



ALBEMARLE COUNTY PLANNING
STAFF REPORT SUMMARY

Project Name: R. A. Yancey Lumber Corporation: Special Exception Request	Staff: William D. Fritz, AICP
Planning Commission Public Hearing: June 23, 2020	Board of Supervisors Hearing: July 15, 2020
Owner(s): R. A. Yancey Lumber Corporation	Applicant(s): R. A. Yancey Lumber Corporation
Acreage: 35.8 acres	By-right use: Sawmills, temporary or permanent: planing mills; wood yards (reference 5.1.15)
TMP: 55-111B and 55-112 Location: Northeast quadrant of the I-64 and Rockfish Gap Turnpike interchange, commonly known as the Yancey Mills or Crozet exit.	Special Exception Request for: Reduction in setbacks, expanded hours of operation, expansion in permitted sound levels and reduction in vibration limits.
Magisterial District: White Hall	Proffers/Conditions: No
Requested # of Dwelling Units/Lots: None	DA - RA - X
Proposal: Approval of special exceptions to bring the existing mill into compliance and authorize new construction.	Comp. Plan Designation: Rural Area
Character of Property: The site is developed as a sawmill and wood yard.	Use of Surrounding Properties: Residential, wooded and commercial uses exist on properties in the area.
Factors Favorable: <ol style="list-style-type: none"> 1. Would permit an existing business to remain and expand. 2. Impact caused by some special exceptions may be mitigated with conditions. 3. Some areas have been used for Mill operations prior to 1980 and approval of special exceptions clarifies the permitted activities. 	Factors Unfavorable: <ol style="list-style-type: none"> 1. Approval of some special exceptions would result in substantial impact to adjacent property. 2. Approval of some special exceptions is not supported by the special exception review criteria.
Recommendation: Subject to conditions, staff recommends approval of those special exceptions that would allow structures and activities existing as of June 12, 2020 to remain except for the sorter/stacker. Staff recommends denial of any exceptions that would result in construction of new structures or placement of new machinery.	

STAFF CONTACT: William D. Fritz, AICP
PLANNING COMMISSION: June 23, 2020
BOARD OF SUPERVISORS: July 15, 2020

PETITION:

PROJECT: R. A. Yancey Lumber Corporation: Special Exception Request
MAGISTERIAL DISTRICT: White Hall
TAX MAP/PARCEL: 55-111B and 55-112
LOCATION: Northeast quadrant of the I-64 and Rockfish Gap Turnpike interchange, commonly known as the Yancey Mills or Crozet exit.
PROPOSAL: Request for special exceptions to allow reduction in setbacks, expanded hours of operation, expansion in permitted sound levels range and reduction in vibration limits. Approval of the special exceptions will bring the existing mill into compliance based on the mill's compliance with special conditions and authorize new construction.
OVERLAY DISTRICT: Entrance Corridor
PROFFERS: None
COMPREHENSIVE PLAN: Rural Area

CHARACTER OF THE AREA:

The property is developed as a sawmill and wood yard. Property to the north, west and east have residential uses. Property to the south is wooded. Property to the northeast is developed commercially. Village residential zoning is located north of this property across Rockfish Gap Turnpike.

PLANNING AND ZONING HISTORY:

December 10, 1980 – During the adoption of the Zoning Ordinance and the comprehensive rezoning of the County the supplemental regulations of Section 5.1.15 were adopted and these properties were designated as HI, Heavy Industry.

October 14, 1987 – The Board of Supervisors amended the Albemarle County Service Authority jurisdictional area to include water service.

October 11, 1988 – Variance to the front setback was approved to allow expansion of the office building adjacent to Rockfish Gap Turnpike.

January 21, 1991 – Building permit application was submitted for storage building. This application has been voided and no information is available.

September 16, 1991 – Building permit was issued for portable equipment for asphalt. This equipment is no longer on the property.

February 4, 2003 – Variance was approved to allow construction of a rotary crane. This crane was not constructed.

July 12, 2004 – SDP 2003-44 Yancey Lumber Log Crane site plan was denied.

September 12, 2018 – Building permit was submitted for construction of a sorter stacker. This permit has not been issued. Special exceptions are required for the permit to be issued.

February 21, 2019 – Building permits were submitted for all buildings constructed without required

permits. These permits have not been issued. Some permits cannot be issued without special exceptions. Some permits require building code issues such as inadequate fire flow to be addressed.

December 20, 2019 – Notice of Violation was issued stating “The piece of equipment constructed in the VDOT right of way and the new sorter/stacker constructed on these parcels do not meet the required setbacks.” The owner has appealed this determination.

March/April 2020 – Special exception review was scheduled for consideration by the Planning Commission and Board of Supervisors. Due to the impacts of COVID these meetings were not held.

June 2, 2020 – Board of Zoning Appeals deferred appeal hearing.

DETAILS OF THE PROPOSAL:

The applicant has requested 19 special exceptions and provided justification for approval. This information is included in Attachment B and Attachment H. Each special exception request will be discussed in detail.

Below is a summary of the requests:

Relief from the setback requirements of Chapter 18, Section 4.20 of the Code of Albemarle (Attachment C)

- Allow structures closer than 10 feet from the right-of-way.
- Allow structures closer than 100 feet from any district boundary.
- Allow parking closer than 30 feet to any district boundary.

