

### **Item recommended for deferral**

Mr. Keller noted that the Woolen Mills item had been pulled from the meeting and would come back before the Planning Commission on April 9, 2019, tentatively.

### **Public Hearing Items**

#### **SP-2018-00020 WVIR-TV Replacement of Existing TV Broadcasting Tower**

Chris Perez addressed the Commission and stated that the item before them was a television broadcasting tower that has been proposed for the top of Carter's Mountain. Mr. Perez said there was an existing tower that was built in 1973 that was a television antenna that has been proposed to be removed and replaced. Mr. Perez said the current tower did not have the structural capacity to hold new equipment with regards to the Federal Communications Commission's guidelines on weight, as well as all the different things required for the tower to function. Mr. Perez said the property was owned by Crown Orchard, LLC, the applicant was Virginia Broadcasting, LLC, and the special use permit specifically related to communication transmission facilities in the Rural Area zoning district.

Mr. Perez said the existing tower from 1973 was built prior to the requirements for a special use permit and only needed a building permit. Mr. Perez said as part of this current request, a special exception was needed to permit the setback reduction because there was a one-to-one setback from all property lines. Mr. Perez said the current facility was within 35 or 40 feet from a property line from one adjacent owner, so the applicant will go ahead and request the special exception. Mr. Perez stated he has reviewed the special exception request and he found it acceptable and he will review the reasons why.

Mr. Perez showed a slide indicating that the Carter's Mountain parcel was around 300 acres, predominantly covered in orchards, and the public was allowed on some portions of the land -- with Mr. Perez pointing out the section of the property where the antenna farm was located. Mr. Perez said the existing antenna was located within the existing antenna farm at the top of the mountain. He stated that most of the surrounding properties were large and zoned for rural uses, with some properties being 400 acres and one other being 800 acres. Mr. Perez showed an aerial view with many trees and said the top portion of the property was where there were smaller trees in the orchards, with a bald spot at the top of the mountain. He showed a close-up view that included the closest property, TMP 91-18A, which was owned by Mr. Wood. Mr. Perez said the property was where there were antennas owned by public television and that the WVIR television replacement tower was located really close to the property line and was unable to make the one-to-one setback based on its existing location. He noted that all of the other towers in the antenna farm were also clustered using a conservation technique to allow them to be put at the top of the mountain instead of being all over the mountain, which would mean more tree clearance increased visibility of the towers.

Mr. Perez showed a slide depicting a survey from Tom Lincoln that showed that the current tower was about 35 feet from the property line, noting that a star signified the location of the tower that was to be replaced.

Mr. Perez said the current tower was a 314.25-foot-tall facility, with the tower itself being 240 feet and the additional footage being where the television broadcasting antenna exceeded the height of the tower. Mr. Perez said the width of the self-supporting facility was 26 feet wide at the base and three and a half feet wide at the top. Mr. Perez said the current tower was held up with guy wires, and that was currently prohibited by the county's wireless policy. Mr. Perez noted that the current tower was not a wireless facility subjected to 5140 but that he wanted to recognize that the wireless policy prohibited guy wires in towers.

Mr. Perez showed a slide depicting what the tower looked like from Piedmont Virginia Community College. Mr. Perez showed a slide depicting what the proposed tower would look like from that perspective compared to the existing tower and noted that there were very few distinguishable differences from that distance. He presented a slide from the back side of the tower and noted that the star signified the tower that was to be replaced and that it would be replaced with an almost identical tower. Mr. Perez said the tower would be self-supporting and a little wider, but would be the same height and the same color based on FCC guidelines.

Mr. Perez said that staff found there would be no detrimental impacts to adjacent properties and that reducing visibility by eliminating the guy wires was a positive finding. He noted that an additional favorable factor was that this was a redevelopment and so no additional trees would be removed, there was no increase in impervious surfaces, and this use would help spur economic growth.

