



**ALBEMARLE COUNTY PLANNING**  
**STAFF REPORT SUMMARY**

<b>Project Name:</b> SUB2008-287 Fontana – Phase C – Section 1 Critical Slopes Waiver Request	<b>Staff:</b> Summer Frederick, Senior Planner, Phil Custer, Engineer
<b>Planning Commission Public Hearing:</b> October 5, 2010	<b>Board of Supervisors Hearing:</b> Not applicable
<b>Owners:</b> Fontana Land Trust; A M Nichols, Trustee	<b>Applicant:</b> Steve Driver, Terra Engineering
<b>Acreage:</b> 17.146 acres	<b>Rezone from:</b> Not applicable <b>Special Use Permit for:</b> Not applicable
<b>TMP:</b> Tax Map 78E, Parcel A <b>Location:</b> Brunello Court at its intersection with Fontana Drive Extended	<b>By-right use:</b> R4-Residential (4 units/acre)
<b>Magisterial District:</b> Rivanna	<b>Proffers/Conditions:</b> Yes
<b>Requested # of Dwelling Lots:</b> 34	<b>DA – X      RA –</b>
<b>Proposal:</b> Request for preliminary plat approval to create thirty-four (34) lots on 17.146 acres. This application includes a request to modify Section 4.2.3.2 to allow disturbance of approximately 1.7 acres of critical slopes.	<b>Comp. Plan Designation:</b> Neighborhood Density Residential – residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses.
<b>Character of Property:</b> Property is currently undeveloped and wooded.	<b>Use of Surrounding Properties:</b> Developed residential neighborhoods, and wooded areas.
<b>Factors Favorable:</b> <ol style="list-style-type: none"> <li>1. Application meets technical criteria for disturbance of critical slopes; and,</li> <li>2. Disturbance of critical slopes allows for development in line with current zoning, comprehensive plan designation, and an approved re-zoning application plan.</li> </ol>	<b>Factors Unfavorable:</b> <ol style="list-style-type: none"> <li>1. None identified.</li> </ol>
<b><u>RECOMMENDATION:</u></b> Staff recommends Approval of the critical slopes waiver/modification request, with the following condition: <ol style="list-style-type: none"> <li>1. Water Protection Ordinance plan be submitted for all of Phase 4C, and the site grading is constructed as one phase.</li> </ol>	

**STAFF PERSON:** Summer Frederick; Senior Planner, Current Development  
Phil Custer; Engineer, Current Development

**PLANNING COMMISSION:** October 5, 2010

**AGENDA TITLE:** Fontana – Phase C – Section 1 Critical Slope Waiver

**APPLICANT:** Steve Driver; Terra Engineering

**PROPERTY OWNER(S):** Fontana Land Trust; A M Nichols, Trustee

**APPLICANT’S PROPOSAL:**

Disturb 1.7 acres of critical slopes in conjunction with the grading and construction of infrastructure for thirty-four (34) residential lots.

**COMPREHENSIVE PLAN:**

Neighborhood Density Residential – residential (3-6 units/acre) and supporting uses such as religious institutions and schools and other small-scale non-residential uses.

**REASON FOR PLANNING COMMISSION REVIEW:**

Required by Zoning Ordinance Section 4.2.5.a.

**PLANNING AND ZONING HISTORY:**

*ZMA2004-18 Fontana 4C* - Rezone 17.146 acres from RA Rural Areas which allows agricultural, forestal, and fishery uses; residential density (0.5 unit/acre), R-4 Residential zoning district (4 units/acre) and R-1 Residential zoning district (1 unit/acre) to R-4 Residential zoning district which allows residential uses at 4 units per acre for 34 dwelling units at a gross density of 1.98 units/acre. Approved 03.19.2008.

**CRITICAL SLOPES MODIFICATION:**

The request for a modification has been reviewed for both the Engineering and Planning aspects of the critical slopes regulations. Section 4.2.3.2 of the Zoning Ordinance restricts earth-disturbing activity on critical slopes, while Section 4.2.5(a) allows the Planning Commission to waive this restriction. The applicant has submitted a request and justification for the waiver [Attachment B], and staff has analyzed this request to address the provisions of the ordinance.

Critical slopes cover approximately 2.4 acres, or approximately 14% percent of the site. 1.7 acres, or 70% of critical slopes on the site, are included in this request. The requested critical slopes are naturally occurring. Staff has reviewed this waiver request with consideration for the concerns that are set forth in Section 4.2 of the Zoning Ordinance, entitled “Critical Slopes.”

A request to allow disturbance of critical slopes must be reviewed in accord with the requirements of Section 4.2.5. This section requires a two part analysis. Section 4.2.5(a)(1-2) is a review of the technical performance standards. If these technical standards are not met, the disturbance of critical slopes cannot be approved by the Planning Commission. If these technical standards are met, the Planning Commission may then consider the disturbance of critical slopes. The criteria for the Planning

Commission’s review of the disturbance of critical slopes are found in Section 4.2.5(a)(3). Staff presents the analysis of the request to disturb critical slopes in two parts.