Relief from the supplemental regulations of Chapter 18, Section 5.1.15 of the Code of Albemarle (Attachment D)

- Allow structures and storage of logs closer than 100 feet from any lot line.
- Allow machinery to be located closer than 600 from dwellings on adjacent property.
- Allow operations to begin at 6:00 am instead of 7:00 am.
- Allow loading and unloading of wood products between 6:00 am and 11:00 pm instead of 7:00 am and 12 midnight except for activities associated with the kiln which would be permitted 24 hours a day.

Relief from noise regulation provision of Chapter 18, Section 4.18 of the Code of Albemarle (Attachment E)

- Allow increase in daytime maximum dBa measured in a receiving zone (adjacent property) from 60 dBa. The proposed increase ranges from 66 dBa to 77 dBa.
- Allow increase in nighttime maximum dBa measured in a receiving zone (adjacent property) from 55 dBa. The proposed increase is to 65 dBa adjacent to Rockfish Gap Turnpike and to 59 dBa in other locations.

REASON FOR REVIEW:

The Zoning Ordinance allows for some regulations to be varied, waived or modified by special exception. Those regulations eligible for a special exception are specifically noted in the Zoning Ordinance. In some instances, the Zoning Ordinance simply states that the regulation may be reduced by special exception. For example, the regulations for setbacks in industrial districts contains the following language: (Reference Chapter 18, Section 4.20(b)(2) of the Code of Albemarle)

Any minimum setback may be reduced by special exception.

However, other sections contain more detailed language. In the case of waiver or modification from the requirements of Section 5 the Zoning Ordinance states in part, “The commission may modify or waive any such requirement upon a finding that such requirement 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; except that, in no case, shall such action constitute a modification or waiver of any applicable general regulation set forth in section 4 or any district regulation”. (Reference Chapter 18, Section 5.1(a) of the Code of Albemarle)

While the Zoning Ordinance states that this type of modification (special exception) is subject to commission action, a decision of the Court has required the County to modify the Zoning Ordinance to establish that the authority to grant special exceptions is reserved by the Board of Supervisors. Chapter 18, Section 33.43 of the Code of Albemarle provides clarification on the issue of special exceptions.

The action before the Board of Supervisors is consideration of the special exceptions. The Code of Albemarle has additional regulations that must be met by the owner. Staff has not included discussion of these regulations in this report because they are required, and no conditions are necessary to enforce the requirements. Examples of the types of regulations that must be met include the building code requirements to ensure that all buildings meet the Uniform Statewide Building Code. This includes a requirement that appropriate construction techniques are used and adequate fire protection is provided. The Code requires submittal of a certified engineers report. This report must include a description of the proposed operation, including all machines, processes, and products to verify that the activity complies with required performance standards.

Sec. 33.43 - Introduction.

This division establishes the regulations and safeguards for filing, reviewing, and acting on applications for special exceptions.

A. Power to grant special exceptions is reserved by the Board of Supervisor. The Board of Supervisors reserves the power to consider and approve or deny all applications for special exceptions.

B. Matters eligible for a special exception. The Board may approve special exceptions to waive, modify, vary, or substitute any requirement of this chapter that is expressly authorized to be waived, modified, varied, or substituted.

C. Variations and exceptions distinguished. A special exception is not required for any matter that may be varied or excepted under Section 32 or Chapter 14 or for developing and constructing residential dwellings at the use, height, and density permitted by right in the applicable district as provided by Virginia Code § 15.2-2288.1.

The Board of Supervisors has the sole authority to grant special exceptions and prior review by the Planning Commission is not required by the Zoning Ordinance. The Board of Supervisors has established a policy directing staff to refer special exceptions to the Planning Commission for a recommendation when staff is recommending denial of any special exception.

The Board of Supervisors chose to amend only the provisions of Chapter 18, Section 33.43 of the Code of Albemarle and not every provision discussing possible modification of regulations. This has led to some confusion about the role of the Planning Commission. The role of the Planning Commission is to review the special exception and provide a recommendation on the application.

