

**King & Queen County
Planning Commission Minutes
November 1, 2010**

The King & Queen County Planning Commission met on Monday, November 1, 2010, at 6:00 p.m. in the King & Queen County Courts and Administrations Building in the Court Room for their regular monthly meeting.

Planning Commission Members Present:

John Roane	James “Jimmy” Guess
William Herrin	Milton Watkins
David Campbell	Wallica Gaines
Robert “Bob” Taylor	Hunter Richardson (<i>*arrived 13 minutes late</i>)
Donna Thompson	

Also in Attendance:

Thomas J. Swartzwelder, County Attorney
Donna E. Sprouse, Assistant Zoning Administrator

Call to Order

Chairman, Robert Taylor, called the meeting to order.

Roll Call/Determination of Quorum

Mr. Campbell took roll call and determined that a quorum was present.

October 4, 2010 – Regular Meeting

After brief review of the minutes, a motion was made by Mr. Watkins to approve the minutes as written, second by Mr. Guess.

Voting For: Watkins, Roane, Gaines, Herrin, Guess, Taylor, Thompson, Campbell

Voting Against: None

Abstain: None

New Business

A. CU10-03 & SP10-07, William & Vivian Smith (Public Hearing)

Mr. Taylor asked Mrs. Sprouse to please review the first item under new business. Mrs. Sprouse explained that The Planning and Zoning Department received a complete application with payment on September 28, 2010 from Mrs. Vivian Smith requesting the approval of a Conditional Use Permit and Level 3 Site Plan to allow for the placement of three (3) amateur radio towers (after the fact). The property is located at 13918 Richmond Tappahannock Hwy. in the Newtown Magisterial District, County Tax Map Parcel No. 1632-11R-526A & 1632-11R-534.

As shown on the attached documentation, tower #1 was constructed in 1999 and is 80' in height. Tower #2 was started in 2009 and is still under construction and is presently 90' in height, however will be 120' tall when complete. Tower #3 was constructed in 2009 and is 60' in height.

The property is zoned Agricultural. Other surrounding land uses include agricultural and residential. The property is located within the Economic Development Corridor along Route 360, Richmond Tappahannock Hwy.

According to Chapter 3, Article 8.1, Amateur Radio Antennas, *"The purpose of this article is to establish general guidelines related to amateur radio antennas consistent with 47 CFR 97.15 and Virginia Code section 15.2-2293.1 to reasonably accommodate amateur radio antennas and to impose the minimum regulation necessary to accomplish the purpose of protecting the health, safety and welfare of the citizens of King & Queen County."*

According to Chapter 3, Article 4, Permitted Uses, Table 4.1, Permitted Use Table, *"Amateur Radio Antennas higher than the height of the primary structure may be permitted in the Agricultural zoning district by approved Conditional Use Permit and Level 3 Site Plan."*

According to Chapter 3, Article 8.1, Amateur Radio Antennas, Section 3-188, Factors considered in granting conditional use permits, *"The governing authority shall consider the following factors in determining whether to issue a special use permit for any antenna higher or taller than the primary structure, although the governing authority may waive or reduce the burden on the applicant of one or more of these criteria if the governing authority concludes that the goals of this article are better served thereby:*

1. *Height of the proposed antenna and/or tower;*
2. *Proposed placement of the antenna and/or tower on the property*
3. *Proximity of the antenna and/or tower to residential structures and residential district boundaries;*
4. *Nature of the uses on adjacent and nearby properties;*
5. *Surrounding topography;*
6. *Whether the antenna and/or tower is to be designed to collapse within the lot lines in case of structural failure;*
7. *Surrounding tree coverage and foliage; and*
8. *Design of the antenna and/or tower with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness and whether the design of the structures will use materials, colors, textures, screening, and landscaping that will blend the amateur radio antenna to the natural setting and surrounding structures."*

According to State Code of Virginia, 15.2-2293.1, *"Any ordinance involving the placement, screening or height of antennas shall reasonably accommodate amateur radio antennas and shall impose the minimum regulation necessary to accomplish the locality's legitimate purpose. In localities having a population density of 120 persons or less per square mile according to the 1990 United States census, no local ordinance shall (i) restrict amateur radio antenna height to less than 200 feet above ground level as permitted by the Federal Communications Commission or (ii) restrict the number of support structures. In localities having a population density of more than 120 persons per square mile according to the 1990 United States census, no local ordinance shall (i) restrict amateur radio antenna height to less than 75 feet above ground level or (ii) restrict the number of support structures. Reasonable and customary engineering practices shall be followed*

in the erection of amateur radio antennas. This section shall not preclude any locality, by ordinance, from regulating amateur radio antennas with regard to reasonable requirements relating to the use of screening, setback, placement, and health and safety requirements.”

Mrs. Sprouse noted that the existing towers are grey in color and are located either adjacent to or behind the primary structure. In case of structural failure, the tower will collapse on property belonging to Mr. & Mrs. William Smith and only runs the risk of doing damage to their own home in such case. With this being the first Conditional Use Permit & Level 3 Site Plan request for the installation of amateur radio towers (especially after the fact) staff has no firm recommendation to approve or deny the request. Considering the location of the property, along Route 360 within the Economic Development Corridor, and considering that the applicant/owner owns the surrounding parcels, staff leans towards recommending approval with conditions attached to the approval. However, consideration should be taken with setting precedence if approved, considering this is the first application known for such request.