Mr. Perez referenced a slide depicting recommended conditions and noted that the ones listed in the presentation were modified from the one in the staff report after input from the County Attorney's Office. He stated that these changes were not substantive and were the result of wordsmithing. Mr. Perez also noted that there were conditions for the special exception allowing for the 35-foot setback reduction. He displayed a list of potential motions and noted that the applicant approached him and said they would in the future also bring an application to further decrease the setbacks to 30 feet in order to give them more flexibility in case the builder needed more space. Mr. Perez said he did not find any additional impacts based on where the antenna currently was, the height of the antenna, and the uses on the adjacent property -- which also had towers on it.

Mr. Perez asked the Commission if there were any questions.

Mr. Keller asked the Commission if there were any questions for staff.

Mr. Dotson inquired about Condition D that stated there would be no additional antennas or support services at the site, asking if there were a physical reason for the condition since the county encouraged colocation.

Mr. Perez responded that he was mimicking conditions placed on the adjacent tower, which was owned by a sister company, and they were generally the same conditions. He said his logic was related to the county's wireless antenna policy, and putting additional facilities on the tower might increase the bulk and visibility so this condition would prohibit that from happening.

Ms. Riley said she wanted to follow up on Condition G, which pertained to the colocation of emergency communication systems, and noted that this might negate Condition D. She asked Mr. Perez to describe further.

Mr. Perez explained that Condition G was intended to give the county some flexibility in terms of allowing emergency communication systems to be put on the tower, provided the county entered into an agreement with the applicant. He said that this condition would prevent the county's hands from being tied in the future if there were a decision to place emergency communications facilities on the antenna.

Mr. Perez noted that this condition was also replicated in the most recent similar application.

Ms. Spain noted that Mr. Wood was concerned at the community meeting about whether the guy wires on his property would be removed.

Mr. Perez said they would be removed from Mr. Wood's property and that when the tower first went up in 1973, no survey was conducted -- but once one was conducted, it was discovered the guy wires were on Mr. Wood's property. Mr. Perez said this existing condition would be eliminated with the new tower because it would be self-supporting.

Ms. Spain asked if the tower replacement would prevent Mr. Wood from building a new home on his property with the new one-to-one setback.

Mr. Perez responded that he asked that question of the zoning office and they said that it would not prevent Mr. Wood from building a house there. Mr. Perez said the only thing that would prevent him from building a house there was if the county put conditions on the new tower of a one-to-one fall zone to put an easement over the area. He stated that without that condition, Mr. Wood could build a house there if he met all of the other requirements. Mr. Perez said there was currently an existing tower there, but if it were to be removed and Mr. Wood wanted to build a house there, there would be nothing in the current application that would stop him from doing so.

Ms. Spain asked if the county typically designated a fall zone for towers and that it never occurred to her that they could blow over.

Mr. Perez clarified that this new tower would be self-supporting in that would fall onto itself, but that did not weigh into his decision to not require a fall zone. Mr. Perez said there were two

reasons why he did not require a fall zone, and one was that there was an existing tower on the adjacent property that would have a fall zone within the same area, meaning a like use to like use situation -- which he said was why he would not put the condition on one and not the other. He added that there was not a second reason.

Mr. Keller opened the public hearing and invited the applicant to speak.

Mr. Greg Duncan stated that he was representing WVIR-TV and was joined by Harold Wright, general manager of the television station. Mr. Duncan said that Mr. Wright had brought local television to Charlottesville and Albemarle County. Mr. Duncan said that WVIR now employed nearly 100 people and had been in the community for 45 years. Mr. Duncan said one of the main reasons for the application was because Congress had ordered the FCC to reshuffle the bandwidth available to television stations so the excess bandwidth could be sold to the cellular industry. Mr. Duncan said that as part of that process, WVIR was shifted to Channel 2 and they have been ordered to be on the air on Channel 2 no later than September 6, 2019. He stated that in order to meet this deadline, the station needed to replace the 1972 guy wire tower with a new tower -- and given Albemarle's dislike of guy wires, they chose a self-supporting tower. He noted that the current tower did not support the new Channel 2 antenna either from the FCC or Federal Aviation Administration regulations for ice load for new antennas of this weight. Mr. Duncan said the current antenna atop the tower weighed 2,660 pounds, and the new antenna would weigh 14,661 pounds.

