

R. A. Yancey Lumber Corporation: Special Exception Request

I. Introduction

R. A. Yancey Lumber Corporation (the "Company") is the owner of two parcels of land identified as tax map parcels 55-112 and 55-111B (the "Property"). Members of the Yancey family have operated a sawmill and lumber yard business on the Property continuously since 1949 (the "Mill"). The Mill employs approximately 70 workers. The Property contains 35.74 acres and is zoned Heavy Industry.

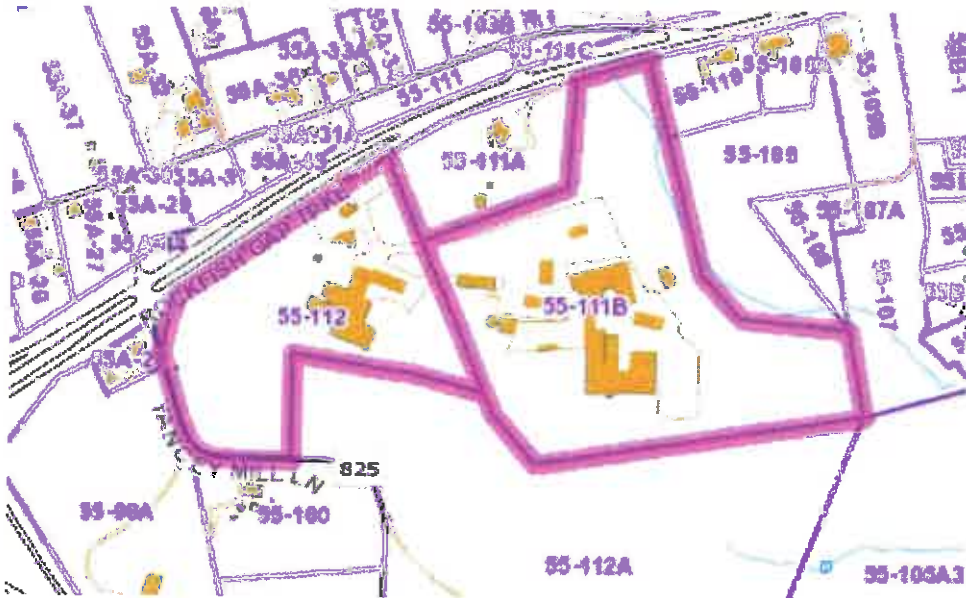


Figure 1

The Mill has expanded over time with the growth of its customer base. It periodically invests in the business with the addition or replacement of large pieces of equipment with more modern, safe and efficient equipment to remain competitive within its industry, to better serve its customers, and to implement safer and more productive manufacturing practices.

Over the years, changes to the County's zoning regulations have imposed setback requirements that now affect most of the Property. The impact of these zoning regulations serves to hamstring just about any change to the Mill without relief. Compliance with all the currently applicable regulations without relief in the form of special exceptions will arguably leave the Company without room to operate on a sustainable basis – much less to operate safely.

The Company was unaware of these regulations when it invested in a new major, multi-million-dollar piece of equipment in the summer of 2017 known as a "Sorter-Stacker." As part of the Mill's core operation, freshly cut lumber of various sizes (2x4s, 4x4s, 6x6s, 2x10s, among others) emerges from the Mill in a continuous stream at a relatively rapid pace. The sorter component of the new Sorter-Stacker equipment sorts lumber from the continuous stream into various sizes using bins based on size of the lumber. The stacker component then stacks, separates, and bands lumber of the same type for drying. The Mill is one of the last of its size that does not have a Sorter-Stacker, as the industry has become increasingly mechanized, making it nearly impossible for the Mill to remain competitive within its industry without it.

Management of the Mill became aware of setback requirements upon the completion of a current survey by Timmons Group in late 2017. Following the advice of counsel, Management has stopped assembly of the Sorter-Stacker and is hereby seeking, through the special exception application process, for relief from certain regulations as described herein, so it may continue to continue operations, while also assuring the survival of the Mill, along with the jobs and tax revenue associated with its continued successful operation.

On behalf of the Company, we request special exceptions to several Sections of the County Zoning Ordinance, as outlined in more detail below. We would be happy to discuss the application in more detail at a meeting with the County staff at any time.

II. Special Exception Requests

Section 4.20 - SETBACKS AND STEPBACKS IN HEAVY INDUSTRY DISTRICTS

Properties zoned Heavy Industry (HI) in the County are subject to the setback regulations provided in the "General Regulations" section of the County Zoning Ordinance

Figure 2 below depicts the zoning classifications of the Property and properties adjacent to it.



