

**NELSON COUNTY BOARD OF ZONING APPEALS
December 3, 2018
MEETING MINUTES**

Present: Gifford Childs, Ron Moyer, Mary Kathryn Allen, Carole Saunders and Angela Jones

Staff: Sandy Shackelford, Director, Planning & Zoning, and Emily Hjulstrom, Secretary

Call to Order: Ms. Allen called the meeting to order at 6:00 P. M. in the Auditorium at Nelson County Middle School. There were five members present to establish a quorum.

**MOTION - PROPOSED RESOLUTION
FOR CLOSED SESSION
OF NELSON COUNTY BOARD OF ZONING APPEALS
DECEMBER 3, 2018**

I hereby move, pursuant to the provisions of VA. CODE ANN. §2.2-3711 A 7 & 8 (Repl. Vol. 2017) that the Board of Zoning Appeals for Nelson County convene in closed session for consultation with legal counsel and consultants pertaining to actual or probable litigation in regard to the granting or withholding of variances for Atlantic Coast Pipeline and further for consultation with legal counsel employed specifically regarding the application variances of Atlantic Coast Pipeline.

The vote was: Aye: *Angela Jones, Ron Moyer, Gifford Childs, Carole Saunders, Mary Kathryn Allen.*
Nay:
Abstain:

Ms. Angela Jones made the above motion with Mr. Gifford Childs providing the second.

The vote was:

Aye:

Mary Kathryn Allen

Angela Jones

Gifford Childs

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Ron Moyer

Carole Saunders

Nay:

Ms. Allen reconvened the meeting at 7:07 pm. She made a motion to come back to order and that the BZA only discussed what they went into closed session for. Ms. Saunders seconded the motion. The BZA voted to approve the motion with a vote of 5-0.

The vote was:

Aye:

Mary Kathryn Allen

Angela Jones

Gifford Childs

Ron Moyer

Carole Saunders

Nay:

Approval of Minutes (November 5, 2018): Ms. Allen asked for any changes or corrections on the minutes.

Mr. Moyer made a motion that the meeting minutes be approved. Ms. Saunders provided the second; the motion was approved 5-0.

Variances 2018-07 – 2018-10

Ms. Allen then read from the following public hearing guidelines:

NELSON COUNTY BOARD OF ZONING APPEALS

PUBLIC HEARING GUIDELINES

1. The Presentation by the Petitioner's representative(s) will be limited to fifteen (15) minutes. If it is difficult to fully explain a complex proposal orally within the time limit, it is recommended that the petitioner submit in advance to the Zoning Office written information that can be mailed to the Board of Zoning Appeals prior to their respective meetings.
2. A sign in sheet will be available and anyone desiring to speak must sign in.
3. Speakers representing a group will be allowed five (5) minutes to speak if their presentation will reduce the number of persons to make public comment.
4. Subsequent speakers will be allowed a maximum of three (3) minutes each and cannot allocate their time to another individual.
5. Speakers must come to the podium, give their name and address before making their remarks.
6. Speakers will be timed by a staff assistant and given notice when they have one (1) minute left and when their time has expired. Upon notification the speaker shall relinquish the podium and return to their seat.
7. Speakers are asked to not be repetitive and to insure their remarks are relevant to the request at hand.
8. When the public hearing is closed the Board of Zoning Appeals will deliberate on the agenda item, during which the public may remain present but will not be allowed to speak. Members of the Board of Zoning Appeals may ask questions of anyone in the audience in order to seek clarification of issues that were brought out at the hearing.
9. Abusive and inappropriate language will not be tolerated.
10. The Chair will fairly enforce the above rules.

Draft 12-03-2018

Final 05-06-2019

Ms. Allen confirmed that the variances were advertised correctly in the paper and that the notifications online were also correct. The only issue was that one map was wrong with the packet initially provided to them but they had the information all along and that it is now correct.

Ms. Shackelford then provided the following staff report:

**Nelson County
Board of Zoning Appeals**

Memo

To: Board of Zoning Appeals
From: Sandra M. Shackelford
Date: 11/19/2018
Re: Atlantic Coast Pipeline Variance Applications – Staff Report

Background:

At the end of 2017, the Atlantic Coast Pipeline (ACP) submitted applications for eleven variance requests where the pipeline is planned to cross through designated floodplains. The Board of Zoning Appeals met in February of 2018 and dismissed all but four of those applications due to lack of standing. The remaining applications were deferred at the applicant's request but have remained active and are now ready to be considered.

