

## Potomac Riverkeeper Network Comments on Northfax West development - Special Exception and Special Use Permit

June 23, 2020

Dear Mayor Meyer and Members of the City Council,

Please accept the following comments on behalf of [Potomac Riverkeeper Network](#) (PRKN) regarding the above-referenced development project.

PRKN is a member supported, non-profit clean water advocacy organization whose mission is to protect the public's right to clean water in the Potomac and Shenandoah Rivers.

After reviewing the details of this project and the likely impacts to the North Fork of Accotink Creek, PRKN is extremely concerned that the project will essentially destroy approximately 1700' of the Creek as a result of its diversion through storm culverts. Not only the stream itself but the riparian area surrounding the stream would be severely disturbed, if not eliminated altogether. As a result, PRKN opposes this project in its current form, and urges the City Council not to approve the Special Use Permit or Special Exception to the RPA, at least until a more thorough examination of alternatives and an independent assessment of the Creek's health are completed and reviewed by the Council. PRKN hereby incorporates by reference and fully supports the comments filed by the Audubon Naturalist Society on this matter.

The section of the Creek and riparian area on the site is a designated RPA, and as such is supposed to be protected from precisely this type of suburban development under the state's Chesapeake Bay Preservation Act and locally pursuant to the city's Chesapeake Bay Preservation Ordinance (CBPO). The RPA designation was created and implemented to protect water quality and preserve remaining areas of undeveloped land and stream habitat. Such habitat, even when it's not pristine, provides ecological services to the surrounding environment and watershed, particularly when it's located in headwater areas of tributaries of the Potomac or the Potomac itself. And in areas where the drinking water supply is derived from surface water sources, as it is in the City of Fairfax, protecting all surface water resources connected to that supply is even more important.

As all of you are no doubt aware, precious little natural habitat remains in Fairfax, or in fact in the Potomac watershed in Northern Virginia, due to poorly planned and executed development and redevelopment projects. Increased urbanization leads to increased impermeable surface area, which in turn leads to polluted stormwater runoff that degrades water quality in our streams and rivers. Northfax West appears to be yet another project which, while well intentioned, will destroy natural habitat and a relatively healthy stream in the name of development.

PRKN offers the following comments on specific aspects of the Applicant's proposal and request for a Special Exception and Special Use Permit.

**1. The Statement of Justification provided by the Applicant was inadequate to meet the criteria for granting a special exception to allow construction in the RPA**

The City of Fairfax Zoning Code states that “Special exceptions to the general performance criteria for resource management and resource protection areas detailed in 4.18.7 may be granted by the city council provided the findings of 4.18.11.D are made.” (4.18.11.B of the Fairfax Zoning Code). In order to be granted a Special Exception, the project proponent’s application must contain a Statement of Justification that addresses the five criteria of Section 4.18.11.D (118-6-5 in CBPO). This includes the following; “The request is in harmony with the purpose and intent of 4.18 and is not of substantial detriment to water quality” (4.18.D.3). From PRKN’s perspective, the purpose and intent of Section 4.18 is to balance the need for economic development with the need to manage RPAs to protect water quality and natural habitat in areas subject to the Chesapeake Bay Preservation Act and CBPO in the City of Fairfax. Culverting nearly 2000’ linear feet of a surface stream would clearly be a “substantial detriment to water quality” in that particular stream, changing it irrevocably from a freeflowing surface stream to essentially a flood control culvert. It’s hard to imagine a more substantial detriment, short of damming or bulldozing the stream out of existence directly. PRKN’s review of the Application materials could not find a discrete Statement of Justification that addressed the five criteria in the CBPO. Instead, there are repeated references to the fact that leaving the stream in place would render the entire site inappropriate for development, due to the hit on ROI that a smaller development footprint would result in. The Applicant readily referred to the city’s Comprehensive Plan and other planning processes that identify this site as pre-ordained to be fully developed. Thus the Creek becomes an inconvenient impediment to be removed, rather than a valuable natural feature that could be restored or otherwise protected while allowing development on the remainder of the site. As such, the material in the Application that may constitute the Statement of Justification appears to focus almost exclusively on the first criteria, that “The requested is the minimum necessary to afford relief” (4.18.11.D.1). PRKN could not find any other specific references to the remaining criteria in the Application. As a result, we urge the Council not to make any decision on this project until the Applicant provides a complete Statement of Justification that addresses all criteria required by the Ordinance, in order to comply with local and state law.