Figure 2

Section 4.20(b) requires a minimum setback of 10 feet for structures from U.S. Route 250 (Rockfish Gap Turnpike). In addition, because the Property is nearly surrounded by rural area ("RA") and Village Residential districts as shown in Figure 2 (except for the property zoned Highway Commercial as shown in red), Section 4.20(b) therefore also prohibits (i) any structure from being located closer than 100 feet from abutting properties and (ii) any off-street parking space from being located closer than 30 feet from the district boundaries. Because the Property is surrounded by properties with different zoning classifications, the district boundary is the same as the Property boundary lines where it is adjacent to RA land.

There are several existing Mill structures that impede upon the above described setbacks, including the new Sorter-Stacker. In addition, some of the impediments would be considered legally nonconforming, as the Mill was established long before the adoption of Section 4.20(b) in 2015, or other setbacks that were in effect prior to 2015. However, we request a comprehensive special exception, which would provide relief from the three provisions of Section 4.20(b) outlined above regardless of the status of the nonconformity and not specific to

any single impediment. Specific details related to each request are shown on the enclosed Exhibit package entitled R.A. Yancey Lumber Corporation Special Exception Requests” prepared by FPW Architects, dated January 28, 2020 (the “Exhibit”).

Specific requests:

1. Minimum Front Setback: (Section 4.20(b))

Existing Setback: 10 feet from the right-of-way

Proposed Modification: Reduce setback from 10 feet to 0 feet

We hereby request that this setback be reduced from 10 feet to 0 feet along U.S. Route 250, to accommodate the Stem Loader structure that is located with this setback.

2. Minimum Side and Rear Setbacks: (Section 4.20(b))

Minimum Side and Rear Setback: In the HI district, if the abutting lot is zoned residential, rural areas, or the Monticello Historic district: (i) no portion of any structure, excluding signs, shall be located closer than 100 feet from the district boundary...

Existing Setback: 100 feet from Residential or Rural Area Zoning District

Proposed Modification: Reduce setback from 100 feet to 35 feet, and from 100 feet to 50 feet in areas shown on the Exhibit.

We request this modification to accommodate several structures that have been in place for many decades, and also the new Sorter-Stacker.

3. Off-Street Parking Setback: (Section 4.20(b))

Minimum Side and Rear Setback: In the HI district, if the abutting lot is zoned residential, rural areas, or the Monticello Historic district: ... (ii) no portion of any off-street parking space shall be located closer than 30 feet from the district boundary.

Existing Setback: 30 feet from Zoning District Boundary for off-street parking

Proposed Reduction: Reduce setback from 30 feet to 0 feet in the areas shown on the Exhibit.

We request this modification to accommodate the existing location of employee parking, which has been in place for many decades. The Company is not proposing to move any parking area any closer to any lot line, but to maintain the existing, historic location and condition.

Section 5.1.15 SUPPLEMENTAL REGULATIONS APPLICABLE TO SAWMILL, TEMPORARY OR PERMANENT, PLANING MILLS AND WOOD YARDS

In addition to the "General Regulations" of Section 4.20(b) discussed above, the Property is also subject to Supplementary Regulations specific to Sawmills, Planing Mills, and Wood Yards contained in Section 5.1.15 of the County Zoning Ordinance.

Sections 5.1.15(a) and (b) require the following:

(a) No structure and no storage of lumber, logs, chips or timber shall be located closer than one hundred (100) feet to any lot line.

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

(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.

(d) All timbering and milling operations, including reforestation/restoration and the disposal of snags, sawdust and other debris, shall be conducted in accordance with Title 10.1 of the Virginia Code and the regulations of the Virginia Department of Forestry.

Similar to Special Exception Requests 1, 2, and 3, there are several existing Mill structures that impede upon the sawmill-specific setbacks, including the proposed new Sorter-Stacker. The depicts the current non-conformities under these Supplemental Regulations. Some of these impediments would also be considered legally nonconforming, as many of the Mill's components existed prior to the adoption of Section 5.1.15 in 1980. We hereby request a comprehensive special exception to Sections 5.1.15(a), (b), (c), and (d) as detailed herein.

4. Sawmill Specific Setback from Property Boundaries: (Section 5.1.15(a))

(a) No structure and no storage of lumber, logs, chips or timber shall be located closer than one hundred (100) feet to any lot line.

Existing Setback: 100 feet from any lot line (applies to structures and storage of lumber, logs, chips and timber).

Proposed Reduction: Reduce setback from 100 feet to 0 feet along Route 250, and from 100 feet to 35 feet in areas shown on the Exhibit.

5. Sawmill Specific Machinery Setback from Dwellings: (Section 5.1.15(b))

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

Existing Setback: 600 feet from any off-site dwelling (applies to saws, planers, chippers, conveyors, chutes, or other similar machinery).