ANALYSIS OF THE SPECIAL EXCEPTIONS

SETBACKS – Special Exception Details

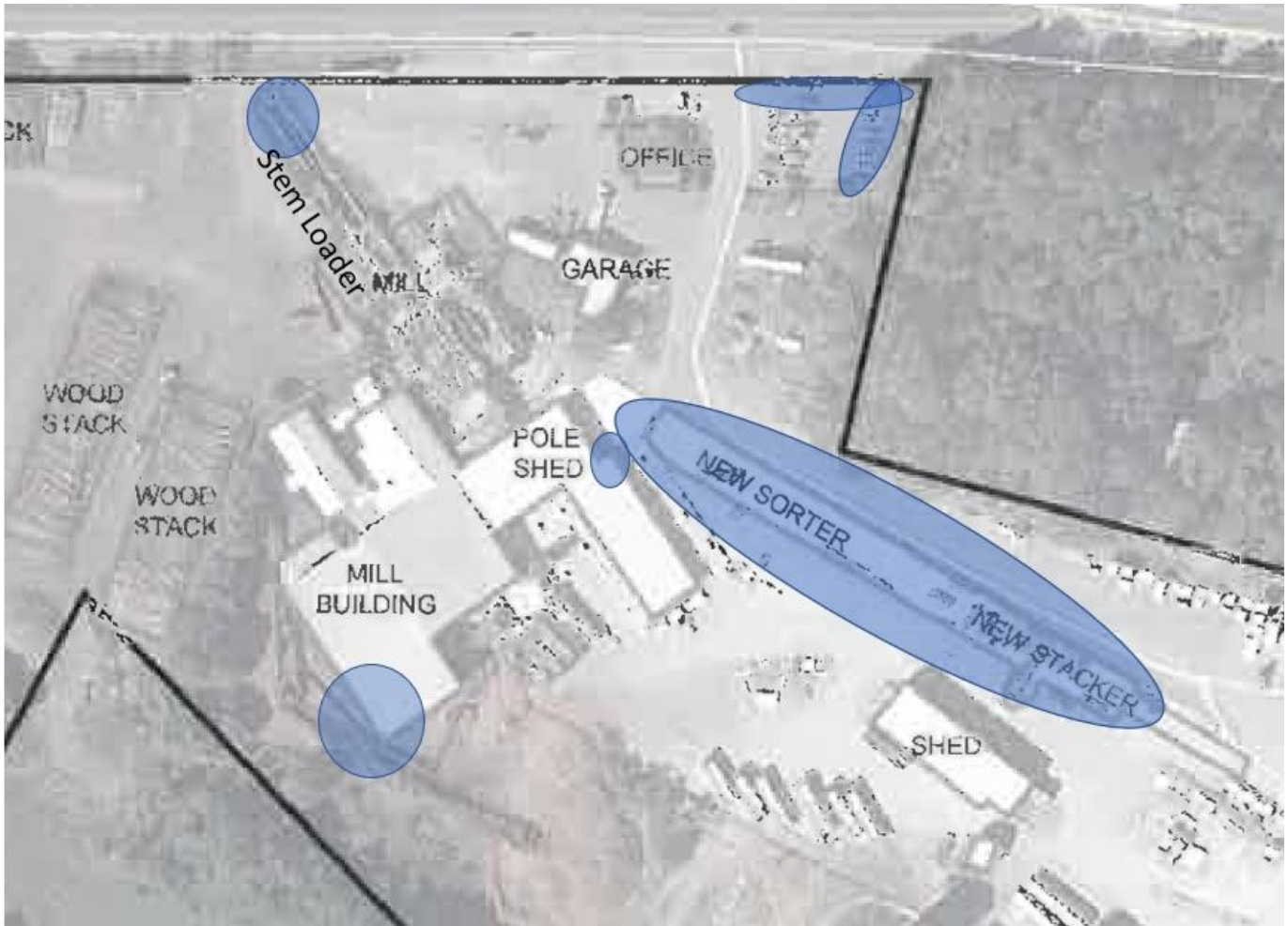
Request for relief from the setback requirements of Chapter 18, Section 4.20 of the Code of Albemarle (Attachment C)

- Allow structures closer than 10 feet from the right-of-way.
- Allow structures closer than 100 feet from any district boundary.
- Allow parking closer than 30 feet to any district boundary.

(The ordinance contains no standards for the review of a special exception)

Throughout this report staff will refer to building numbers where available. Attachment K includes an aerial photograph identifying buildings by number and a building schedule describing each building including when it was built.

The applicant has requested a special exception from the setback for three structures and parking. Staff has highlighted the location of the structures and parking area below.



The applicant constructed a Stem Loader adjacent to Rockfish Gap Turnpike. This construction appears to have occurred sometime between 1996 and 2002 based on review of aerial photographs. At the time of construction, the ordinance required a 50-foot setback for structures adjacent to public streets. The ordinance was amended in 2015 and currently requires a 10-foot front setback. The equipment was actually constructed across the property line such that it was located approximately 5 feet into the right-of-way of Rockfish Gap Turnpike. The applicant has purchased 10 feet of right-of-way from the Commonwealth, so that the equipment is no longer in the right-of-way. No plat has been submitted for review and staff is unable to confirm if the setback is now met.

The portion of the Mill Building (building 7b) not meeting the 100-foot setback was constructed after 1980 and before 1990 based on review of aerial photographs and information provided by the applicant. This structure is approximately 95 feet from the property line.

The portion of the Pole Shed (building 8) not meeting the 100-foot setback was constructed in 1996 according to information provided by the applicant. This building is approximately 98 feet from the property line.

Construction of the new Sorter/Stacker (building 27) was begun but has stopped. Retaining walls have been constructed and some equipment is in place as is a concrete floor. This proposed structure is approximately 35 feet from the property line. The ordinance requires a 100-foot setback.

The date of establishment of the parking area is difficult to verify. Staff has reviewed the available aerial photographs. It appears that the general area has been used for parking or storage since 1980.

SETBACKS – Comments

Setbacks are intended to prevent the overcrowding of property and prevent impacts on adjacent properties. The Board of Supervisors has determined that a structure setback of 100 feet in the Heavy Industrial district is appropriate to protect adjacent non-industrial property from substantial impacts. This setback has not changed since the adoption of the ordinance in 1980.

No building permits were submitted for these structures prior to their construction. If permits had been submitted, they would not have been approved. At the time the buildings were constructed the only method to reduce setbacks was by applying for a variance. The ordinance has been amended and setbacks may now be reduced by the Board of Supervisors with a special exception. It is important to note that conditions may be imposed on the approval of either a variance or special exception.

It is unlikely that a variance would have been granted for a reduction in setback because redesign was possible. The redesigned structures would have met setbacks and allowed for reasonable use of the property.

It is possible however, that a reduced setback could have been approved. Any approvals should take into account the impact caused by the structure. These impacts may include:

- Visual impacts
- Blocking air or light
- Sound impacts from equipment or activity

The minimal reduction in setback requirements for the Mill Building and Pole Shed are such that visual impacts or the blocking of air or light are not significantly greater than what would occur by meeting the setbacks.

