

# Spotsylvania County Planning Commission

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Holbert Building Board Room, 9104 Courthouse Road, Spotsylvania VA 22553

**MINUTES:** July 17, 2019

**Call to Order:** Mr. Newhouse called the meeting to order at 7:00 p.m.

**Members Present:**

Richard Thompson	Courtland
Howard Smith	Livingston
Jennifer Maddox	Berkeley
Michael Medina	Salem
Mary Lee Carter	Lee Hill
C. Travis Bullock	Battlefield ( <i>arrived at 7:05</i> )
Gregg Newhouse	Chancellor

**Staff Present:**

Paulette Mann, Planning Commission Secretary  
Wanda Parrish, AICP, Director of Planning  
B. Leon Hughes, AICP, Assistant Director of Planning  
Shannon Fennell, Planner III  
David Dameron, CZA, Planner III  
Kimberly Pomatto, CZA, CTM, Interim Zoning Administrator  
Alexandra Spaulding, Senior Assistant County Attorney

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**Announcements:** Ms. Parrish updated the Commissioners about upcoming cases and community meetings.

## **Review & Approval of minutes:**

**Motion and vote:** Mr. Newhouse made a motion, seconded by Mr. Thompson to approve the revised minutes of June 19, 2019. The motion passed 4-0-2, with Mr. Newhouse and Mr. Smith abstaining and Mr. Bullock not present for the vote.

## **Unfinished Business:**

## **Enforcement and Vehicle Sales Report**

Ms. Pomatto presented the report. She stated that while she was not in attendance at the June meeting, she did have an opportunity to watch the recording and has structured the presentation to touch on what she hopes are all of the questions related to the enforcement of vehicle sale establishments.

She discussed the following definitions:

1. Vehicle sales establishments are defined two ways in our Code. Small scale and large scale
2. Large scale vehicle sale establishments are any use of 2 acres or more of land where the

- primary occupation is the sale, rental, and ancillary service of vehicles
3. Small scale vehicle sale establishments are any use of less than 2 acres of land where the primary occupation is the sale, rental, an ancillary service of vehicles
  4. Typical ancillary (or accessory) uses with vehicle sale establishments include light and major service, paint booths, and carwash detailing.

She discussed where vehicle sale establishments can locate in the county:

1. A vehicle sale establishment may locate by right on any lot 2 acres or more in size that is zoned Commercial 3, Industrial 1 or 2
2. Of the commercial and industrial zoned properties in the County approximately 500 would allow vehicle sale establishment by right
3. A special use permit is required for any property located in the Commercial 2 district and a special use permit is required for any lot that is less than 2 acres in size and zoned Commercial 3 or Industrial 1 or 2.
4. Of the commercial and industrial inventory approximately 1,200 properties in the County would require a special use for vehicle sales.

Ms. Pomatto discussed what permits are required:

1. If the property allows the use by right or if a special use permit is approved and the property is vacant then a site plan will be required and the site must be developed to Code requirements – this includes the paving of the parking lots, installation of required landscaping, set aside open space, potentially sidewalks along with a designated parking plan identifying the display or inventory parking, customer and employee parking as well as loading zones.
2. Once a site plan has been approved, the site developed and a certificate of occupancy is issued, the Zoning Use Permit is required to enable the use on the property. This Use permit is specific to the dealer or the owner/operator and it validates that the dealer is operating the site as approved on the site plan. So again, the County is reviewing the site, the designated parking and loading areas.
3. If the property is already developed, maybe it was developed as a vehicle sales lot or maybe not, maybe it was initially developed as a bank – for any developed site that an applicant wishes to operate a vehicle sales establishment, they must obtain a Zoning Use Permit. At this stage, is where the county is verifying that the developed site can accommodate the proposed use. The applicant must provide a layout which identifies the parking plane and loading areas. This layout is approved as part of the Use Permit. As I mentioned, Use Permits are specific to the dealer so if the ownership of the operation changes hands they must apply for a new Use Permit and we re-validate everything.

She discussed non-conforming lots:

1. So how do non-conforming lots fall in to this – any vehicle sale establishment which is currently operating on lots less than 2 acres without a special use permit is non-conforming. Keep in mind, this would also include a property that may have more than one dealer operating on the same property
2. Non-conforming uses may continue the use indefinitely unless there is a lapse in the use

for 2 years – so again, keep in mind, the non-conforming use is not specific to the dealer or operator, it runs with the property. So the property can change hands, obtain new Zoning Use Permits from the County

3. The limitation to the non-conforming use is that it may not be expanded or extended beyond the floor area or lot area that it occupied. So that is where from an enforcement standpoint we rely on the layouts provided with the Zoning Use Permits. If a non-conforming vehicle sale establishment wanted to add a new inventory or display area to their site, they would not be permitted to do so. In order to expand, they would need to apply for a special use permit.