Proposed Modification: Waive the 600-foot setback from any off-site dwelling and replace with a setback of 100 feet from property line in area shown on the Exhibit, to 0 feet in area shown on Exhibit along Route 250, to 35 feet in area shown on the Exhibit, and to a variable width distance adjacent to tax map parcel 55-111A as shown on the Exhibit. All distances measured from the property line instead of from off-site dwellings.

The Zoning Ordinance provides that any requirement of Section 5 may be modified or waived by the special exception process. The specific criteria for when the Planning Commission may grant such modifications or waivers is as follows: "upon a finding that [enforcing] 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."

The purposes of "Chapter 18 - Zoning" of the County code is "to promote the public health, safety, convenience, and welfare..." The code continues, "...to these ends, this chapter is intended to ... (G) Encourage economic development activities that provide desirable employment and enlarge the tax base..."

The Supplementary Regulations of Section 5.1.15 were adopted in 1980, when the Mill and most, if not all of the closest residences were already in existence, thereby causing the Mill, a business that had been in continuous operation for over 30 years, to become legally non-conforming. This imposition of legal nonconforming status by the amended Ordinance makes it very difficult for the Mill to expand and adapt to the market by installing modern and safer equipment and technology without further violating the supplemental regulations. The location of new equipment is heavily influenced by the fixed location of the original Mill Building, which was constructed in 1949.

For example, due to the location of the original Mill building and the irregular shape of the Property, the Sorter-Stacker could only be installed in the proposed location. Neither that location, nor any other location on the Property, would enable the Sorter-Stacker to comply with the setback regulations outlined herein. Installation of modern equipment of this kind is consistent with industry standards and is required to assure that the Mill remains competitive and technologically current. In fact, few mills of this size lack this kind of equipment. The equipment the Mill currently uses for the same task was constructed in 1978. This old equipment needs to be replaced for the Mill to remain technologically current and competitive within the industry. The current sorting process is physically demanding work conducted outside, in all but the worst weather. The proposed sorter will be enclosed within a building when completed and will alleviate the need to manually stack heavy lumber and thus lessen the occurrence of workplace injuries. Enclosing the machinery is also expected to reduce the overall noise level emanating from the Mill as well. Moreover, the Sorter-Stacker is a multi-million-dollar investment, generating large amounts of local tax revenue.

Granting a special exception for Section 5.1.15 will help ensure the continued successful operation of the Mill, the continued (and increased) generation of local tax revenue, and increased safety at one of the County's largest industrial operations. By contrast, enforcement of the County's applicable setback requirements would likely impair the ability of the Mill to

compete within its industry to such an extent that the business would eventually be unable to continue. Closure of the Mill, which has been a continuous, family-run operation for over 71 years, would be contrary to the Zoning Ordinance's stated purpose in subsection (G) to "encourage economic development activities that provide desirable employment and enlarge the tax base." Therefore, modification of these setback regulations by granting these special exceptions will satisfy the purposes of the Zoning Ordinance to a greater extent than strict enforcement.

In addition, the 600-foot setback requirement from nearby residences, per subsection (b) of Section 5.1.15, places control over the Mill's compliance with the County Zoning Ordinance in the hands of third parties and outside of the Company's control. For instance, the area surrounding the Mill had been comprised of many residences on small parcels close to the Mill for many years prior to the adoption of the Supplemental Regulations in 1980, making it impossible for the Mill to have ever complied with this large setback. In addition, many of the adjacent residential properties could easily construct new, additional dwellings closer to the Mill's property line, or to expand existing dwellings closer to the Mill's property line, thereby expanding the required 600-foot buffer further onto the Property. 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. For these reasons, and further given the irregular shape of the Property and the functional and operational needs of the Mill, we believe the regulations of Section 5.1.15(b) impose unreasonable restrictions and setbacks on the Mill.

To avoid these unreasonable restrictions and ensure the continued successful and safe operation of the Mill, and in furtherance of the public health, safety, welfare and other purposes of the Zoning Ordinance, we contend that granting comprehensive special exceptions to Section 4.20(b) and Sections 5.1.15(a) and (b) is reasonable, necessary and appropriate under the circumstances.

The Mill has already invested millions of dollars to keep pace with the industry and enhance the safety of its workers by beginning assembly of the Sorter-Stacker. Upon learning that the assembly of the Sorter-Stacker may violate the setback regulations, the Company's Management halted further work on the new equipment, and took steps to begin to bring the Mill into compliance and to request comprehensive Special Exceptions. The decision was made to halt further assembly on the Sorter-Stacker despite the substantial impacts to the Mill. Among other impacts, the contractor assembling the equipment has since redeployed its employees to other projects, while the Company continues to pay interest financing on the equipment loan without the benefit of the improved efficiencies that the Sorter-Stacker would provide. Despite these impacts, the Company recognizes and appreciates the importance of addressing these issues and working to come into compliance. We believe the special exception process will enable the Mill and the County to work together to ensure the best resolution for all interested parties.

