

STAFF PERSON: Christopher Perez, Senior Planner
PLANNING COMMISSION: March 5, 2019
BOARD OF SUPERVISORS: TBD

SP201800020 – WVIR-TV Replacement of Existing Television Broadcasting Tower

PETITION:

PROJECT: SP201800020 – WVIR-TV Replacement of Existing Television Broadcasting Tower

MAGISTERIAL DISTRICT: Scottsville

TAX MAP/PARCEL: 09100000002800

LOCATION: Off Route 53, Carters Mountain Orchard.

PROPOSAL: Replace an existing 314.25 feet tall guy-wired television broadcasting tower with a new 314.25 feet tall self-supporting television broadcasting tower in the same location. A special exception to setbacks under Section 4.10.3.1 is needed.

PETITION: Section 10.2.2(6) of the zoning ordinance which allows for communication transmission facilities in the RA, Rural Areas district. Supplemental regulation apply to this use under Section 5.1.12.

ZONING: RA Rural Areas - agricultural, forestal, and fishery uses; residential density (0.5 unit/acre in development lots)

OVERLAY DISTRICT: Southern Albemarle Rural Historic District, Mountain Protection Areas, and Critical Slopes.

PROFFERS: No

COMPREHENSIVE PLAN: Rural Areas - preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources/residential density 0.5 unit/acre in development lots. Rural Areas 4 Comp Plan Area.

CHARACTER OF SURROUNDING AREA:

Attachment B contains an aerial photograph of the area. The site is located in an existing antenna farm located at the top of Carter's Mountain surrounded by 200+ acres. The antenna farm contains a multitude of other towers. The antenna farm is not open to the public and is accessed by an existing dirt road.

PLANNING AND ZONING HISTORY:

The tower proposed to be replaced was constructed in 1973 with a building permit approved by the County. There is not a previously approved special use permit for this tower, as this requirement was not applicable at the time of development. The lease area owned by WVIR has a series of approved special use permits for alterations to the site, including approval of a second tower and the replacement of the transmission building and updates to equipment within the lease area, as listed below.

- **SP200200043 WVIR Crown Orchard Company** – Construction of a digital broadcast television tower (the second tower within the lease area).
- **SP199300010 Virginia Broadcasting Corporation (WVIR-TV)** – Transmitter building replacement and equipment updates.

DETAILS OF THE PROPOSAL:

WVIR requests approval of a special use permit to replace an existing 314.25 feet tall guy-wired television broadcasting tower with a new 314.25 feet tall self-supporting television broadcasting tower in the same location. A special exception to setbacks under Section 4.10.3.1(b) is needed.

COMMUNITY MEETING

The applicant conducted the required community meeting at the 5th & Avon Community Advisory Committee meeting on December 20, 2018.

The following questions and concerns were raised by Committee members and members of the community:

- What will the proposed tower look like? How tall will it be?
- Will the existing guy wires on Mr. Wood's property be removed?
- What is the distance of the existing tower from the adjacent property line?
- Would the tower replacement prohibit the adjacent property owner (Mr. Wood) from building a new home on their property within the 1 to 1 setback of the facility?
- Discussion was had about the history of how the tower was built and the original agreements between the original owner of the orchard, Roy Macklanah.

ANALYSIS OF THE SPECIAL USE PERMIT REQUEST:

Section 33.39(B) states that the Commission, in making its recommendation, shall consider the same factors found in Section 33.40 (B):

1. No substantial detriment. Whether the proposed special use will be a substantial detriment to adjacent parcels.

No discernible detriment to adjacent parcels will result from this proposal. The area in question is an existing antenna farm with many other approved towers, located at the top of Carter's Mountain surrounded by a 200+ acre orchard. There has been a broadcasting tower in this precise location since 1973. With the replacement of the existing tower no additional trees or land disturbance is being proposed. The replacement tower is the same height and generally the same width as the existing tower (Attachment E). The replacement tower is self-supporting and will discontinue the use of guy wires that the existing tower utilizes. Staff finds no substantial detriment to the adjacent property or other tenants of the parcel.

2. Character of the nearby area is unchanged. Whether the character of the adjacent parcels and the nearby area will be changed by the proposed special use.

Neither the character of the adjacent parcels nor the character of the nearby area will be changed by the proposed replacement tower. The area in question is an antenna farm with many existing towers, located at the top of Carter's Mountain surrounded by a 200+ acre orchard.