PRKN also notes that the Applicant’s June 17, 2020 water quality assessment of the Creek section on the site fails to provide conclusive evidence that this Creek section is beyond saving and thus does not merit protection. On the contrary, the report by Apex reinforced the need to

protect this section of Creek from further degradation, despite the fact that the assessment was done in a vacuum and failed to consider future stormwater management improvements in the surrounding community that might actually improve water quality in the Creek. The report cites all the urban stressors on streams like this – stormwater runoff, temperature, invasives, and lack of connectivity to a larger healthy stream ecosystem. Unfortunately, one could make the same assessment of many similar streams throughout Northern Virginia, and the Bay region in general, especially ones in areas undergoing rapid urbanization. The assessment was also tasked with looking exclusively at water quality and biota in the creek, and did consider the riparian area benefits the stream might offer to birds and other terrestrial species, as noted in Audubon Naturalist Society's comments.

- 2. The Applicant's proposal to offset impacts to the North Fork of Accotink Creek by implementing a stream restoration project in Van Dyck Park appears to be a proffer, and as such would not be allowed for use in a Planned Development proposal.**

The City of Fairfax's Zoning Ordinance states that "No proffers will be allowed in a planned development, as the master development plan and the applicable provisions of the zoning ordinance will control what may be created in an approved planned development." Section

3.8.2. See <https://www.fairfaxva.gov/home/showdocument?id=7891#page=86>

The Applicant's proposal to do stream restoration on a section of Accotink Creek in Van Dyck Park, not adjacent or in the planned development, may constitute a proffer that is not allowed under current zoning law. While the stream restoration would take place outside the planned development, it is intrinsically tied to the Northfax West site, and thus is arguably not allowed. PRKN requests that the Council specifically address in writing whether it considers the stream restoration proposal a proffer, and whether it's inclusion in this project proposal complies with state law.

- 3. The Applicant's analysis and consideration of alternatives to culverting the North Fork of Accotink Creek is conclusory at best, and does not adequately consider alternatives to culverting that would allow construction on a smaller portion of the site while maintaining or restoring the Creek in its current form.**

As noted above, PRKN urges the Council to require the Applicant to conduct a more rigorous alternatives analysis that consider restoring or otherwise maintaining the surface water flow of the Creek while allowing development on a smaller portion of the site.

- 4. The Applicant's wetlands assessment was inadequate.**

PRKN notes the comments and information submitted by Audubon Naturalist Society that support the need for an independent wetlands assessment for the site, in addition to an

independent assessment of the Creek's water quality and the degree to which it supports riparian habitat and terrestrial species (e.g. birds, small mammals, insects) on the site.

PRKN appreciates the opportunity to provide comments on this project. I reiterate our request that the Council put a hold on this project until more information can be gathered regarding the ecological benefits of the Creek, and a more robust alternatives analysis is provided by the Applicant to support destroying the North Fork of Accotink Creek.

Communities, elected officials and environmental advocates are putting tremendous effort into restoring our rivers and Chesapeake Bay. Projects that destroy even small natural sections of this watershed represent a slow death by a thousand cuts, and must be very carefully considered to ensure that they comply with the law and reflect the values of the community in which they occur.

Thank you.

**Phillip Musegaas**  
**Vice President of Programs and Litigation**  
**Potomac Riverkeeper Network**  
3070 M Street NW  
Washington, DC 20007  
ph 202-888-2037 (main) \* ph 202-888-4929 (direct)  
[phillip@prknetwork.org](mailto:phillip@prknetwork.org)