NOISE AND VIBRATION:

In connection with these special exception requests, the Company engaged the services of Bill Yoder, a Senior Staff Scientist at Acentech, who regularly serves as a sound consultant to local businesses. For more information on the background for each of these requested modifications, please see the two enclosed reports from Acentech dated October 28, 2019, and January 24, 2020.

6. Noise Regulations : (Section 4.18.04)

Existing Regulation: Maximum dBA allowed in Rural Area or Residential "receiving zones:"

Daytime: 60 dBA.

Proposed Modification: In the area shown in green on the Exhibit, replace limit with the following: the typical or median 5-minute source sound level shall not exceed 77 dBA after removal of ambient sound level; in the area shown in pink adjacent to tax map parcel 55-111A, the typical or median 5-minute source sound level shall not exceed 70 dBA after removal of ambient sound level; in the area shown in dark blue on the exhibit, increase maximum to 66 dBA, in the area shown in light blue on the Exhibit, increase maximum to 72 dBA.

Nighttime: 55 dBA.

Proposed Modification: Increase maximum to 65 dBA along Route 250 and adjacent to TMP 55-111A, increase maximum to 59 dBA along all other boundaries.

As noted, please refer to the two Acentech reports for details on these proposed modifications, as well as the Exhibit. The Company is not proposing to increase noise levels over and above existing, historic conditions, but only to legally accommodate these historic conditions.

7. Vibration Regulations: (Section 4.14.2)

Existing regulations establish maximum peak velocity for continuous and impulsive vibration at Residential zoning district boundaries

Existing Continuous Limit: 0.00 inches per second

Proposed Modification: Increase limit from 0.00 to 0.15 inches per second

As discussed in the Acentech memo of October, 2019, there is no way to prove there are no continuous source of 0.00 in residential areas, because of the presence of ambient noise. Thus, it is impossible to measure 0.00 inches per section. Instead, we propose to replace this impossible performance standard with the performance standard for rural/non-residential Existing Continuous Limit, which is 0.15 inches per second. This is a far more reasonable limit, for it is still half of the threshold of vibration for the most sensitive human.

Existing Impulsive Limit: 0.006 inches per second

Proposed Modification: At point #17, the typical impulsive PPV shall not exceed 0.01 inches per second.

This request will only apply at point #17, where the Stem Loader is located adjacent to Route 250, and has been since at least 1992. The Company is not proposing to increase vibration levels at this location, but only to accommodate historic conditions and continue its operations.

For the reasons stated herein and in the Acentech reports, enforcement of the existing regulations regarding noise and vibration would not forward the purposes of this chapter or otherwise serve the public health, safety, or welfare. In addition, the proposed modified regulation would satisfy the purposes of this chapter to at least an equivalent degree as the specified requirement, since the company is not proposing to increase noise or vibration levels above historic conditions that have existed for many decades.

7. Hours of Operation: (Section 5.1.15(c) and (d))

As noted above, the Supplemental Regulations contained in Section 5.1.15 were adopted in 1980, 30 years after the Mill began operations. Nevertheless, the Company seeks modification to these regulations to enable it to continue operating as it has since at least 1960.

Section 5.1.15(c):

Existing Regulation: No machinery used for sawing, planning, chipping or other wood processing shall operate between 7:00 pm and 7:00 am.

Proposed Modification: Restrictions in place between 7:00 pm and 6:00 am.

As has been the practice since 1960, the Company turns on its equipment at 6:00 am to warm up so that it may begin work promptly at 6:30 am. The Company requests this modest modification to enable these hours of operation to continue. No expansion of these existing hours of operation are proposed.

Section 5.1.15(d):

Existing Regulation: No wood or wood products shall be loaded or unloaded between midnight and 7:00 am.

Proposed Modification: Restrictions in place from 11:00 pm to 6:00 am, except as part of the wood drying process at the kilns.

Likewise, since 1960 the company has started loading logs at 6:00 am when the logging trucks start to arrive. The Company requests this modest modification to enable these hours of operation to continue. No expansion of these existing hours of operation are proposed.

For the reasons stated herein, enforcement of the existing regulations contained in Section 5.1.15(c) and (d) regarding hours of operation would not forward the purposes of this chapter or otherwise serve the public health, safety, or welfare, since the Company has been operating during the requested business hours for 60 years. In addition, the proposed modified regulation would satisfy the purposes of this chapter to at least an equivalent degree as the specified requirement, especially the proposed modification to Section 5.1.15(d), which proposes to stop the loading and unloading one hour earlier than the existing regulation.