The review of a variance would have insured that the Stem Loader would not have been built within the right-of-way. Impacts from this structure include visual impacts on Rockfish Gap Turnpike. This road was designated an Entrance Corridor in 1990. If the applicant had applied for a variance or a building permit it would have been reviewed by the Architectural Review Board for impacts. The Architectural Review Board can support the reduction in setback for the Stem Loader in its current location (Attachment F). However, it is unknown what the comments of the Architectural Review Board would have been if an application for the Stem Loader had been submitted prior to its construction. The Virginia Department of Transportation does not object to the location of the Stem Loader and has in fact sold the necessary area to the applicant so that the Stem Loader no longer encroaches into the right-of-way.

The location of the proposed Sorter/Stacker (building 27) is approximately 35 feet from the property line. This 65% reduction in setback will result in visual and sound impacts on the adjacent property inconsistent with the purpose of setbacks. It will also result in the placement of equipment and activity much closer to adjacent property than permitted by-right in the Heavy Industry District.

On September 17, 2018, the Architectural Review Board (ARB) reviewed the proposal for the construction of the new Sorter/Stacker (building 27), special exception for the other structures and special exception for parking. The ARB supported the exceptions. The ARB recommended screening, either fencing or landscaping to provide separation and buffering between the right-of-way and the parking. The applicant has submitted a conceptual plan showing an area for the installation of landscaping. Attachment O.

As stated previously it is difficult to determine when the location of the parking within the setback was established. It is possible that this parking predated the adoption of the ordinance in 1980. This is not a determination that the parking is non-conforming but is an acknowledgement that some activity was occurring near Rockfish Gap Turnpike and the adjacent property since 1980.

The noise impacts caused by the reduction in setback will be address in later portions of this report.

SUPPLEMENTARY REGULATIONS – Special Exception details

The Ordinance contains regulations specific to sawmills, planing mills and wood yards (Attachment D). These regulations are intended to address the specific and unique impacts generated by this type of use.

The applicant has requested a special exception from setback regulations for multiple structures and the storage of lumber, logs, chips and timber. Below, staff has highlighted the location of the structures and machinery that do not meet required setbacks. The reader will note that some structures are not highlighted but are within 600 feet of adjacent residences. Those structures closer than 600 feet to adjacent residences that are not highlighted are not subject to the setback because they either do not contain machinery or existed prior to 1980.



The applicant has requested relief from multiple supplementary regulations. The language of the ordinance and the applicant's request are outlined below. The applicant's full request is contained in Attachment B and Attachment H.

Ordinance Requirement

- a. No structure and no storage of lumber, logs, chips or timber shall be located closer than 100 feet to any lot line. Trees and vegetation within the 100 foot setback shall be maintained as a buffer to abutting properties and uses, provided that during the last three months of operation the trees may be removed.

Outline of Applicant's Request

The applicant has requested that existing structures and storage of lumber, logs, chips or timber be allowed to continue as currently exists. Adjacent to Rockfish Gap Turnpike the setback for the storage of lumber, logs, chips or timber would be reduced to zero (0) feet. The applicant requests that the proposed Sorter/Stacker setback be reduced to 35 feet. Some of the location of lumber, logs, chips or timber are less than 100 feet from adjacent lots.

Ordinance Requirement

- b. No saw, planer, chipper, conveyor, chute or other similar machinery shall be located closer than 600 feet from any dwelling on any lot other than the lot on which the sawmill, planing mill or wood yard is located.

Outline of Applicants Request

The applicant is requesting that existing machinery not meeting the required setback be allowed to remain.

- The proposed Sorter/Stacker (building 27) is approximately 350 feet from the dwelling located to the north on Tax Map 55, Parcel 111A.
- The Pole Shed (building 6) is approximately 540 feet from the dwelling located to the north on Tax Map 55, Parcel 111A.
- The Silo (building 10) is approximately 570 feet from the dwelling located to the north on Tax Map 55, Parcel 111A.
- The Boiler (building 11) is approximately 570 feet from the dwelling located to the north on Tax Map 55, Parcel 111A.
- The Kiln (building 12A) is approximately 515 feet from the dwelling located to the north on Tax Map 55, Parcel 111A.
- The Planer (buildings 18, 22 and 23) is approximately 550 feet from the dwelling located to the north on Tax Map 55, Parcel 111A.
- The Pole Shed (building 6) is approximately 540 feet from the dwelling located to the north on Tax Map 55, Parcel 111A.
- The Mill Building (building 7a and 7b) is approximately 520 feet from the dwelling located to the south on Tax Map 55, Parcel 100.

- The Stem Loader (adjacent to Rockfish Gap Turnpike) is approximately 500 feet from the dwelling located to the west on Tax Map 55A, Parcel 28.

All the residential structures evaluated relative to the setbacks were in existence in 1980.

Ordinance Requirement

- c. No machinery used for sawing, planing, chipping or other wood processing shall operate between 7:00 p.m. and 7:00 a.m. No wood or wood products shall be loaded or unloaded between 12:00 midnight and 7:00 a.m.

Outline of Applicant's Request

~~The applicant is requesting that machinery used for sawing, planing, chipping or other wood processing be permitted from 6:00 am to 11:00 pm.~~

The applicant is requesting that machinery used for sawing, planing, chipping or other wood processing be permitted from 6:00 am to 7:00 pm. (This sentence was corrected after the Planning Commission meeting.)