3. Harmony. Whether the proposed special use will be in harmony with the purpose and intent of this chapter,

The intent of the rural area (RA) district is to preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources, while allowing uses that are compatible and do not detract from the district. The requested use is permissible by special use permit in the RA district, and is not incompatible with surrounding properties or districts. This use is located in an existing antenna farm on Carter's Mountain. There are many similar towers within close proximity to WVIR's tower proposed to be replaced. By clustering antennas within the existing antenna farm the County has actively preserved and protected its agricultural, forestal, open space, and natural, historic and scenic resources. The proposed replacement tower is in harmony with the purpose and intent of this chapter.

with the uses permitted by right in the district,

As shown and articulated in the application materials and staff report, the proposed replacement communication transmission facility use does not represent an inharmonious relationship with other permissible uses in the RA district as it generates; little to no traffic, no pollution, no noise, and does not increase the negative visual impacts of the antenna farm. Additionally, the proposed tower replacement is in harmony with the current agricultural use of the parcel.

with the regulations provided in Section 5 as applicable,

The use, communications transmission facility, is permitted in the RA zoning district by special use permit under Section 10.2.2(6). This section references supplemental regulations under Section 5.1.12 as being applicable to the use; however, these specific supplemental regulations are only applicable to public utility structures/uses. WVIR TV broadcasting is not a public utility or public use;

rather, it is a private company, thus these supplemental regulations are not applicable to the use.

Additionally, the tower will have no impact on any existing public facilities or any public infrastructure. The use will not endanger the health or safety of workers or residents in the community and will not impair or serve as a detriment to neighboring properties. The use will continue to be fenced and posted with “no trespassing” signs.

and with the public health, safety, and general welfare.

The proposal is not unharmonious with public health, safety, or general welfare. WVIR-TV has served the community for over 40 years by airing local and national news to keep the community informed. WVIR-TV is also a member of the Emergency Alert System according to the information provided by the applicant. The FCC has mandated a reduction in bandwidth for television broadcasting in order to provide more bandwidth to the wireless communication/cellular telephone industry. In order for WVIR-TV to comply with the regulations they are being forced to move from Channel 32 to Channel 2. The existing tower built in 1972 does not meet current FCC or FAA requirements for wind or ice load for the new, heavier Channel 2 antenna. This new antenna will weigh 5 times as much as the current antenna. The proposed replacement tower will allow the broadcaster to comply with the FCC mandated “repacking” of their signal in order to remain on the air. WVIR-TV must build the replacement tower no later than September 6, 2019.

4. *Consistency with the Comprehensive Plan. Whether the proposed special use will be consistent with the Comprehensive Plan.*

The site is located in the Rural Area 4 designation of the Comprehensive Plan. The rural area designation seek to preserve and protect agricultural, forestal, open space, and natural, historic and scenic resources. This site is located in an existing antenna farm on Carter’s Mountain. There are many such towers in the antenna farm within close proximity to WVIR’s existing tower. Additionally, a number of special use permits have been approved for towers in the antenna farm. Notably, there has been a broadcasting tower in this precise location since 1973. With the replacement of the existing tower no additional trees or land disturbance is being proposed. The replacement tower is the same height and generally the same width as the existing tower. The replacement tower is self-supporting and will discontinue the use of guy wires that the existing tower utilizes. By clustering antennas within the existing antenna farm the County has actively preserved and protected its agricultural, forestal, open space, and natural, historic and scenic resources. The proposed replacement tower is consistent with the Comprehensive Plan.

SUMMARY:

Staff finds the following factors favorable to this request:

1. No detrimental impacts to adjoining properties.
2. Reduced visibility by discontinuing the use of the existing guy wires
3. The proposal is a redevelopment project which does not involve tree clearing, grading, or increased impervious surface area.
4. The proposed use generates economic activity and supports job opportunities.

Staff finds the following factor(s) unfavorable to this request:

None identified

RECOMMENDED ACTION:

Based on the findings described in this report and factors identified as favorable, **staff recommends approval of special use permit application SP201800020 with the following conditions (below).**

1. The development of the site, and any modifications, shall be in general accord with the conceptual plan, provided in this staff report as Attachment B, consisting of a survey by Thomas B. Lincoln dated October 17, 2018 last revised October 31, 2018 titled *Exhibit Showing WVIR-TV Self Supporting Replacement Tower Lease Area*, a preliminary antenna design by AlanDick Jampro Antennas, Inc, and an aerial locator map depicting the site location (hereafter “Conceptual Plan”), as determined by the Director of Planning

and the Zoning Administrator. To be in general accord with the Conceptual Plan, development and use shall reflect the following major elements within the development essential to the design of the development, including but not limited to all concealment elements, concealment technique, and concealment elements of the eligible support structure, as shown and described on the Conceptual Plan and mentioned below:

- a. The height of the tower shall not exceed 240.25 feet and the top of the digital antenna shall not exceed 314.25 feet above ground level. No equipment, with the exception of any FAA required flight safety lighting, shall extend more than 50 feet above the top of the digital antenna;
- b. The width of each side of the tower shall not exceed 26 feet at its base, and 3.5 feet at the top;
- c. Color (red and white)
- d. No additional antennas that support services other than television broadcasting shall be attached to the facility.
- e. Only those satellite and microwave dishes that are necessary to support the transmission of the digital television signal shall be permitted on the tower or the digital antenna.
- f. No guy wires shall be permitted;
- g. The above conditions notwithstanding, additional facilities, including equipment, antennas, and microwave dishes necessary for the Emergency Communications Center's emergency communications system, may be placed on this tower if the applicant and lessee of the tower enter into an agreement with the County to do so.