The four applications currently under consideration are the following;

2018-007: Muddy Creek
2018-008: UNT of Rockfish River 2
2018-009: Falls Run
2018-010: Dutch Creek

In the Nelson County Floodplain Ordinance (Article 10 of the zoning ordinance), pipelines meet the definition of a critical facility because it is a structure or facility that transports highly volatile, flammable, explosive, toxic, and/or water-reactive materials (10.15.F). Critical facilities that cross a Special Flood Hazard Area (SFHA) are not permitted unless a variance is first granted by the Board of Zoning Appeals.

A *Special Flood Hazard Area* is defined in the floodplain ordinance as the land in the floodplain subject to a one percent or greater chance of being flooded in any given year. According to the FEMA definition, which is the standard that is used to determine where floodplains in the County exist, the SFHA in Nelson County is made up of flood zones A and AE, which can be viewed on the County's GIS maps. The distinction between these two zones is minor – the base flood

elevation has been identified for AE zones, but not for A zones. However, both zones are defined by having a one percent chance of being flooded in a given year.

The applicants have submitted all of the information required in Section 10.13.C. of the Nelson County Floodplain Ordinance. At the meeting in February, the BZA voted to retain KCI Technologies to provide technical assistance in the review of the applications. Additional technical information has been requested including the technical data used to support the findings of the no rise certificates included in the applications for each site and construction information. This information has been provided to and reviewed by the engineering consultants, who will submit a separate report with their findings.

Discussion:

In Section 10.21, the Floodplain Ordinance advises the BZA on the criteria they should consider when determining whether to grant a variance. The decision to grant a variance should be based on:

- A. A showing of good and sufficient cause;
- B. Determination by the Board of Zoning Appeals that failure to grant the variance would result in exceptional hardship to the applicant; and
- C. Determination by the Board of Zoning Appeals that the granting of such Variance will not result in:
 - 1. Unacceptable or prohibited increases in flood heights;
 - 2. Additional threats to public safety;
 - 3. Extraordinary public expense;
 - 4. Nuisances being created;
 - 5. Fraud or victimization of the public; or
 - 6. Conflict with local laws or ordinances.

In addition, the ordinance lists out several factors that the BZA should consider as listed below:

- A. The danger to life and property due to increased flood heights or velocities caused by encroachments. No Variance shall be granted for any proposed use, development, or activity within any floodway district that will cause any increase in the Base Flood Elevation (BFE).
- B. The danger that materials may be swept on to other lands or downstream to the injury of others.
- C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- D. The susceptibility of the proposed facility and its contents to flood damage and effect of such damage on the individual owners.
- E. The importance of the services provided by the proposed facility to the community.
- F. The requirements of the facility for a waterfront location.
- G. The availability of alternative locations not subject to flooding for the proposed use.
- H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- I. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area.

J. The safety of access by ordinary and emergency vehicles to the property in time of flood.

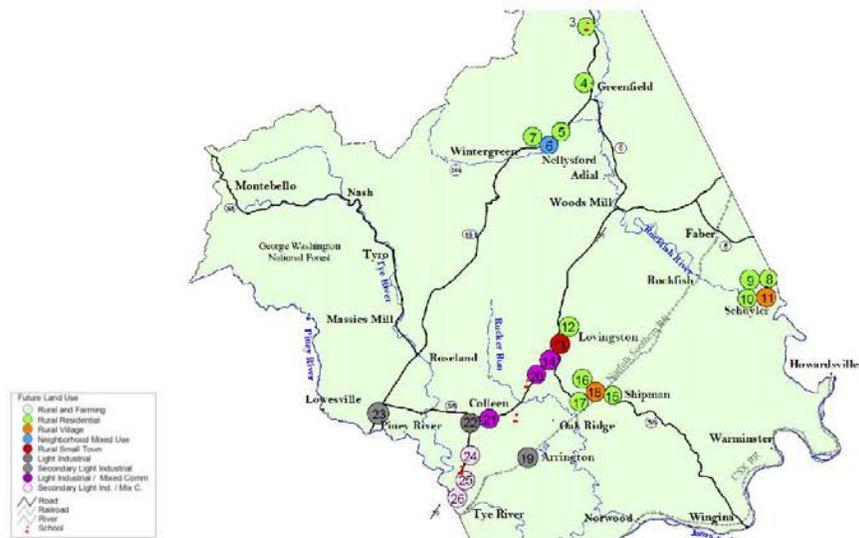
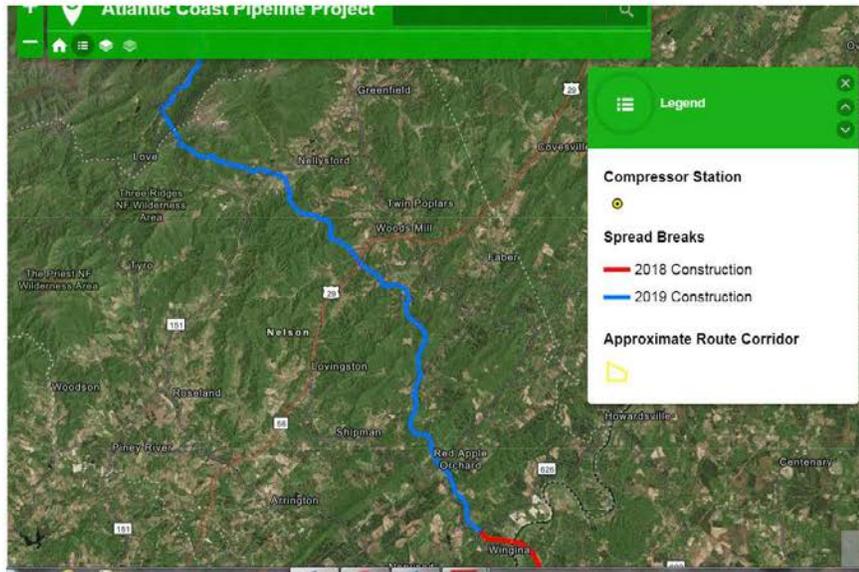
K. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.