Ms. Pomatto displayed a map of the County which identifies each licensed independent dealer in the County. From the overall map, you can see that these establishments are predominately located within the primary development boundary. They are mostly concentrated in the 4-Mile Fork area, Lafayette Blvd, as well as further south in Thornburg. As of today, there are 115 independent dealers operating in the County. This number does not include RV dealers, motorcycle dealers, or any other franchise dealers. The number is solely independent dealers and of the 115 dealers, 91 are operating as a non-conforming use.

Ms. Pomatto explained the process and the purpose of Zoning.

1. Zoning is response for code compliance whether it be compliance with special use permit conditions, development in accordance with an approved site plan or a zoning use permit.
2. This division consists of only 2 field inspectors for the entire County – so with that proactive enforcement is not feasible. We operate on a complaint basis, meaning we must receive a complaint to trigger an inspection and investigation.
3. We do work cooperatively with the Sherriff's Office – and I understand that in situation where there's a car transporter stopped in the middle of the road block traffic, the Sheriff's Office is clearly the appropriate agency to contact particularly so if it is after hours. However, that's just 1 element. At this time, there is no protocol established for Deputies to refer those infractions to Zoning for investigation but that is something I intend to work on establishing b/c it is safe to say that 9 times out of 10 that car transporter is not able to offload on the site b/c the site is not operating in accordance with their Use Permit and at that point, it is a Zoning Enforcement issue.
4. We also work cooperatively with DMV's Motor Vehicle Dealer Board Investigator – recently our communication has been on a daily basis.

To ensure compliance and to allow our office to pursue enforcement, it all begins with filing a complaint. Those may be submitted in person at our office, on the phone or our website on the County page allows for complaints to be submitted electronically at any time

She discussed that from January 1, 2017 to today, Zoning has received a total of 23 complaints related to these operations. (3 complaints in 2017, 9 in 2018, and 11 thus far in 2019.)

Ms. Pomatto displayed a flow chart on how the enforcement process works:

1. We receive a complaint or an issue is referred to us from another agency
2. Code Enforcement Officer inspect the site for compliance with the applicable permits, if a

violation is observed the officers take notes, take a picture to document and then issue a notice of violation. In order to issue a notice of violation our officers must witness the violation. So if there are after hour violations, we will schedule special inspections as necessary...whether that be at night or on the weekends.

3. Code enforcement re-inspects the site in 7 days. If the violation has been corrected, the case is closed. If the violation is still present, then we issue a second and final notice. Again depending on the nature of the violation, we will schedule inspections as necessary.
4. Code enforcement inspects again in 7 days and if the violation persists then we move forward with the process, coordinate with the County Attorney's Office to proceed to court for a ruling.

Mr. Thompson inquired what the final disposition of these cases was.

Ms. Pomatto stated that none of these cases have gone to court, some are still ongoing and have to be observed by a Code Enforcement Officer. Many are not clearly obvious. For example, the off-loading of vehicles needs to be observed and many times this happens after we've already closed for the day.

Mr. Medina inquired about repeat violators.

Ms. Pomatto stated that we are building a casefile, so that if it does end up in court, we have a paper trail in building a case.

Mr. Smith inquired if the Code Enforcement Officers go out looking for violations.

Ms. Pomatto stated no they do not, we don't have the personnel to do so however, if staff needs to investigate a potential violation, arrangements can be made to go out after regular business hours.

Mr. Bullock stated he has many concerns. He stated that he would like some time to digest the information and revisit this when he has his questions compiled.

Ms. Maddox inquired if the nonconforming dealerships are all grandfathered.

Ms. Pomatto stated yes that we currently only have one dealerships with a special use permit. All of the others do have a zoning use permit. She stated that since taking over that these uses are reviewed at a higher standard.

Mr. Newhouse inquired how many of the complaints were unfounded complaints.

Ms. Pomatto stated that several were unfounded and several were compliance, for example blocking an entrance. She stated that it is important to note that they are all operating with the appropriate permits.

Mr. Thompson inquired if any of these had gone to court.

Ms. Pomatto stated none of them have gone to court and that the cases are left opened to allow

them the opportunity to comply.

Mr. Newhouse inquired if the business license can be revoked.

Ms. Pomatto stated that working with DMV is their strongest leverage.