The applicant is requesting that the loading or unloading of wood products be permitted from 6:00 am to 11:00 pm and that loading and unloading associated with the kiln be permitted 24 hours a day.

SUPPLEMENTARY REGULATIONS – Comments

The ordinance provides guidance for review of a special exception from the supplementary regulations:

Sec. 5.1 - Supplementary regulations.

- a. The commission may modify or waive any such requirement upon a finding that such requirement 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; except that, in no case, shall such action constitute a modification or waiver of any applicable general regulation set forth in section 4 or any district regulation. In granting a modification or waiver, the commission may impose conditions as it deems necessary to protect the public health, safety, or welfare.

The setbacks established by the supplementary regulations are intended to minimize the impacts caused by industrial character of sawmills, planing mills and wood yards. The applicant has provided a justification for the granting of the special exception (Attachment B and Attachment H). Staff will not address all the applicant's justification but does offer some comments.

Staff has reviewed aerial photography from 1980. The storage of storage of lumber, logs, chips or timber on the property appears to be in the same location or nearly same location today as it existed

in 1980. This is not a determination that the storage of storage of lumber, logs, chips or timber is non-conforming but is an acknowledgement that some activity was occurring near Rockfish Gap Turnpike and the adjacent properties since 1980.

The applicant states that the adoption of the 1980 ordinance imposed restrictions on the property making expansion difficult. However, the ordinance has always contained an option for relief from overly burdensome regulations. In fact, the applicant has twice made use of the relief process to allow expansion of the office (building 01) and construction of a rotary crane. Both applications submitted by the applicant were approved. However, the applicant never sought relief from any regulations for the construction of other structures or machinery. During the review of a request the County could have considered all relevant factors including the impact of denial, possible alternatives allowing compliance, and measures to mitigate the impacts caused by granting modifications. Because the structures are existing, except for the proposed Sorter/Stacker staff has limited the analysis to possible methods of mitigating the impacts. The primary impact from the machinery is noise. The noise impacts caused by the reduction in setback will be addressed in later portions of this report.

The applicant has stated that due to the location of the original Mill Building (buildings 4, 5, 6) and the shape of the property, no other location exists for the proposed Sorter/Stacker (building 27). Staff notes that some of the buildings associated with the Mill Building do predate the 1980 regulations. However, expansions have occurred after 1980. These improvements do not meet the setback requirements. None of these expansions were reviewed for compliance with the ordinance. It is impossible to determine if alternative layouts for those improvements would have allowed for the construction of the Sorter/Stacker in a location that meets the requirements of the ordinance or in a location that did not require a 40% reduction in the required setback.

The applicant correctly notes that the presence of dwellings on adjacent property imposes a setback on the mill. The applicant also correctly states that new dwellings could be constructed on adjacent property and that the presence of new dwellings could impose even greater setbacks on the mill. However, the applicant states that “The requirements of this regulation would then impossibly require the Mill to incur the exorbitant expense of rearranging the Mill based on these newly constructed residences to achieve compliance with the buffer – an unreasonable, impractical, and entirely impossible requirement”. The construction of dwellings on adjacent property may impose additional setbacks on the Mill. However, construction of dwellings on adjacent property would not require the Mill to rearrange structures, machinery or modify operations in any way. The County would take into consideration the timing of construction of dwellings on adjacent property when reviewing any special exception request. Just as the County would consider new residential construction adjacent to a mill, the County must consider new mill construction adjacent to existing residences.

Staff does not agree with the applicant’s assertion that “...The regulations of Section 5.1.15(B) impose unreasonable restrictions and setbacks on the Mill”. The applicant had the option to submit a request for relief prior to construction. As stated previously the applicant did seek relief from regulations twice. Both of those requests were approved. At the time of review of any request, the County may have denied the request, approved the request or approved the request with conditions. If the County denied a request or imposed conditions that the owner objected to, those actions could have been appealed. It is impossible to determine what the layout of the Mill would have been if requests had been submitted. The County is not be obligated to approve the current request for the Sorter/Stacker because the applicant has constructed improvements without permits in such a manner as to leave one area available for expansion.

The applicant has asserted that the operating hours are historical, dating back to 1960. Staff is unaware of any request the applicant has made to vest these activities as non-conforming and staff is unable to independently verify the historic hours of operation. However, the kiln was constructed in 1990, without permits. Therefore, the hours of operation associated with this activity cannot be vested.

NOISE – Special Exception details

The applicant has submitted noise and vibration studies (Attachments G and N). The ordinance establishes noise level limits for receiving zones. In this situation the receiving zone is also the property line. The ordinance establishes a daytime noise level limit of 60 dBA and a nighttime noise level limit of 55 dBA.

The applicant is requesting that daytime typical or median 5-minute maximums be 77 dBA after removal of ambient sound level adjacent to Rockfish Gap Turnpike and 70 dBA for the property to the north, Tax Map 55, Parcel 111A.

The applicant is requesting that nighttime noise level maximums be increased to 65 dBA adjacent to Rockfish Gap Turnpike and 59 dBA at all other boundaries.

NOISE – Comments

The ordinance provides guidance for review of special exception noise regulations:

- a. The commission may modify or waive the standard set forth in section 4.18.04 in a particular case upon finding that strict application of the standard would cause undue hardship and not forward the purposes of this chapter or otherwise serve the public health, safety or welfare, or that alternatives proposed by the owner would satisfy the purposes of this section 4.18 at least to an equivalent degree.