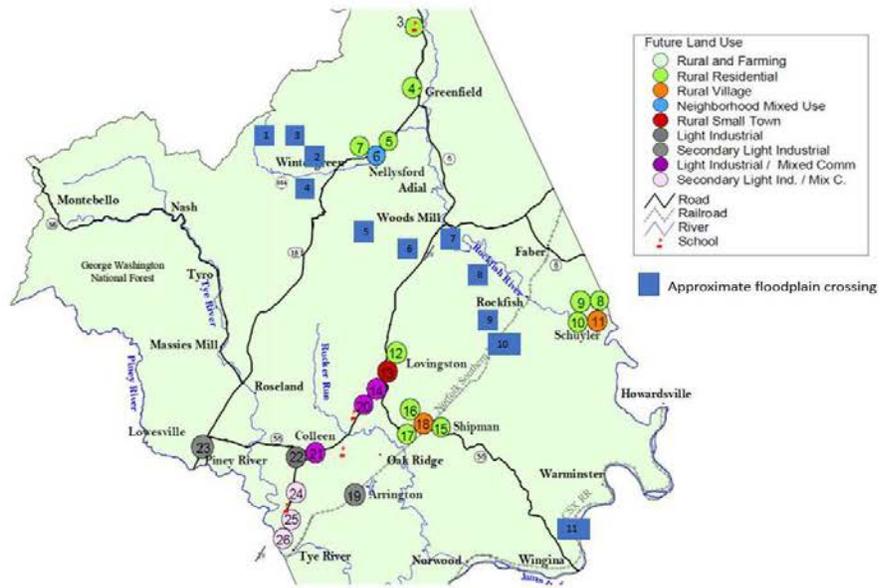
L. The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

M. Such other factors which are relevant to the purposes of this ordinance.

Not all of the above factors will be relevant in all, or even any, of the applications. However, it is important that the BZA considers any relevant matters that are discussed during the hearing in weighing their decision.

One of the factors listed for consideration is the relationship of the proposed use to the Comprehensive Plan. The images shown on the following pages show the current route of the planned pipeline against the Comprehensive Plan maps.





Draft 12-03-2018

Final 05-06-2019

Ms. Allen noted that they would hold a public hearing for speakers wishing to refer to all variances at once:

The applicant Felix Sarfo-Kantanka, is the general affairs manager with Dominion energy in Nelson County. He presented the following information:

Atlantic Coast Pipeline

**Nelson County
Board of Zoning Appeals
Floodplain Crossings
December 3, 2018**



Atlantic
Coast
Pipeline

INTRODUCTION

- The Atlantic Coast Pipeline is a 600 mile natural gas pipeline beginning in Harrison County, West Virginia and ending in Robeson County North Carolina, with a lateral to serve the Hampton Roads area.
- Federal Energy Regulatory Commission (FERC) approved ACP with the issuance of the Certificate of Public Convenience and Necessity on October 13, 2017. FERC's evaluation included a detailed review of environmental impacts including floodplain crossings.
- ACP will cross approximately 27.2 miles in Nelson County with a 42-inch diameter underground natural gas pipeline.
- Under the FERC approved route the pipeline will cross approximately 4.5 miles of FEMA identified floodplain in the County.
- This includes 3.5 miles of pipeline and 1 mile of access roads.