Suggested Conditions if Approved

- If tax map parcels 1632-11R-526 and 1632-11R-534 are ever transferred in any manner to someone other than Mr. William Smith or Mrs. Vivian Smith, the tower and all other connections such as (but not limited to) its guide wires and anchors associated with such tower shall be removed from such parcel completely. A relocation of such tower will require an amendment to this Conditional Use Permit and Level 3 Site Plan.
- If for any reason the antenna or tower is not in operation for a continuous period of twelve months, the antenna and tower shall be considered abandoned and the owner of such antenna or tower shall remove it within 90 days of receipt of notice from the governing authority notifying the owner of such removal requirements. Removal includes the removal of the tower, any and all footers and support structures.

*(*Mr. Richardson arrived at 6:13 p.m.)*

Mr. Taylor opened the public hearing and asked if the property owners, Mr. & Mrs. Smith would like to speak about their request. Hearing no comments from the property owners, Mr. Taylor asked if there was anyone in the audience that would like to speak for or against the project. Mr. Coates, adjoining property owner stated that he had no objections to the towers. Mr. Jackson, adjoining property owner stated that he was not speaking for or against the project but wanted to know how Mr. & Mrs. Smith were able to install the towers without prior approvals and why wasn't this addressed sooner rather than after the fact. Mr. Jackson noted that Mr. Watkins resides a mile or so from the Smith's and asked why he didn't notice the construction. Mr. Taylor noted that there has been a change among the Planning Commission and staff. He also noted that there have been a lot of changes and that most things are complaint driven unless staff discovers violations or issues while conducting site inspections. This is something that was brought to staff's attention and now it is being corrected. Mr. Watkins noted that he is new to the Planning Commission and that is why he didn't mention it during the construction phase at the time construction had taken place.

Hearing no further comments, Mr. Taylor closed public comment period.

Mr. Taylor asked the Planning Commission if they had any comments. Mrs. Gaines stated she had several questions. She asked for clarification of the 1st suggested condition by staff. Mrs. Gaines

asked if the Commission should allow a potential new purchaser of the adjoining property the opportunity to have the towers to remain by amended Conditional Use Permit and Level 3 Site Plan. Mr. Swartzwelder noted that because of possible fall radius issues, if Mr. & Mrs. Smith were to sell an adjoining parcel then the new owner would have parts of the tower on their property and/or run the risk of not meeting the fall radius. Mrs. Sprouse also noted that this was a suggested condition by Mr. Smith at the time he applied.

Mrs. Gaines also asked if 12 months was sufficient time to repair the tower should it not be operational as suggested as another condition of the Conditional Use Permit. Mrs. Sprouse explained that the suggested conditions are conditions either agreed by the applicant and or listed requirements within the ordinance. Mr. Smith stated that should he have an issue with his tower operations, it is easy to fix it within 12 months.

Hearing no other comments, a motion was made by Mr. Watkins to approve the Conditional Use Permit CU10-03 and Level 3 Site Plan SP10-07 as submitted with staff's suggested conditions, seconded by Mrs. Thompson.

Voting For: Watkins, Roane, Gaines, Herrin, Guess, Taylor, Richardson, Thompson, Campbell
Voting Against: None
Abstain: None

CU10-03 and SP10-07 is recommended for approval and will now be placed before the Board of Supervisors.

Mr. Swartzwelder informed Mr. & Mrs. Smith that they will receive a letter as to when the next public hearing will be with the Board of Supervisors.

Unfinished Business

A. Open Discussion – Should existing Fire Departments & Rescue Squads have reduced setbacks for future expansion?

Mr. Swartzwelder noted that this was a continuation from the last meeting and stated that the Board is looking for means for allowing options of relaxing some zoning requirements, such as building setbacks for existing volunteer fire and rescue buildings in this county. He asked should there be reduced setback requirements to allow for expansion? Should it remain the way it is written and require them to go before the BZA? Mr. Swartzwelder noted a strict interpretation of the current ordinance will not permit such expansions and will require BZA approvals. With that in mind, he asked what grounds the BZA would have for the approval of such a request. It could not be a financial reason and it has to be a hardship with no other options. It really puts the BZA in an odd situation. Mr. Swartzwelder noted that Mrs. Sprouse suggested that in the comments section of the proposed permitted use table; consider allowing reduced setbacks for existing fire and rescue buildings so there will not be a need to request a variance. He noted we just need to come up with those suggested setbacks. After some discussion among the Planning Commission, it was agreed to have staff come up with setbacks and include it within the proposed permitted use table for review.

Commissioner's Comments

There were no comments.

Staff's Comments

There were no comments.

Mr. Taylor stated that the next Planning Commission meeting is scheduled for December 6, 2010 at 6 p.m. in the Court Room.

Adjournment

There being no further business, a motion was made by Mr. Watkins to adjourn. Adjournment was ratified by all saying "Aye".

Robert "Bob" Taylor, Chairman