The County does not have any staff qualified to provide detailed comment on noise studies and must rely on the information submitted by the applicant. The County Engineer has reviewed the applicant's submission to verify that it has been prepared as required by the Ordinance and that the report uses appropriate engineering concepts.

The applicant notes that conducting the noise study is complicated by the presence of the Mill and ambient sounds, particularly from Rockfish Gap Turnpike.

As staff has stated previously in this report, setbacks are a means of mitigating noise impacts. It is clear from the noise studies and observation that the Mill generates a significant amount of noise. The applicant has stated, "The Company is not proposing to increase noise levels over and above existing, historic conditions, but only to legally accommodate these historic conditions". Staff agrees that any conditions that existed prior to 1980 are historic and may be considered vested. However, expansions occurred after 1980 and these expansions increased noise levels. None of the expansions were reviewed for compliance with the ordinance. Staff has not reviewed the request to allow increased noise levels above the 1980 noise levels with any consideration that they have existed for a number of years. Staff has reviewed the request for increased noise as if the use does not exist. This is how the requests would have been considered if the owner had submitted applications for the construction of new buildings and placement of new equipment after 1980.

VIBRATION - Special Exception details

The applicant has submitted a request for a modification of the vibration regulations of Chapter 18, Section 4.14.2.

VIBRATION - Comments

The ordinance contains no provision allowing for the Board of Supervisors to consider a special exception from the vibration regulations.

SUMMARY AND RECOMMENDATIONS

(These recommendations may also be found in Attachment J. The numbers match what is included in Attachment J.)

SETBACKS – Special Exception

The ordinance contains no criteria for review of a special exception for reduction of setbacks in the Heavy Industry district.

The setbacks of the Heavy Industry district are intended to minimize impacts on adjacent property.

(Attachment J, Item 1)

Staff recommends approval of a special exception from the provisions of Chapter 18, Section 4.20b to reduce the 100 foot setback for the Mill Building (building 7b) and Pole Shed (building 8). Staff is making this recommendation solely on the basis that the buildings exist, and the reduction is minimal. This recommendation should not be considered as a precedent for any future requests on this or any other site.

(Attachment J Item 2.)

Staff recommends approval of a special exception from the provisions of Chapter 18, Section 4.20b to reduce the 10 foot setback for the Stem Loader. This recommendation is based on VDOT's willingness to sell right-of-way to allow the Stem Loader to be approximately 5 feet from the right-of-way and the recommendation of the Architectural Review Board.

(Attachment J Item 3.)

Staff recommends approval of a special exception from the provisions of Chapter 18, Section 4.20b to reduce the 30 foot setback for parking adjacent to Rural Areas property. This recommendation is based on the review of aerial photography which appears to indicate that this area has been used for parking or storage prior to 1980.

(Attachment J Item 4.)

Staff recommends denial of a special exception from the provisions of Chapter 18, Section 4.20b to reduce the 100 foot setback for the proposed Sorter/Stacker (building 27) to 35 feet. Staff opinion is that approval would be inconsistent with the following stated purpose and intent of the Zoning Ordinance as found in Chapter 18, Section 1.4 of the Code of Albemarle:

- Facilitate creating a convenient, attractive and harmonious community;
- Protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, impounding structure failure, panic or other dangers;

Staff notes that approval of the request may be consistent with the following stated purpose and intent of the Zoning Ordinance:

- Encourage economic development activities that provide desirable employment and enlarge the tax base.

Staff opinion is that if the applicant had complied with the ordinance for the construction and placement of structures and machinery it is possible that suitable area may exist to allow construction of the Sorter/Stacker with less impact on adjacent Rural Areas property.

SUPPLEMENTARY REGULATIONS – Special Exception

The ordinance provides guidance for review of a special exception from the supplementary regulations. Staff's recommendation is made with consideration of the ordinance guidance.

(Attachment J Item 5.)

Staff recommends approval of a special exception from the provisions of Chapter 18, Section 5.1.15a to reduce setback for the storage of lumber, logs, chips or timber to zero (0) feet. This recommendation is based on the review of aerial photography which appears to indicate that these areas were used for storage prior to 1980.

(Attachment J Item 6.)

Staff recommends denial of a special exception from the provisions of Chapter 18, Section 5.1.15a to reduce the 100 foot setback for the proposed Sorter/Stacker (building 27) to 35 feet. Staff opinion is that requiring a 100 foot setback does serve the public health, safety and welfare. Further, staff is unable to find that a reduced setback of 35 feet would satisfy the purposes of the supplementary regulations requiring a 100 foot setback to at least an equivalent degree.

(Attachment J Item 7.)

Staff recommends denial of a special exception from the provisions of Chapter 18, Section 5.1.15b to allow the location of the proposed Sorter/Stacker (building 27) approximately 350 feet from the dwelling located to the north on Tax Map 55, Parcel 111A. Staff opinion is that requiring a 600 foot setback does serve the public health, safety and welfare. Further, staff is unable to find that a reduced setback of 350 feet would satisfy the purposes of the supplementary regulations requiring a 600 foot setback to at least an equivalent degree.

(Attachment J Item 8.)

Staff recommends approval of a special exception from the provisions of Chapter 18, Section 5.1.15b to allow the location of the Pole Shed (building 8) approximately 540 feet from the dwelling located to the north on Tax Map 55, Parcel 111A. This recommendation is based on denial of the request to increase noise limits. If the noise limits are met, a reduction of the required 600 foot setback is met to at least an equivalent degree. If a special exception is granted to allow increased noise levels staff does not support a reduction in setback.