There was discussion about sidewalks and whether they are required.

Ms. Pomatto stated that they are required in commercial areas.

Ms. Parrish stated that they are not required in industrial areas.

Mr. Bullock stated that are many violations occurring on Lafayette Blvd and Courthouse Road.

Ms. Pomatto stated that violations are triggered by complaints.

Ms. Maddox stated that complaints don't always lead to violations, correct.

Ms. Pomatto stated yes, that is correct. She discussed the new page on our website to report violations.

Mr. Medina inquired if the page is for any zoning violation or only these types of violations.

Ms. Pomatto stated that it is for all violations.

Mr. Medina inquired if the county is proactive at all in zoning violations.

Ms. Pomatto stated that the zoning department receives approximately 600 complaints annually and because of staffing levels, they are not able to be out canvassing the county looking for violations.

Mr. Medina stated he wonders if adjusting workloads to designate two hours or so per week to be out looking for violations would work.

Ms. Carter stated that it is important to note that they are not against car dealerships, we just want them to be attractive.

The Commissioners thanked Ms. Pomatto for her presentation.

### **Closed Session**

Mr. Newhouse apologized to the audience due to the fact that they must go into closed session for legal advice ahead of the scheduled public hearings.

Ms. Spaulding read the following resolution:

At a meeting of the Spotsylvania County Planning Commission held on July 17, 2019, on a

motion by Ms. Carter, seconded by Mr. Smith and passed 7-0, the Planning Commission adopted the following resolution:

**RESOLUTION NO. 2019-03**

**To Adjourn into Closed Meeting**

WHEREAS, the Spotsylvania County Planning Commission desires to adjourn into Closed Meeting for consultation with legal counsel employed or retained by public body regarding specific legal matters requiring the provision of legal advice by such counsel, specifically related to: 1) changes to the Code of Virginia; 2) advice related to the County’s zoning ordinance and zoning enforcement; and 3) review of changes to the Telecommunications Act of 1996 related to telecommunication towers; and

WHEREAS, pursuant to Va. Code Ann. § 2.2-3711(A)(7), such discussions may occur in Closed Meeting.

NOW, THEREFORE, BE IT RESOLVED that the Spotsylvania County Planning Commission does hereby authorize discussion of the aforestated matters.

Ms. Spaulding read the following resolution:

At a meeting of the Spotsylvania County Planning Commission held on July 17, 2019, on a motion by Ms. Carter seconded by Mr. Smith and passed 7-0 the Commission adopted the following resolution:

**RESOLUTION NO. 2019-04**

**Return to Open Meeting**

WHEREAS, the Spotsylvania County Planning Commission has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Va. Code §2.2-3712(D) (1950, as amended), requires a certification by this Commission that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Spotsylvania County Planning Commission hereby returns to open meeting and certifies, by roll call vote, that to the best of each member’s knowledge only public business matters lawfully exempted from the open meeting requirements of the Freedom of Information Act and identified in the motion to go into Closed Meeting were heard, discussed or considered in the Closed Meeting.

**Continued Public Hearing:**

**Special Use Permit:**

**SUP19-0001 Shirley Ann Ali and Bashar Itraish (Mazari Motors):** Requests a special use permit to allow vehicle sale, rental, and ancillary service establishment (small scale) on a parcel consisting of approximately 1.18 acres currently zoned Commercial 3 (C-3). The parcel is addressed as 10900 Courthouse Road and is located at the intersection of Courthouse Road (Route 208) and Ewell Road (Route 636), approximately 1,250 feet east of Jefferson Davis Highway (Route 1). The parcel is located in the Primary Development Boundary and the Primary Highway Corridor Overlay District. The property is designated for Commercial Land Use on the Future Land Use Map of the Comprehensive Plan. Tax parcel 23 (A) 140. Courtland Voting District.

*Mr. Newhouse stated that the public hearing remains open.*

Ms. Fennell provided updates to the Commission. The subject application is for Special Use approval of a Vehicle sales, rental, and ancillary service establishment on approximately 1.18 acres of Commercial (C-3) property. The property is located at 10900 Courthouse Road, which is located at the intersection of Courthouse Road (Route 208) and Ewell Road (Route 636), approximately 1,250 feet east of Jefferson Davis Highway (Route 1). The project will adaptively reuse an existing 2,600 square foot brick building for the dealership. The site was formerly used as a convenience store with fueling stations; and also contains two signs, a small shed, a vacuum and air pumping station. The proposal includes the interior renovation of the existing 2,600 square foot building to accommodate offices, an employee break room, restrooms, and a show room.