**PART I**

**REVIEW OF REQUIREMENTS OF SECTION 4.2.5:**

Section 4.2.5 establishes the review process and criteria for granting a waiver of Section 4.2.1. The following comments by Staff address the provisions of Section 4.2.5(a):

**County Engineer’s review of the technical performance standards:**

**Description of critical slope area and proposed disturbance:**

The applicant is requesting a waiver to disturb critical slopes to develop this parcel in accordance with ZMA-2004-00018. The disturbance is needed to construct the roadways, pedestrian paths, SWM facility(-ies), ESC measures, and the general mass grading required by Proffer 2 [Attachment D]. The alignment of the roadways and lot layout match the approved rezoning plan. It should also be noted that the overlot grading plan is still under review and will need to be modified, especially around lots 28-31 where a retaining wall is still shown.

Areas	Acres	
Total site	17.146 acres approximately	
Critical slopes	2.4 ac.	14% of site
Critical slopes disturbed	1.7 ac.*	70% of critical slopes

\*This number was not provided by the applicant in his request letter. Staff generated this number after reviewing the grading plan and assuming that the slope at the rear of lots 12-13 was the only area of the parcel that would remain undisturbed, except for the construction of the trail across this slope. This number is also subject to change because a full construction set (ESC, SWM, and road plans) has not been reviewed.

**Exemptions to critical slopes waivers for driveways, roads and utilities without reasonable alternative locations:**

The disturbance to critical slopes to construct the roadways, SWM facility, and pedestrian paths could be considered exempt per 18-4.2.6.c. Disturbances to critical slopes necessary to construct the offsite drainage conveyance will be considered exempt per 18-4.2.6.c

**Compliance with Zoning Ordinance 18-4.2:**

“movement of soil and rock”

Given the existing topography on site, the ESC plan for this phase of Fontana will be challenging. Not only is a significant portion of the property a critical slope (14% of the acreage), the average slope is close to 19%. Standard ESC measures will likely be employed: a sediment basin, sediment traps, diversion dikes, and silt fence. However, because of the slopes of the existing and proposed topography, soil loss will be greater than the average site.

“excessive stormwater runoff”

A stormwater management plan must be approved for this project prior to construction. The plan will collect as much of the runoff as possible and direct it to Stormwater Management facilities.

“siltation”

Please refer to the “movement of soil and rock” section.

“loss of aesthetic resource”

The critical slopes located within Sections 1 and 2 are not an aesthetic resource in staff’s opinion. Nearly all of the critical slopes in these sections were created when other phases of the Fontana Development were constructed. However, the critical slopes within Section 3 appear to be natural and are associated with an intermittent stream on TMP 78-57. This tract is somewhat screened by the existing forest on TMP 78-57.

“septic effluent”

This development must be served by public sewer.

## **PART II**

### **Current Development Planning Staff’s review:**

#### **Section 4.2.5(a)(3):**

*The commission may grant a modification or waiver 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;*

Strict application of the requirements of section 4.2 would require the relocation or realignment of proposed streets and individual lot divisions. Since these streets and lots were conceptually approved via ZMA 2004-18, staff does not believe strict application of the requirements of section 4.2 would forward the purpose of this chapter. The proposed street alignment and lot layout does not pose a threat to public health, safety or welfare.

- 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 developer or subdivider has not proposed any alternatives that would satisfy the intent and purposes of section 4.2 to at least an equivalent degree.

- 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*

Erosion and sediment control regulations offer protection to adjacent properties. However, in light of the erosion challenges facing this site, staff recommends approval of the waiver with the condition that one Water Protection Ordinance plan be submitted for all of Phase 4C ,and that the site is constructed as one phase. Staff believes this condition will also help the applicant successfully fulfill proffers attached to this property.

Approving the waiver would not be detrimental to the orderly development of the area and would not result in significant degradation of the property or adjacent properties. In fact,

approval would be consistent with the orderly development of the area because it allows for development to occur as envisioned by the Board of Supervisors when ZMA2007-18 was approved.

- 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.*

This property is located within the County's R4-residential zoning district. Its Comprehensive Plan land use recommendation is Neighborhood Residential Density which promotes residential development like that which is proposed in this project. This project has also been conceptually approved via ZMA 2004-18. The proposal to allow disturbance of critical slopes allows for development in line with assigned zoning, comprehensive plan designation, and previously approved re-zoning application plan.

**SUMMARY AND RECOMMENDATION:**

Staff review has resulted in favorable findings:

Favorable factors:

1. Application meets technical criteria for disturbance of critical slopes; and,
2. Disturbance of critical slopes allows for development in line with current zoning, comprehensive plan designation, and an approved re-zoning application plan.

Unfavorable factors:

1. None identified

Staff opinion is that the favorable factors outweigh the unfavorable factors and therefore staff recommends **approval** of this waiver, with the following condition.

**RECOMMENDED CONDITION:**

1. Water Protection Ordinance plan be submitted for all of Phase 4C, and the site grading is constructed as one phase.

**ATTACHMENTS:**

- A. [Location Map](#)
- B. [Applicant's request and justification letter](#)
- C. [Proposed subdivision plan](#)
- D. [Proffer statement for ZMA2004-18](#)