Atlantic
Coast
Pipeline

Floodplain Ordinance Requirements

- The primary purpose of the County’s floodplain management ordinance is to regulate uses, activities and development within the floodplains that may cause unacceptable increases in flood heights, velocities, and frequencies.
- Local governments must adopt floodplain management ordinances consistent with Federal Emergency Management Agency performance measures in order for its citizens and business to have access to flood insurance through the National Flood Insurance Program.
- Any development activity in the floodplain that constitutes a “man made change” to land triggers the need for a zoning permit issued in conformance with the County’s floodplain requirements.

Variance Request

- While most zoning permits for floodplain crossings are approved administratively, the County’s floodplain regulations (amended on September 12, 2017) require that “critical facilities” obtain a variance from the Board of Zoning Appeals (BZA) before a zoning permit may be issued.
- The County has determined that the ACP is a “critical facility” under the County’s ordinance.
- There are four variance requests currently before the BZA.

ACP Construction Facts

- The pipeline will be constructed underground, at a minimum depth of five (5) feet below all stream channels.
- There will be no aboveground facilities or structures constructed in any floodplain in the County.
- Completed pipeline installation will not alter the elevation of any floodplain or adversely affect channel capacity.
- Construction activity will not negatively alter any existing channel or floodway capacity of any watercourse, drainage ditch, or any other drainage facility or system in the County's floodplain districts. Construction is anticipated to begin early 2019, pending receipt of all permits.

ACP Construction Facts (cont.)

- ACP construction will comply with all federal requirements including those of FERC and the Army Corps of Engineers requirements for wetland and stream crossings.
- ACP construction will also comply with all State requirements including those of the Department of Game and Inland Fisheries, the Marine Resources Commission and the Department of Environmental Quality, including the 401 Water Quality Certifications, and the approved Erosion and Sediment Control Plans.
- All floodplain crossings will be restored to pre-existing contours and elevations, and will be revegetated to prevent erosion.

Floodplain Crossing Early Restoration



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Factors for Variance Approval

- In considering a variance application, the BZA's considers the ordinance requirements and the following factors:
 - Danger to life and property due to increased flood heights or velocities.
 - **The ACP will not increase flood heights or velocities; and,**
 - **There will be no increase in Base Flood Elevation.**
 - Danger that materials may be swept on to other land or downstream to the injury of others.
 - **The pipeline will be anchored by its construction at least five feet below the stream channel; and,**
 - **There will be no permanent materials or facilities located on any site.**

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Factors for Variance Approval (cont.)

- Whether any proposed water supply and sanitation systems are able to prevent disease, contamination, and unsanitary conditions.
 - **There is no water or sanitation system proposed; and**
 - **The project will not adversely affect existing systems.**

- The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the facility owner.
 - **Being located underground, the pipeline is not susceptible to flood damage.**

Factors for Variance Approval (cont.)

- Importance of the ACP to the community.
 - **The availability of natural gas for electric power generation will enable Dominion Energy to continue to reduce coal fired generation thereby reducing greenhouse gas emissions.**

- Availability of alternative locations.
 - **The route location was approved by FERC on October 13, 2017 after alternative routing was evaluated . The FERC approved final route was chosen as having the least environmental impact to serve the purpose and need of the project.**

Factors for Variance Approval (cont.)

- Compatibility of the Project with existing and future development.
 - **The construction of ACP will not impact any existing or future development in these areas.**
 - **Further, the FERC process considers local land use criteria and routing was approved based on compatibility with land use.**

- The relationship between the proposed use and the Comprehensive Plan and floodplain management program for the area.
 - **The construction of ACP, an underground pipeline, is consistent with the Comprehensive Plan's goal of maintaining the rural character of the County; and,**
 - **The project satisfies all applicable floodplain management criteria as set forth in application.**

Factors for Variance Approval (cont.)