The Generalized Development Plan (GDP) shows this proposal completed in two phases. Phase I consists of the applicant demolishing the existing gas tanks, fueling stations and canopies, vacuum stations, bollards, a sign, and shed. This phase also includes the striping of 68 vehicle display spaces and 14 parking spaces provided for customers and the employees, the construction of a sidewalk and landscaping along Courthouse Road (Route 208). Phase II consists of the redesign of the existing stormwater management basin to allow for 18 additional vehicle display spaces.

The site has two points of access which are existing, one from Courthouse Road (Route 208) and one from Ewell Road (Route 636). The estimated daily vehicular trips generated by the development upon the completion of Phase II is approximately 80 trips per day which is significantly lower than the 252 estimated daily vehicular trips that are projected for the by-right use convenience store with fueling stations. This proposal is an expansion of an existing used car dealership adjacent to the subject parcel; therefore, no decrease in levels of service on Courthouse Road (Route 208) are anticipated as a result of this proposal. The applicant submitted within the GDP narrative a vehicle delivery statement that stock vehicles will be delivered by smaller hauling trucks (carrying three vehicles or less) and will utilize the entrance on Ewell Road, just past the intersection of Ewell Road and Courthouse Road.

The applicant has requested a modification to the required street buffer type C on an arterial road. The street buffer type requires a 10' landscape strip along Courthouse Road (Route 208). According to the GDP, a large grass island approximately 160' in length is bifurcated by the right of way line and the island is triangular in shape; therefore, there is approximately 60' that is less than 10' in width. The required 10' width is present within the remaining 100' of the island. The applicant's modification request is to modify the required buffer width only within the 60' area of

the entire 160' grassed island. The applicant proposes to plant the required number of plant types per the DSM within the remaining 100' of the grassed island; therefore, staff supports the modification.

Staff has conducted a Comprehensive Plan analysis and determined the proposed project to be consistent with the goals and objectives on the Comprehensive Plan.

During the June 5<sup>th</sup> Planning Commission meeting, a vehicle delivery plan was requested. The applicant provided a plan that showed an oversized vehicle (illustrated in green) entering the site from Courthouse Road traveling through the site to the proposed loading area to the north of the brick building and exiting the site using the access on Ewell Road. For the purpose of the simulation, a tractor and trailer was used to demonstrate the size of the space provided to accommodate loading and unloading of stock vehicles. Ms. Fennell stated that the Commission requested examples for the typical haulers. She displayed photos showing the types of haulers that will be used to deliver stock vehicles to the site.

Ms. Fennell discussed the following findings:

In Favor:

- The request is consistent with the Comprehensive Plan with respect to land use, public facilities and historic and natural resources goals and policies.
- The proposal satisfies all of the Special Use standards of review as established in Sec.23-4.5.7 of the County's Zoning Ordinance.
- The proposed use is consistent with surrounding commercial uses.
- The proposal allows for the reuse of an existing vacant commercial building, in addition the proposed landscaping and removal the existing accessory structures will provide for a much needed revitalization that is consistent with the improvements to the east along Courthouse Road (Route 208).

Against:

- There are no findings against this application.

Based on staff's analysis and findings in favor noted above, staff recommends approval. Should the Commission recommend approval, staff recommends approval be accompanied with the following conditions:

1. The project shall be developed in conformance with the Generalized Development Plan titled, "Special Use Application – Mazari Motors" as revised on April 18, 2019 and prepared by Ryan K. Foroughi.
2. Display vehicles shall only be parked within display areas as depicted on the approved GDP.
3. There shall be no vehicle major service on site. Vehicle major service establishment shall be defined as major mechanical and body work, repair of transmissions and

differentials, straightening of body parts, painting welding or other similar work is performed on vehicle.

4. Stock vehicles shall be delivered individually or via delivery trucks on the site utilizing the intersection of Ewell Road (Route 636) and Courthouse Road (Route 208). At no time shall delivery trucks block or park on the public street during delivery. No large commercial haulers are permitted to deliver vehicles to the site. Large commercial haulers shall be defined as delivery vehicles that can haul more than 3 vehicles.
5. No loading and unloading shall occur between the hours of 6 p.m.- 9 a.m. and 3:30 p.m. – 6:30 p.m. on any day of the week.
6. Demolition/removal of the existing gas pumps, canopy, islands, bollards, vacuum station and existing sign (as depicted on the approved GDP) shall be applied for in conjunction with the application for zoning use permit. Such demolition/removal shall occur prior to the issuance of the zoning use permit.
7. Landscaping improvements within right-of-way shall be completed and installed prior to the issuance of the zoning use permit.
8. Submission of the easement plat to permit access to the existing BMP and to expand the existing 10' waterline easement to 20' shall be approved and recorded within 90 days of the approval of this Special Use Permit. Submission of a minor site plan shall be required prior to the commencement of Phase II (as depicted on the approved GDP).