Mr. Duncan commented that staff had done an excellent job with their report and that he would adopt their findings and conclusions in the special use application. He said that he hoped the Planning Commission would recommend the special use permit, and WVIR had also asked for a special exception for the lot line setback. Mr. Duncan said that when WVIR first erected its tower in 1973, it was represented to them that the lessor of the property owned all of the apple orchard -- but that turned out to be untrue. He stated that the tower that was erected in 1973 sat in very close proximity to the adjacent lot, but it was important to note that there were no houses or any other structures on the lot within 314 feet of the tower except apple trees that had been there for over 50 years. He emphasized that the existing tower had been in harmony since it was built, and the new tower would continue to do so. Mr. Duncan said it was his understanding that the adjacent landowner did not object to the special exception and that changing the towers would benefit him because it would result in the removal of a guy wire that had been encroaching that property for many years.

Mr. Duncan commented that staff had done an excellent job with the special exception but he didn't support the condition of 35 feet from the adjacent property line. He said the goal was to put the antenna -- all 78 feet of it -- in exactly the same position in the air that the current antenna was in. He stated that this may necessitate the shifting of one or more of the feet of the tower, and a cushion was needed for the builder of the new tower so that the 35-foot setback wasn't breached. Mr. Duncan stated that the setback of 30 feet was recommended in advance to ask for permission now rather than forgiveness in the future. He thanked the Commission for their time.

Mr. Bivins asked if there were members of the public who wished to speak on the matter.

Mr. Hunter Wood stated that he was the owner of the adjacent lot and that his address was 135 Somerset Farm Drive. He stated that he did not have an objection to the tower now that the guy wire was going way, and his only concern related to the fact his lot was a residential lot and his only buildable area was on top of the point. He stated that he wanted 100 percent assurance that anything done with the tower did not impede his property at all, and he supported the variance as long as it did not stop him from building on his property in the future.

Mr. Bivins asked if any of the members of the public wanted to speak. There were none.

Mr. Keller invited the applicant to speak again.

Mr. Duncan said he had nothing else to add.

Mr. Keller asked if commissioners had any additional questions. There were none, and Mr. Keller closed the public hearing.

Mr. Bivins asked what the process would be for rebuilding if there were an active incident such as the tornados that hit sections of Alabama over the previous weekend.

Mr. Perez clarified that Mr. Bivins was asking about whether the tower had fallen down, stating that the applicant would just need to come back for a building permit and that the special use permit would still stand.

Mr. Herrick said that was correct and that the special use permit would run with the land, so the holder of the special use permit would have the ability to reconstruct the tower in the same location under the same conditions.

Mr. Perez said the facility was not tied to a reference tree and was not a Tier II Personal Wireless Facility.

Ms. Spain asked if there were a way to make sure that he had the ability to build in the future.

Mr. Perez said he got an email from zoning that stated that the question was in the file and that it was possible that Ms. McCulley could write something declarative -- but to Mr. Perez, the approval of the permit would not prohibit anything unless the county was to put a fall easement on the neighboring property.

Ms. Spain said she thought a note clarifying this point from the head of the department would be reassuring to Mr. Wood.

Mr. Keller asked if there was any further discussion from the Commission. Hearing none, he called for a motion. He asked for Mr. Perez to redisplay the list of motions on the screen.

Ms. Riley made a motion to recommend SP-2018-00020 with conditions as stated in the staff report.

Ms. Spain seconded the motion.

Mr. Keller asked if there was further discussion. With none, Ms. Blanton called the roll.

The motion was approved by a vote of 6:0 (Ms. Firehock was absent).

Mr. Keller said the matter would be moving onto the Board of Supervisors.

Mr. Herrick asked Mr. Keller if the Commission would entertain a motion on the special exception as well.

Mr. Keller said yes and asked if there was a motion.

Ms. Riley made a motion recommending approval of the special exception to modify the setback for the reasons outlined in the staff report, with the condition that it now read for a 30-foot setback. Ms. Spain seconded the motion.

Mr. Perez said that the presentation had changed some of the conditions of the staff report for both the item and noted that it was a little different.