(Attachment J Item 9.)

Staff recommends approval of a special exception from the provisions of Chapter 18, Section 5.1.15b to allow the location of the Silo (building 10) approximately 570 feet from the dwelling located to the north on Tax Map 55, Parcel 111A. This recommendation is based on denial of the request to increase noise limits. If the noise limits are met, a reduction of the required 600 foot setback is met to

at least an equivalent degree. If a special exception is granted to allow increased noise levels staff does not support a reduction in setback.

(Attachment J Item 10.)

Staff recommends approval of a special exception from the provisions of Chapter 18, Section 5.1.15b to allow the location of the Boiler (building 11) approximately 570 feet from the dwelling located to the north on Tax Map 55, Parcel 111A. This recommendation is based on denial of the request to increase noise limits. If the noise limits are met, a reduction of the required 600 foot setback is met to at least an equivalent degree. If a special exception is granted to allow increased noise levels staff does not support a reduction in setback.

(Attachment J Item 11.)

Staff recommends approval of a special exception from the provisions of Chapter 18, Section 5.1.15b to allow the location of the Kiln (building 12A) approximately 515 feet from the dwelling located to the north on Tax Map 55, Parcel 111A. This recommendation is based on denial of the request to increase noise limits. If the noise limits are met, a reduction of the required 600 foot setback is met to at least an equivalent degree. If a special exception is granted to allow increased noise levels staff does not support a reduction in setback.

(Attachment J Item 12.)

Staff recommends approval of a special exception from the provisions of Chapter 18, Section 5.1.15b to allow the location of the Planer (buildings 18, 22 and 23) approximately 550 feet from the dwelling located to the north on Tax Map 55, Parcel 111A. This recommendation is based on denial of the request to increase noise limits. If the noise limits are met, a reduction of the required 600 foot setback is met to at least an equivalent degree. If a special exception is granted to allow increased noise levels staff does not support a reduction in setback.

(Attachment J Item 13.)

Staff recommends approval of a special exception from the provisions of Chapter 18, Section 5.1.15b to allow the location of the Mill Building (building 7a and 7b) approximately 520 feet from the dwelling located to the south on Tax Map 55, Parcel 100. This recommendation is based on denial of the request to increase noise limits. If the noise limits are met, a reduction of the required 600 foot setback is met to at least an equivalent degree. If a special exception is granted to allow increased noise levels staff does not support a reduction in setback.

(Attachment J Item 14.)

Staff recommends approval of a special exception from the provisions of Chapter 18, Section 5.1.15b to allow the location of the Stem Loader (adjacent to Rockfish Gap Turnpike) approximately 500 feet from the dwelling located to the west on Tax Map 55A, Parcel 28. This recommendation is based on denial of the request to increase noise limits. If the noise limits are met, a reduction of the required 600 foot setback is met to at least an equivalent degree. If a special exception is granted to allow increased noise levels staff does not support a reduction in setback.

(Attachment J Item 15.)

~~Staff recommends approval of a special exception from the provisions of Chapter 18, Section 5.1.15c that operation of machinery used for sawing, planing, chipping or other wood processing be permitted from 6:00 am to 11:00 pm.~~ Staff recommends approval of a special exception from the provisions of Chapter 18, Section 5.1.15c that operation of machinery used for sawing, planing, chipping or other wood processing be permitted from 6:00 am to 7:00 pm. (This sentence was corrected after the

Planning Commission meeting). This recommendation is based on denial of the request to increase noise limits. If the noise limits are met, a reduction of the required 600 foot setback is met to at least an equivalent degree. If a special exception is granted to allow increased noise levels staff does not support a reduction in setback.

(Attachment J Item 16.)

Staff recommends approval of a special exception from the provisions of Chapter 18, Section 5.1.15c that the loading or unloading of wood products be permitted from 6:00 am to 11:00 pm. This recommendation is based on the historical use of the property and that it satisfies the purposes of the supplementary regulations to at least an equivalent degree.

(Attachment J Item 17.)

Staff recommends denial of a special exception from the provisions of Chapter 18, Section 5.1.15c that the loading and unloading associated with the kiln be permitted 24 hours a day. Staff opinion is that requiring an extended period where activity does not occur on site does serve the public health, safety and welfare. Further, staff is unable to find that allowing 24 hour a day loading and unloading activities would satisfy the purposes of the supplementary regulations to at least an equivalent degree.

NOISE – Special Exception

The ordinance provides guidance for review of a special exception noise regulations. Staff's recommendation is made with consideration of the ordinance guidance.

The intent of the noise regulations is: (reference Chapter 18, Section 4.18 of the Code of Albemarle)

The board of supervisors hereby finds and declares that noise is a serious hazard to the public health, safety, welfare, and quality of life, and that the inhabitants of the county and adjoining localities have a right to and should be free from an environment of noise. Therefore, it is the policy of the county to regulate noise as provided in this section 4.18.

(Attachment J Item 18.)

Staff recommends denial of a special exception from the provisions of Chapter 18, Section 4.18.04 to increase daytime noise limits. The applicant may seek a determination on noise level for non-conforming activities. Those activities constructed or expanded after adoption of the Zoning Ordinance in 1980 were subject to the ordinance but were never reviewed. The adjacent properties impacted were developed with dwellings prior to the expansion of the Mill. Mitigation of noise may be accomplished with construction techniques. For those buildings housing equipment, the design of structures, the location of structures and the choice of equipment can mitigate noise. The fact that the applicant has developed the property and may have to retrofit should not be considered an undue hardship as the development of the property was conducted without any permits and not in compliance with the County regulations. Approval of increased noise levels does not serve the public health, safety or welfare to an equivalent degree as complying with the ordinance. Approval of an increase to the limits in noise levels is inconsistent with the intent of the noise regulations.