Mr. Newhouse asked for clarification on the unloading plan as did Ms. Carter.

Ms. Fennell explained the unloading plan.

Applicant's Representative, Samer Shalaby: Mr. Shalaby stated that they took away 6 parking spaces to ensure the site could accommodate the haulers and the ability to circulate through the site. He stated they do agree to place the sign on the property displaying the County's zoning office phone number, should anyone wish to report a violation and finally they made sure to restrict the delivery hours.

Ms. Carter inquired if they would be required to install sidewalks.

Ms. Parrish stated yes as did Mr. Shalaby.

*Speaking in favor or opposition: None*

*Mr. Newhouse closed the public hearing.*

**Motion and vote:** Mr. Thompson made a motion, seconded by Mr. Smith to deny the special use request. The motion failed 3-4, with Mr. Thompson, Mr. Smith, and Mr. Bullock voting yes.

Mr. Newhouse commended the applicant for addressing the concerns of the Commission.

Ms. Carter agreed and stated that she believes they will abide by the conditions of the permit.

Ms. Maddox stated that she feels like the County is headed in the right direction based on the presentation by Ms. Pomatto.

**Motion and vote:** Mr. Newhouse made a motion, seconded by Ms. Maddox to recommend approval of the special use request with the recommended conditions. The motion passed 5-2 with Mr. Smith and Mr. Thompson voting no.

**SUP18-0011 – AT &T Telecom at Peace United Methodist:** Requests special use permit approval for a 105-foot monopole communication tower with a 4-foot lightning rod, for a total of 109 feet, on two parcels together constituting 8.829 acres zoned Residential 1 (R-1). The properties are located on Maple Grove Drive (Rt. 1115) at its intersection with Blake Drive (Rt. 1116). One property is addressed as 801 Maple Grove Drive and the second is unaddressed and identified as Tax Parcel 23-A-92D. The parcels are located in the Primary Development Boundary. The properties are designated as Institutional Development on the Future Land Use Map of the Comprehensive Plan. Tax Parcels 23-A-92B and 23-A-92D. Courtland Voting District.

*Mr. Newhouse opened the public hearing.*

Mr. Dameron presettled the case. The application is for a special use permit for a proposed telecommunications facility consisting of a 109' monopole within a 50' x 50' equipment compound surrounded by an 8' tall chain link fence on two parcels consisting of approximately 8.829 acres currently zoned Residential 1(R-1). The 109' tower consists of a 105' monopole topped by a 4' tall lightning rod and is designed to appear to be a pine tree, similar to the tower at Zoan Baptist Church on the south side of Plank Road. The applicant has stated this height will allow it to locate its antennas at a height of 100' and also allow at least two future carriers to locate antennas at 90' and 80' respectively. The height of the monopole was determined by the applicant to be the lowest possible height that will eliminate current coverage gaps.

A proposed 12-foot-wide gravel/dirt easement connected to the existing church parking area will provide access to the site. This parking area directly accesses Maple Grove Drive.

The Code of Virginia sets the maximum setback for telecommunication towers at the setback of the zoning district, which is 30' front, 10' side, and 35' rear. The applicant did show the tower break zone on the GDP at 68' 3" and the nearest dwelling in any direction will be more than 200' distance from the tower. In addition, the applicant has provided an engineering certification letter which indicates the fall radius for the planned monopine design is less than 60'.

Areas to the north and east of where the compound and tower are proposed are currently wooded and a portion of this area will be removed to accommodate the proposed installation. Apart from the area being cleared for the compound, all other trees onsite will be preserved. The landscape plan provides for 31 bushes and trees planted around the telecommunications facility to the west and south where there is no or minimal vegetation to provide a landscaped vegetative buffer which will be planted in an area at least fifteen (15) feet wide on the perimeter of the compound in accordance with the Zoning Ordinance.

This location was selected because the applicant determined the site is in a half-mile radius in which a tower would meet their needs. As noted within the applicant's statement of compliance and justification, several co-location opportunities within this half-mile radius were considered to meet their needs, but there were no structures which met both the height and structural requirements or land owners willing to lease space to the applicant, nor are there County lands or facilities that meet the applicant's needs.