Minor modifications to the plan which do not conflict with the elements above may be made to ensure compliance with the Albemarle County Zoning Ordinance.

2. Prior to the issuance of a building permit, the applicant shall submit the final set of site drawings for construction of the facility. Planning staff shall review the revised plans to ensure that all appropriate conditions of the special use permit have been addressed;
3. The facility shall be disassembled and removed from the site within 90 days of the date its use for digital television transmission is discontinued. If the Zoning Administrator determines at any time that surety is required to guarantee that the facility will be removed as required, the permittee shall furnish to the Zoning administrator a certified check, a bond with surety satisfactory to the County, or a letter of credit satisfactory to the County, in an amount sufficient for, and conditioned upon, the removal of the facility. The type of surety guarantee shall be to the satisfaction of the Zoning Administrator and the County Attorney;
4. The use, structure of activity for which this permit is issued shall commence no later than September 6, 2020. The term "Commence" shall mean commencement of the structure that is necessary for mounting the digital antenna;

POSSIBLE PLANNING COMMISSION MOTION- SP201800020:

A. Should the Planning Commission **choose to recommend approval** of this special use permit:

Move to recommend approval of SP201800020, WVIR-TV replacement tower, with conditions as stated in the staff report.

B. Should the Planning Commission **choose to recommend denial** of this special use permit:

Move to recommend denial of SP201800020, WVIR-TV replacement tower. Should a commissioner motion to recommend denial, he or she should state the reason(s) for recommending denial.

SPECIAL EXCEPTION REQUEST:

The applicant has requested a Special Exception pursuant to County Code Section 33.49, to modify County Code § 18-4.10.3.1(b) to allow the replacement tower to be built in the same location as the existing tower, which is closer in distance to any lot line than the height of the structure. The proposal is to reduce the required setback from 314.25' to no closer than 35' to the property line.

Staff Analysis

County Code § 18-4.10.3.1 requires that communication towers be located no closer in distance to any lot line than the height of the structure. County Code § 18-4.10.3.1(c) allows waivers or modifications to the setback to be considered.

The existing tower is currently located approximately 35' from the adjacent property line of TMP 91-18A. The replacement tower is proposed to be located in the same location as the existing tower. The base of the tower will be located no closer than 35' to the adjacent property line. The location is expected to be located as depicted in the Lease Area Survey by Tomas Lincoln contained in Attachment B.

Requests for modifications must be reviewed under the criteria established in County Code § 18-33.49(a), taking into consideration the factors, standards, criteria and findings for each request; however no specific finding is required in support of a decision. The public health, safety, or welfare will be equally served with the reduced setback, which is the material criterion in County Code § 18-4.10.3.1. There are no residences near the tower, the closest residence being addressed structure 1539, which is located 3,000' from the proposed tower. The proposed tower site is within an existing antenna farm atop of Carter's Mountain surrounded by 200+ acres of orchard. The only structures near the proposed tower are those of other towers and associated equipment. The only property impacted by the setback modification is TMP 91-18A. The owner of TMP 91-18A (Hunter Wood) was notified of the proposal and we have received communication from his representative, stating he is not opposed to the tower unless the fall zone would restrict a building permit for this lot. The approval of the SE will not restrict a building permit for this lot. Additionally there is an existing TV tower on TMP 91-18A within the required setback of the proposed tower.

RECOMMENDED ACTION – SPECIAL EXCEPTION:

In consideration of the information provided by the applicant, as well as the staff analysis identified in this report, the special exception request is acceptable.

Therefore, **staff recommend approval of the requested Special Exception** to modify the required setback specified in County Code § 18-4.10.3.1(b), **with the following conditions:**

1. The tower shall be built no closer than 35' to the adjacent property line (TMP 91-18A).

POSSIBLE PLANNING COMMISSION MOTIONS – SPECIAL EXCEPTION REQUEST:

Under policy set by the Board of Supervisors, the Commission shall include in its recommendation for special exceptions per County Code Sections 33.47(B) and 33.48.

A. ***Should the Planning Commission choose to recommend approval of the requested special exception:*** I move to recommend approval of the requested special exception to modify the required setback for the reasons outlined in the staff report and with the condition outlined in the staff report.

B. ***Should the Planning Commission choose to recommend denial of the special exceptions:*** I move to recommend denial of the requested special exception to modify the required setback (state reasons for recommending denial).

ATTACHMENTS

Attachment A – [Vicinity Map](#)

Attachment B – [Conceptual Plan](#)

Attachment C – [Applicant Request and Justification for Special Use Permit](#)

Attachment D – [Applicant Request and Justification for Special Exception](#)

Attachment E – [Pictures of the existing and proposed replacement tower](#)