



**CITY OF CHARLOTTESVILLE
NEIGHBORHOOD DEVELOPMENT SERVICES
MEMO**

To: City of Charlottesville Planning Commission
From: Brian Haluska, AICP
CC: Jim Tolbert, AICP; Missy Creasy, AICP
Date: October 24, 2010
Re: Critical Slopes Ordinance Draft

Introduction

Following the last discussion of the critical slope ordinance, the Commission agreed that the next step should be the drafting of an amended ordinance for review in front of the Commission. This memo introduces a draft critical slope ordinance, and explains the changes between the current ordinance and the proposed ordinance.

Draft Ordinance

Changed text is in bold.

- (1) *Purpose and intent.* The provisions of this subsection (hereinafter, "critical slopes provisions") are **intended to protect natural topographical features that have a slope in excess of the grade established in the following ordinance for the following reasons:**
 - a. **Construction on critical slopes can result in the erosion of those slopes, and impact the structural integrity of those slopes.**
 - b. **Construction on critical slopes can result in erosion that impacts adjacent properties – which may contain environmentally sensitive areas such as streams and wetlands.**
 - c. **Critical slopes are integral to the natural beauty of the City of Charlottesville, and construction on critical slopes impacts the visual quality of the community.**
 - d. **Critical slopes play a role in decelerating stormwater as it passes through the natural vegetation present on those slopes.**

These provisions are intended to direct building locations to terrain more suitable to development and to discourage development on critical slopes.

- (2) *Building site required.* Every lot shall contain at least one (1) building site. For purposes of this section, the term building site refers to a contiguous area of land in slopes of less than twenty-five (25) percent, as determined by reference to either topographic quadrangle maps of the U.S. Geological Survey (contour interval twenty (20) feet), or a source determined by the city engineer to be of superior accuracy, exclusive of such areas as may be located in the flood hazard overlay district or under water.
- (3) *Building site area and dimensions.* Each building site in a residential development shall have adequate area for all dwelling unit(s) **outside of all required yard areas for the applicable zoning district** and all parking areas. Within all other developments subject to the requirement of a site plan, each building site shall have adequate area for all buildings and structures, parking and loading areas, storage yards and other improvements, and all earth disturbing activity related to the improvements.
- (4) *Location of structures and improvements.* The following shall apply to the location of any building or structure for which a permit is required under the Uniform Statewide Building Code and to any improvement shown on a site plan pursuant to Article VII of this chapter:
- a. No building, structure or improvement shall be located on any lot or parcel within any area other than a building site.
 - b. No building, structure or improvement, nor any earth disturbing activity to establish such structure or improvement shall be located on slopes of twenty-five (25) percent or greater **where the run of the slope is greater than 20 feet or the slope is within 200 feet of a stream as identified in the City's Comprehensive Plan**, except as may be permitted by a waiver.
- (5) *Modification or waiver.*
- a. Any person may request the planning commission to modify or waive the requirements of these critical slopes provisions. Any such request shall be presented in writing and shall address how the proposed modification or waiver will satisfy the purpose and intent of these provisions.
 - i. **When an application contains slopes in excess of 40 percent, the planning commission may grant a modification or waiver, upon making a finding that a waiver would serve a public purpose of greater import than would be served by a strict application of the requirements of these critical slopes provisions.**
 - ii. **For all other requests for a modification or waiver, the planning commission may grant a modification or waiver, upon a finding that the alternatives proposed by the developer would better satisfy the purposes and intent of these critical slope provisions.**

No modification or waiver granted by the commission shall be detrimental to the public health, safety or welfare, detrimental to the orderly development of the area or adjacent properties, or contrary to sound engineering practices. In granting a modification or waiver, the planning commission may impose such conditions as it deems necessary to protect the public health, safety or welfare and to insure that a development will be consistent with the purpose and intent of these critical slopes provisions.