The applicant held two community meetings with area residents. Residents expressed concerns about the location and visual impact, including requesting the tower be moved in line with the existing tree line. In response, AT&T redesigned the site, switched from a traditional monopole to the "monopine" design tower, reduced the height, and moved the proposed location 50 feet to the east to be in line with the existing tree line. Additionally, to reduce the potential visual impact, the applicant also plans to further stealth the monopole with "double density" branches.

Mr. Dameron discussed the following findings in favor and against:

- The request is consistent with the Comprehensive Plan with respect to encouraging the provision of telecommunication infrastructure in general and technological infrastructure throughout the Primary Development Boundary in particular.
- The proposal satisfies all of the Special Use standards of review as established in Sec.23-4.5.7 of the County's Zoning Ordinance.
- The proposed use will enhance reliable cellular coverage to the benefit of citizens, tourists and businesses.

Against:

- The tower will be visible to numerous homes in a residential area.

Based on staff's analysis and findings in favor noted above, staff recommends approval. Should the Commission recommend approval, staff recommends approval be accompanied with the following conditions:

1. The telecommunications tower and compound shall be developed in conformance with the Generalized Development Plan titled "GDP for Special Use Permit, TAX ID# 23-A-92B & 23-A-92D, Site Name Raynold, 801 Maple Grove Drive, Fredericksburg, VA 22407" dated May 15, 2019.
2. The final site design and operation of the facility must be in compliance with all other standards outlined in Sec. 23-7A.4.1 of the Code, except that Section 23-7A.4.1.12 is modified to not require the applicant to post a performance bond and Section 23-7A.4.1.10 is inapplicable.
3. If the operation of this site causes any interference to surrounding broadcast television receivers, amateur radio operations, or County radio system operations, the applicant shall investigate the complaint, work with Spotsylvania County Cable TV and Telecommunications Commission to determine remediation, and correct the problem, if it

is found to be the fault of one of the tower vendors, within thirty (30) days of receipt of written notice of the interference complaint to the County.

Applicant, Doug Sampson: He stated that they have been trying to develop this tower for more than three years. Originally it was a monopole but based on comments on the community meeting, they changed it to a monopine and reduced the height. He stated that at the second community meeting that they held, the comments were much more positive with some citizens even asking how quickly the tower could be built. He discussed the photo simulations that they were used and that they were old photos and could provide the updated photos to the Commission.

Mr. Newhouse inquired about the graphic that was provided in their packet showing three rings.

Mr. Sampson stated that they demonstrate that they looked for co-location opportunities that met their needs and couldn't find any. He stated that it is preferred to co-locate because it costs much less to do so.

*Speaking in favor or opposition:*

Mary Carr, Courtland District: She stated that she has resided five lots down from the proposed tower for 29 years and that she fears decreased property values. She also expressed concerns about emissions to the children's daycare. She urged the Commission to recommend denial to the Board of Supervisors.

Jason Poulter, Courtland District: He stated that they spoke against the proposed T-Mobile tower a few years ago and his comments remain the same. There are already many towers in the area and he displayed photos to the Commission. He stated that he is adamantly opposed.

Nancy Poulter, Courtland District: She stated that the T-Mobile tower was denied based on comments related to the children, home values, and traffic. She questioned if the tower company would pay property taxes since the site is on church property and they are non profit and exempt. It would seem to her that the County gains nothing. She stated that they have been paying their taxes for 29 years now. She also inquired if when the cellular technology becomes obsolete, would the tower be taken down. She stated that the applicant for the tower will make money and believes the county should also make money.

Arthur Roles, Courtland District: She stated that the tower should be located on commercial property and has concerns about radiation. He stated that proposal is not in the best interest of the citizens and suggested that the tower be placed on the nearby mall property. He stated that the monopine looks like a toilet brush and he also expressed concerns for the children who attend the daycare.

Mr. Sampson stated that he understands that new towers are a sensitive subject and that they are highly regulated by the FCC and are in full compliance. There are no health effects and that justification cannot be used as a reason to deny. There are studies that show that there is no effect on property values. He discussed that they must try to co-locate before building a tower and there were no co-location opportunities that were viable for them. He stated that the reason they cannot

co-locate on some of them may be because they are already there. Mr. Sampson stated that they are conscientious and try to find the best and least obtrusive sites.

Mr. Thompson inquired about the question regarding once the technology becomes obsolete, what happens.

Mr. Sampson stated that the County requires that it be taken down within six months.

Mr. Thompson inquired if that is only the tower or the whole site.

Mr. Sampson stated that the entire infrastructure would be removed.