Mr. Herrick asked the Commission for clarification as to whether the motion was to adopt the conditions as listed in the printed staff report or if in the presentation. He said if the Commission's wish was to adopt the conditions in the staff report, that would be different.

Ms. Spain asked which interpretation indicated a 30-foot setback.

Ms. Riley said she thought it was the interpretation.

Mr. Perez said that neither stated 30 feet, but a request from the applicant and both the presentation and the staff report said a 35-foot setback -- and the Commission could set it at 30 feet.

Mr. Keller said the Commission could possibly have a discussion.

Mr. Herrick asked if there was an interest in reconsidering the prior motion regarding the special use permit or if the reconsideration should be related solely to the special exception.

Ms. Riley said she thought the only changes in the conditions were related to the special exception. She asked if she should restate the motion.

Mr. Keller said yes.

Ms. Riley moved to recommend approval of the requested special exception to modify the required setback to 30 feet for the reasons outlined in the staff report, with the conditions outlined therein.

Mr. Herrick said the last part was probably inconsistent up until the 30-foot requirement being a condition.

Ms. Riley moved to recommend approval of the requested special exception to modify the required setback to 30 feet for the reasons outlined in the staff report.

Ms. Spain seconded the motion.

Mr. Keller asked for any further discussion. Hearing none, Ms. Blanton called the roll.

The motion was approved 6:0 (Ms. Firehock was absent).

Mr. Keller said he felt the Commission had gotten it, and the matter would move on to the Board of Supervisors.

Mr. Dotson had a question on the previous action. He stated that staff had indicated there were minor changes in wording in the conditions that the County Attorney's Office had provided, and he wanted to know if the Commission moved the printed language or the modified attorney's language.

Mr. Keller responded that his interpretation was that the Commission had approved the latter.

Mr. Herrick said his recollection of the motion was that what was approved were the conditions in the staff report, which were the printed conditions rather than what was in the presentation.

Ms. Riley said she read it from the staff report and said she should redo the first motion as well.

Mr. Herrick said there would first need to be a motion to reconsider because the Commission had already adopted a motion for the printed conditions.

Mr. Keller asked if there was a motion to reconsider.

Mr. Bivins made a motion to reconsider.

Ms. More seconded the motion.

Mr. Keller asked if there needed to be a vote.

Mr. Herrick said yes.

Ms. Blanton called the roll and the motion to reconsider passed 6-0, with Ms. Spain abstaining.

Mr. Keller noted that it was moving on to the Board of Supervisors.

Ms. Riley said that she need to make a motion to proceed and needed to see the version of the motion on the screen to match the appropriate vote.

Ms. Riley made a motion to move approval of SP-2018-020 WVIR-TV Replacement Tower with conditions stated in the presentation.

Mr. Keller and Ms. More seconded the motion.

Mr. Keller asked if there was any further discussion.

There being none, Ms. Blanton called the roll.

The motion was approved by a vote of 6:0 (Ms. Firehock was absent).

Mr. Keller noted that this first night without Sharon Taylor and that this was the first time in his five years that they had done any vote like that one. He thanked all the parties and said the Commission did have it, and that the tower was recommended from the Commission to the Supervisors for approval. He thanked the applicant and the audience.

#### **SP-2018-00022 Dogtopia**

Mr. Benish introduced Mariah Gleason, who he said had been on staff for four months now and was doing a wonderful job. Mr. Benish said this would be Ms. Gleason's first presentation to the Planning Commission and that she was a graduate of the University of Virginia.

Ms. Gleason said she had received both an undergraduate in Environmental Sciences and a graduate degree from UVA from the urban planning program. Since graduation, she said she had been working in Portland, Oregon for a private architectural firm doing master planning work for a high-tech company.

Ms. Gleason introduced herself to the Commission and said she was the lead reviewer for the special use permit for Dogtopia, which had a proposed location along Route 29 north of Lowe's next to Kegler's Bowling Alley and Schewel's Furniture. Ms. Gleason said the special use permit was to expand the commercial uses on the site to allow a commercial kennel in an existing space that would offer daycare, grooming and boarding services. She stated that the proposal was to build an outdoor play space adjacent to the building space. Ms. Gleason noted that the