regarding this application being provided to me or my designated contact via fax and or email. This consent does not preclude such written communication from also being sent via first class mail.

R. Nunley  
Signature of Owner / Agent / Contract Purchaser

RICHARD NUNLEY  
Print Name

10-23-23  
Date

434-989-5552  
Daytime phone number of Signatory

FOR OFFICE USE ONLY APPLICATION# \_\_\_\_\_ Fee Amount \$ \_\_\_\_\_ Date Paid \_\_\_\_\_  
By who? \_\_\_\_\_ Receipt # \_\_\_\_\_ Ck# \_\_\_\_\_ By \_\_\_\_\_



**COUNTY OF ALBEMARLE****APPLICATION FOR A SPECIAL EXCEPTION****CERTIFICATION THAT NOTICE OF THE  
APPLICATION HAS BEEN PROVIDED TO THE LANDOWNER**

*This form must accompany this zoning application if the application is not signed by the owner of the property.*

I certify that notice of the application for, Orchard Acres Lots 37 & 38 Erosion Control Plan  
[Name of the application type & if known the assigned application #]

was provided to Orchard Acres Inc  
[Name(s) of the record owners of the parcel]

the owner of record of Tax Map and Parcel Number 55C-A-37, 55C-A-38

by delivering a copy of the application in the manner identified below:



Hand delivery of a copy of the application to Richard Nunley

[Name of the record owner if the record owner is a person; if the owner of record is an entity, identify the recipient of the record and the recipient's title or office for that entity]

on \_\_\_\_\_  
Date



Mailing a copy of the application to \_\_\_\_\_

[Name of the record owner if the record owner is a person; if the owner of record is an entity, identify the recipient of the record and the recipient's title or office for that entity]

on \_\_\_\_\_ to the following address \_\_\_\_\_  
Date

[A address; written notice mailed to the owner at the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records satisfies this requirement].

Richard Nunley  
Signature of Applicant

RICHARD NUNLEY  
Print Applicant Name

10-23-23  
Date

October 19, 2023

**RE: WPO202300052– 1441 Orchard Drive**  
**Special Exception Request Pursuant to Sec.5.1.28 (a)(7) and Sec.5.1.28 (a)(9)**

Orchard Acres Inc C/O Richard L Nunley is the property owner (the “owner”) of tax parcels 055C0-00-0A-03700 and 055C0-00-0A-03800 (the “property”). An erosion control plan for the property has been submitted to prepare two pads for single family detached dwelling units. In accordance with Sec 5.1. (a) of the Albemarle County Zoning Ordinance (Chapter 18 of the Code of Albemarle), the owner requests the Board of Supervisors waive the supplementary regulation of Sec. 5.1.28 (a)(7) that requires fill activity to be set back a minimum of 75 feet from all property lines in residential zoning districts and fill activity for access to be set back a minimum of 100’ from dwellings on adjacent property. The owner also requests the Board of Supervisors waive Sec. 5.1.28 (a)(9) that requires a minimum lot size of five (5) acres for fill activities.

The owner requests to import fill to the property and grade an area for two house sites in preparation for two future single family detached houses. The owner seeks to sell the property as pad ready to a homebuilder or private individual who will submit specific house plans for each parcel. At this time, the owner does not have specific house plans for the property and therefore has not submitted a building permit on the property and so the fill activity is independent of a building permit.

The property is located approximately 600 feet south on Orchard Drive from the intersection of Lanetown Road and Orchard Drive. The property is comprised of parcels 55C-A-37 and 55C-A-38 which are both zoned R-2. The property is currently vacant and lies within an established residential neighborhood within the Crozet growth area. Adjacent parcels are zoned R-2 and R-4.

**Image A. Zoning Context and Parcel Size**





In accordance with Sec 5.1 (a), supplementary regulations may be waived upon finding that such requirements would not serve the public health, safety or welfare. The owner requests a waiver for Sec 5.1.28 (a)(7) and Sec. 5.1.28 (a)(9). Justification for waiving these regulations is as follows:

**Sec. 5.1.28 (a)(7)**

Sec. 5.1.28(a)(7) states, *“Fill activity (except for access) must be set back a minimum of 75 feet from all property lines in the Rural Areas (RA), Village Residential (VR), Monticello Historic District (MHD), and residential zoning districts, and from all public street rights of way. Access must be set back 50 feet from property lines and 100 feet from dwellings on adjacent property. No setback is required if adjoining lots are under the same ownership. The access to a fill activity is not subject to the setback from public street right of way.”*