*Mr. Newhouse closed the public hearing.*

Mr. Thompson apologized to the residents but stated that Federal law has them in a bind as to what they can deny a tower for.

**Motion and vote:** Mr. Thompson made a motion, seconded by Ms. Carter to find the tower in compliance with the comprehensive plan through the 2232 review. The motion passed 7-0.

**Motion and vote:** Mr. Thompson made a motion, seconded by Ms. Maddox to recommend approval to the Board of Supervisors with the proposed conditions. The motion passed 7-0.

### **Special Use Permit:**

**SUP19-0002 Potomac & Rappahannock Transportation District Commission, the Northern Virginia Transportation Commission, and Crossroads Associates, LLC (Virginia Railway Express):** Requests special use permit approval to allow the expansion of an existing railway maintenance yard in the Industrial 1 (I-1) zoning district. The property consists of approximately 30.27 acres and is located at the terminus of Crossroads Parkway (Route 765), approximately 3790 feet south of its intersection with Mills Drive (Route 17). The property is located in the Primary Development Boundary and in an area identified as Mixed Use and Employment Center on the Future Land Use Map of the Comprehensive Plan. Tax parcels 37 (A) 41A (part) and 37 (A) 41E. Berkeley Voting District.

*Mr. Newhouse opened the public hearing.*

Ms. Fennell presented the case. The application is for Special Use approval to allow the expansion of an existing railway maintenance yard in the Industrial 1 (I-1) zoning district. The property consists of approximately 30.27 acres and is located at the terminus of Crossroads Parkway (Route 765), approximately 3790 feet south of its intersection with Mills Drive (Route 17). There is an existing Conditional Use Permit (CUP-91-71) which was approved on approximately 10.756 acres to allow for a railroad, station/depot/terminal in accordance with the County's Zoning Ordinance. The existing maintenance and storage facility has been operating at the site for approximately 20 years and has entered a contract to purchase approximately 19.51 additional acres for a proposed expansion. Although the applicants are purchasing an additional 19.51 acres, the Generalized

Development Plan shows that this expansion would result in land disturbance of approximately 4.67 acres and an increase of approximately 2.8 acres in impervious area.

The site currently consists of a warehouse building, a crew building, a train wash, and a service and inspection building. There are currently eight train storage tracks for VRE trains. The Generalized Development Plan (GDP) shows the addition of a Lifecycle Overhaul and Upgrade (LOU) facility which is a 33,252 square foot one-story metal building. The LOU facility will be equipped with large pieces of specialty equipment which will enable VRE to perform maintenance and repair work inside the building for both locomotives and passenger cars, with a capacity to store up to four units at a time. The GDP also shows the relocation of two existing storage tracks to accommodate the construction of the LOU facility, the addition of two new storage tracks, a small pervious parking area, a storm water BMP, and an upgraded gravel road for secondary access to the south side of the site. The GDP depicts that there is an existing sound barrier fence and earthen berm that will remain along the property lines to the south and southeast of the site. The applicant will also construct a 7' sound barrier fence along proposed track 10 and the new parking area to help mitigate any negative impacts to neighbors properties.

The proposed expansion will not increase the number of employees at the facility; therefore, no increase in traffic is anticipated. A short-term increase is expected during the construction period; however, the proposed expansion will not cause any additional congestion or hazards to the existing road network.

As proffered with R19-0009, a transitional screening 3 will remain along the VRE's property line adjacent to the residential properties to the south. The transitional screening buffer proposed by the applicant is approximately 180 feet in width which surpasses the required 50-foot transitional screening buffer and consist of approximately 7.5 acres.

Ms. Fennell discussed the following finding in favor and against:

In Favor:

- The request is consistent with the Comprehensive Plan with respect to land use, public facilities and historic and natural resources goals and policies.
- The proposed expansion meets the eight standards of review.
- The applicant is proposing a 7.5 acre screening buffer approximately 180' in width which surpasses required 50' buffer width.
- The expansion will allow maintenance and overhaul activities to be conducted on site instead of having these services outsourced to other companies in other states.
- The expansion would support the existing VRE operations in providing an invaluable benefit to the citizens of Spotsylvania County and commuting public within this region.
- The proposed construction for the expansion is expected to cost about \$36 Million, which would create a substantial demand for construction workers and for good and construction materials, as well as support services during the 1 ½ year construction period.
- Upgrades to the existing gravel road will ensure that emergency vehicles have a secondary access route to and from the facility, which would increase safety and enhance emergency response.

Against:

- There are no findings against this application.