(Attachment J Item 19.)

Staff recommends denial of a special exception from the provisions of Chapter 18, Section 4.18.04 to increase nighttime noise levels limits. The applicant may seek a determination on noise levels for non-conforming activities. Those activities constructed or expanded after adoption of the Zoning Ordinance in 1980 were subject to the ordinance but were never reviewed. The adjacent properties impacted were developed with dwellings prior to the expansion of the Mill. Mitigation of noise can be accomplished with construction techniques. For those buildings housing equipment, the design of

structures, the location of structures and the choice of equipment can mitigate noise. The fact that the applicant has developed the property and may have to retrofit should not be considered an undue hardship as the development of the property was conducted without any permits and not in compliance with the County regulations. Approval of increased noise levels does not serve the public health, safety or welfare to an equivalent degree as complying with the ordinance. Approval of an increase to limits in noise levels is inconsistent with the intent of the noise regulations.

VIBRATION - Special Exception

No provision exists allowing for the Board of Supervisors to consider a special exception from the vibration regulations. Therefore, no recommendation is being made on the applicant's request for a special exception from the vibration regulations.

SUMMARY:

Factors favorable to this request include:

1. Permits an existing business to remain and expand.
2. Impact caused by some special exceptions may be mitigated with conditions.
3. Some areas have been used for Mill operations prior to 1980 and approval of special exceptions clarifies the permitted activities.

Factors unfavorable to this request include:

1. Approval of some special exceptions will result in substantial impact to adjacent property.
2. Approval of some special exceptions is not supported by the special exception review criteria.

RECOMMENDED ACTION:

Based on the findings contained in this staff report, and with the conditions proposed below staff recommends:

Section 4.20 Setbacks and Stepbacks in Heavy Industry Districts

Staff recommends approval of the reduction in setbacks for existing structures and parking.
(Attachment J Items 1, 2, 3)

Staff recommends denial of a reduction in setback for the proposed Sorter/Stacker (building 27).
(Attachment J Item 4)

Section 5.1.15 Supplemental Regulations Applicable to Sawmill, Temporary or Permanent, Planing Mills and Wood Yards - Location of storage of lumber, logs, chips or timber, the location of machinery within 600 feet from any dwelling

Staff recommends approval of a reduction in setbacks for the existing storage of lumber, logs, chips or timber and the location of existing machinery within 600 feet from any dwelling.
(Attachment J Item 5, 8, 9,10, 11, 12, 13, 14)

Staff recommends denial of a reduction in setback for the proposed Sorter/Stacker (building 27).
(Attachment J Item 6, 7)

Section 5.1.15 Supplemental Regulations Applicable to Sawmill, Temporary or Permanent, Planing Mills and Wood Yards – Hours of Operation

Staff recommends approval of a special exception that operation of machinery used for sawing, planing, chipping or other wood processing and that the loading or unloading of wood product be permitted from 6:00 am to 11:00 pm.

(Attachment J Item 16)

Staff recommends denial of a special exception allowing loading and unloading associated with the kiln be permitted 24 hours a day.

(Attachment J Item 17)

Section 4.18.04 Noise Regulations

Staff recommends denial of the requested special exception for modification to the noise regulations.

(Attachment J Items 18, 19)

Staff recommends the following conditions of approval:

1. Structures and Machinery will be permitted as shown on a survey titled ‘Alta/NSPS Land Title Survey’ prepared by Timmons Group and dated August 2, 2017. (Attachment I) except for the Sorter/Stacker which shall not be permitted.
2. The owner must obtain a Certificate of Occupancy for all existing structures by January 1, 2021. For any structure that is not issued a Certificate of Occupancy by January 1, 2021 the owner must cease use of the structure until such time as a Certificate of Occupancy is obtained.

Motions:

Special Use Permit

- A. If the Planning Commission chooses to recommend approval of any special exception request:

I move to recommend approval of special exceptions recommended for approval by staff with the conditions outlined in the staff report.

- B. If the Planning Commission chooses to recommend denial of any special exception:

I move to recommend denial of special exceptions recommended for denial by staff. Any motion(s) to recommend denial should state the reason(s) therefor.

ATTACHMENTS

- Attachment A- Maps and aerial photograph showing character of the area
- Attachment B- Applicant’s request and justification
- Attachment C- Chapter 18, Section 4.20 of the Code of Albemarle
- Attachment D- Chapter 18, Section 5.1.15 of the Code of Albemarle
- Attachment E- Chapter 18, Section 4.18 of the Code of Albemarle
- Attachment F- Architectural Review Board action
- Attachment G1- Noise and Vibration Study

Attachment G2- Noise and Vibration Study

Attachment H1- Applicant's supplemental information, received March 12th.

Attachment H2- Applicant's supplemental information, received March 12th.

Attachment I- Survey titled 'Alta/NSPS Land Title Survey' prepared by Timmons Group and dated August 2, 2017

Attachment J- List of all special exceptions with staff recommendation.

Attachment K- Aerial photo with building numbers and building schedule

Attachment L- Public Comment

Attachment M – Diagram of proposed Sorter/Stacker sound barrier

Attachment N – Additional noise information

Attachment O – Yancey Lumber Screening Exhibit