Pursuant to Sec.5.1 (a), *“The Board of Supervisors may modify or waive any such requirements upon finding that such a requirements would not forward the purposes of this chapter or otherwise serve the public health, safety, or welfare or that a modified regulation would satisfy the purposes of this chapter to at least an equivalent degree as the specified requirement; and upon making any finding expressly required for the modification or waiver of a specific requirement; ... ”*

The property is one acre total in size, with tax parcel 55C-A-37 being .46 acre and tax parcel 55C-A-38 being .54 acre. Given the shape and size of the property, there is limited areas where fill activity can take place without an exception, Image B demonstrates that with the 75’ required setback for fill activity, there is approximately 665 SF available for fill activity. The area available for fill activity does not directly translate to buildable area as the buildable area would be even further reduced in size to account for building setbacks. This square footage is not sufficient to support building pads for the future construction of single family dwellings.

The construction entrance is proposed more than 50’ from property lines and the access point of the construction entrance is approximately 130’ from the nearest dwelling on the adjacent property, however the end point of the construction entrance is proposed to be less than 100’ from the nearest dwelling on adjacent property and so if the construction entrance is considered part of the access to the fill activity, we request a waiver from the requirement for access to be a minimum of 100’ from dwellings on adjacent parcels.

The Board of Supervisors adopted amended regulations for fill and waste areas with the approval of ZTA2019-07 on September 16, 2020; the Staff Report for ZTA2019-07 noted the “Public Purpose to be Served” was to,

*“address impacts such as truck traffic on rural roads, hours of operation, placement of fill on critical slopes and the loss of agricultural resources.[Establish] regulations for the placement of fill covering a wide variety of issues such as slope, fill height, setbacks, lot size, activity area, hours, access standards and prohibiting placement on hydric soils and limits the type of fill material permitted by right in the agricultural districts. The amendment is intended to facilitate the placement of fill in the development areas.”*

Despite the intent of the amendment being to facilitate the placement of fill in the development areas, several exceptions are needed from these regulations to place fill on the property which is in the development areas. There is no loss of agricultural resources or increased truck traffic on rural roads as a result of this fill activity. Pursuant to Sec. 5.1(a) the Board may waive any supplemental requirement upon a finding that such requirement would not forward the purposes of the Zoning Ordinance.

Prohibiting the placement of fill on the property, which is located within the development areas and is to be readied for residential development consistent with the regulations of the R-2 zoning district would not forward the purposes of the Zoning Ordinance or otherwise serve the public health, safety, and welfare. Waiving Sec.5.1.28(a)(7) to place fill on the property and ready the site for residential development would serve a greater public purpose than limiting the fill area due to setback restrictions.

In accordance with Sec.5.1.28(d)(1)(v), approval of this exception would be consistent with an approved land use decision by the County. The property is subject to the Orchard Acres subdivision plat which was signed by the designated agent for the Albemarle County Board of Supervisors on May 21, 1974.

**Image B. Area suitable for fill activity without setback exception**



**Sec 5.1.28 (a)(9)**

Sec 5.1.28(a)(9) states, *"Minimum lot size for fill activity is five acres. Multiple parcels under the same ownership and with the same zoning designation may be considered as a single lot for the purpose of achieving the minimum lot size."*

The property is one acre and therefore does not meet the threshold for fill activity. The five acre threshold is not only problematic for fill activities for this property but also for various fill activities in the development areas that may not be affiliated with a building permit. For example, if clean fill was brought in to level a residential yard or to level an area for a patio or shed, that activity would be prohibited on a parcel less than five acres, which would affect most of the residential parcels in the development areas.



Pursuant to Sec.5.1(a) the minimum five acre requirement for fill activity does not support the purpose and intent of the R-2 district as the five acre minimum requirement inhibits the property from being readied to support the future development of residential units and moreover, would prohibit the import of fill for any site improvements affiliated with residential use that were previously mentioned in this justification.

In accordance with Sec.5.1.28(d)(1)(v), approval of this exception would be consistent with an approved land use decision by the County. The property is subject to the Orchard Acres subdivision plat which was signed by the designated agent for the Albemarle County Board of Supervisors on May 21, 1974.

In your evaluation of this request please consider the location of this property within the development areas and the purpose of the amended fill and waste regulations was to limit impacts on properties within the rural areas and to protect against the loss of agricultural land. This request does not impact the rural areas or agricultural land whatsoever and rather promotes the effective use of land within the development areas.

### Image C. Extents of fill activity on property