Based on staff's findings in favor and analysis that the proposal meets the eight standards of SUP review and approval, the expansion will support the VRE operations while increasing the buffer between the rail yard and adjacent residential uses and the proposal includes infrastructure upgrades that will improve the ability of emergency service personnel to access and provide assistance to the site if necessary. Staff recommends approval with the conditions noted below:

1. The project shall be developed in conformance with the Generalized Development Plan titled, "Generalized Development Plan for Virginia Railway Express" as dated April 12, 2019 and revised on June 28, 2019 and prepared by Michael E. Zmuda.
2. The perimeter of the active area of the rail maintenance and storage yard shall be fenced with an eight (8) foot chain link fence without barbed wire or six (6) foot with barbed wire.
3. A locked gate shall be constructed at the gravel road (secondary entrance).
4. Except for locomotives entering or leaving, noise including that emanating from stationary, idling locomotives shall not exceed 70 decibels at the property lines adjacent to residential dwellings between 9:00 p.m. and 5:00 a.m.
5. Transfer of the property title must be recorded by deed with exhibit plat within 90 days of Board approval of the Special Use Permit.
6. Virginia Railway Express shall maintain the existing sound barrier of at least 15' in height above the rail elevation along the southern property line and from the southeast corner along the eastern property line a distance of 500 feet.
7. A 7' sound barrier fence shall be constructed and maintained along the east of proposed track 10 as depicted on the GDP.
8. Locomotives shall not be fueled except when standing on track with drip pans installed. And emergency spill containment plan shall be implemented and an oil separator system shall be installed and connected to the drip pans under the locomotives, the design and installation of which shall be approved by Spotsylvania County Officials after consultation with the plan preparer and appropriate state agencies.
9. There shall be no fuel storage on the property, all fuel shall be delivered as needed.
10. All local, State and Federal permits for site work shall be obtained and in particular any construction which causes wetland disturbance shall meet County, State and Federal requirements.
11. Clearing shall be strictly limited to those areas shown on the GDP.

Mr. Smith inquired about the stormwater pond. He stated that it is his understanding that the Rod and Gun Club experienced a dam break and it cost them nearly \$80K.

Mr. Medina inquired if the County has equipment to measure decibels?

Ms. Pomatto stated the Sheriff's office has the equipment.

Mr. Medina inquired about fueling and how that works.

Ms. Fennell stated that they call the fuel trucks in when they are low on fuel.

Mr. Newhouse inquired about condition six. He asked if a noise study was done.

Ms. Fennell stated that condition six was an original condition and the applicant may be able to speak to that.

Applicant, Oscar Gonzalez: He stated that staff did a thorough presentation and that as far as the stormwater issue, they will work with the Rod and Gun Club and help with that if determined to be their fault. He stated that he doesn't know the genesis of the noise barrier. He stated that they do receive complaints about ATV noise out there.

Mr. Newhouse stated that a 15-foot-tall wall is quite large.

Mr. Gonzales stated that it has worked okay they are fine to continue that.

*Speaking in favor or opposition:*

Gene Sullivan, representing the Rod and Gun Club: He stated that he is not opposed to the request however they experienced dam breach and it cost approximately \$85K to repair and \$7K to restock the pond. He stated that they hadn't lost the dam since Hurricane Hazel in 1972. He stated that there does appear to be oil on one side of the pond from time to time. He stated that he supports the railroad, VRE, and commerce and is not a radical environmentalist.

Mr. Gonzales stated that they have folks working on the SWM plan and can deal with this ahead of time.

*Mr. Newhouse closed the public hearing.*

**Motion and vote:** Ms. Maddox made a motion, seconded by Ms. Carter to recommend approval the special use with the recommended conditions. The motion passed 7-0.

Mr. Hughes stated that a site plan will be required and that they can go back and look at the stormwater quality and quantity when it's submitted should it be approved.

Mr. Thompson stated that he has slicks on his pond from the mall property.

**Public Comment:** None

**New Business:**

Mr. Thompson stated that he would like for someone to look into the shrubbery at the shopping center that contains Good Wood, adjacent to the mall. He stated that it was torn out years ago but it has since been put back and now it is very dangerous travelling Mall Drive. He stated that cars pulling out of the shopping center are halfway into the road and wants someone from the County to investigate.

Mr. Newhouse agreed and has raised this concern on other properties. Landscaping maintenance is vital.

**Adjournment:**

**Motion and vote:** Mr. Thompson made a motion, seconded by Ms. Carter to adjourn. The motion passed 7-0.

The meeting adjourned at approximately 9:55 p.m.

*Paulette L. Mann*

Paulette L. Mann

*August 7, 2019*

Date