- b. City staff can require that any application for development that does not contain a building site as defined under Section 2 of this ordinance submit a request for a modification or waiver to be reviewed by the planning commission if the proposed development, in the opinion of staff, violates the purpose and intent of the critical slope provisions.**
 - c. In considering a requested modification or waiver the planning commission shall consider the recommendation of the director of neighborhood development services **or his designee**. The director, in formulating his recommendation, shall consult with the city engineer, the city's environmental manager, and other appropriate officials. The director shall provide the commission with an evaluation of the proposed modification or waiver that considers the potential for soil erosion, sedimentation and water pollution in accordance with current provisions of the Commonwealth of Virginia Erosion and Sediment Control Handbook and the Virginia State Water Control Board best management practices, and, where applicable, the provisions of Chapter 10 of the City Code.
 - d. A modification or waiver granted or denied by the commission in conjunction with an application for a special use permit shall be subject to review by the city council. The denial of a modification or waiver, or the approval of a modification or waiver with conditions objectionable to the developer, considered in conjunction with an application for approval of a site plan or subdivision plat may be appealed as set forth within Article VII of this chapter or within Chapter 29 of the City Code, as may be applicable. All other decisions of the commission with respect to a requested modification or waiver may be appealed to the city council.
- (6) *Exemptions.* A lot, structure or improvement may be exempt from the requirements of these critical slopes provisions, as follows:
- a. Any structure which was lawfully in existence prior to the effective date of these critical slopes provisions, and which is nonconforming solely on the basis of the requirements of these provisions, may be expanded, enlarged, extended, modified and/or reconstructed as though such structure were a conforming structure. For the purposes of this section, the term "lawfully in existence" shall also apply to any structure for which a site plan was approved or a building permit was issued prior to the effective date of these provisions, provided such plan or permit has not expired.
 - b. Any lot or parcel of record which was lawfully a lot of record on the effective date of this chapter shall be exempt from the requirements of these critical slopes provisions for the establishment of the first single-family dwelling unit on such lot or parcel; however, subparagraph (4)b., above, shall apply to such lot or parcel if it contains adequate land area in slopes of less than twenty-five (25) percent for the location of such structure.

- c. Access as defined in Section 34-1200 of this chapter, public utility lines and appurtenances, stormwater management facilities and any other public facilities necessary to allow the use of the parcel shall not be required to be located within a building site and shall not be subject to the building site area and dimension requirements set forth above within these critical slopes provisions, provided that the applicant demonstrates that no reasonable alternative location or alignment exists. The city engineer shall require that protective and restorative measures be installed and maintained as deemed necessary to insure that the development will be consistent with the purpose and intent of these critical slopes provisions.

Changes

1. The purpose and intent is altered based on prior discussions with the Commission.
2. The language of the “building site and area dimensions” section is changed slightly to clarify that a building site must be within the applicable setbacks on a lot.
3. Section 4 is amended to require any project that disturbs a slope that is within 200 feet of a stream or has a run greater than 20 feet receive a waiver from the Commission. This would open the door to administrative review of disruption of critical slopes with a run less than 20 feet that are further than 200 feet from a stream.
4. The waiver section is modified to include a strict standard of review for slopes that are 40% or greater in slope. The amended section would also establish a slightly higher standard for waivers on sites with slopes that exceed 25% but do not exceed 40%. Lastly, a new section permits City staff to refer to the Commission any project that disturbs 25% slopes, even if the slopes have a run of less than 20 feet, or more than 200 feet from a stream.
5. The exceptions section clarifies that the exception for accessways does not apply to roads, but rather connections between access from a public right-of-way to a structure.

Suggested Process

Staff suggests that the Planning Commission hold a “work shop” similar to the process employed on the zoning matrix revisions earlier in 2010. At the November regular meeting, the Commission could hear public comment on the draft ordinance, but this would not serve as the official public hearing on the proposed ordinance, just an opportunity for the Commission to hear feedback on the proposal. Following any revisions that come out of the November meeting, the public hearing on the proposed ordinance could be scheduled for December.