- The safety of access by ordinary and emergency vehicles to the property during a flood.
 - **As an underground project, the pipeline should not require access by emergency vehicles if flooding occurs; however, emergency vehicles will be able to cross the pipeline right-of-way.**

- Expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site.
 - **There is no expected change in heights, velocity, duration, rate of rise and/or sediment transport of the floodwaters at any of the four sites.**

- The repair or rehabilitation of historic structures.
 - **There are no historic structures related to this project.**

Conclusion

- The four floodplain permit applications before you are in full compliance with Nelson County's floodplain ordinance.
- ACP has cooperated with the County by timely providing additional information that is over and above the requirements of the County's ordinance.
- We respectfully request your approval of all four applications.
- Maps and construction details are attached for your information.

Contact Information

Felix Sarfo-Kantanka

External Affairs Manager

Dominion Energy

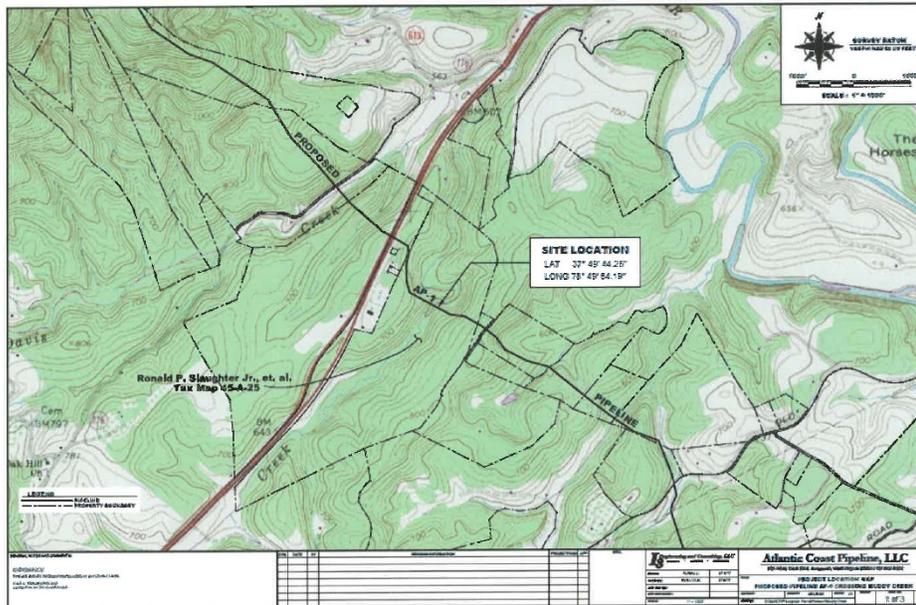
Felix.Sarfo-Kantanka@dominionenergy.com

804-212-8594

Variance # 2018-007 Muddy Creek

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Variance # 2018-007 Muddy Creek

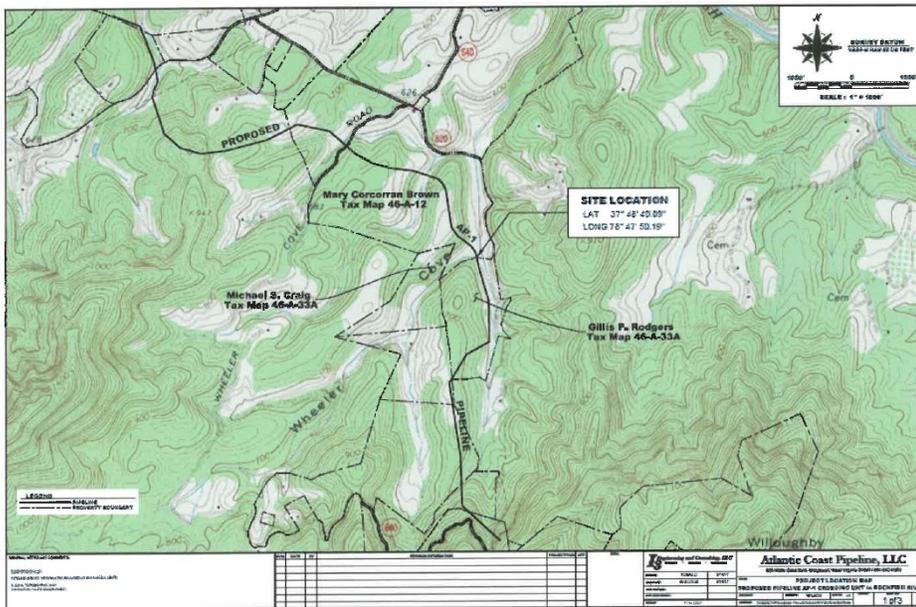


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Variance # 2018-008 UNT of Rockfish River 2

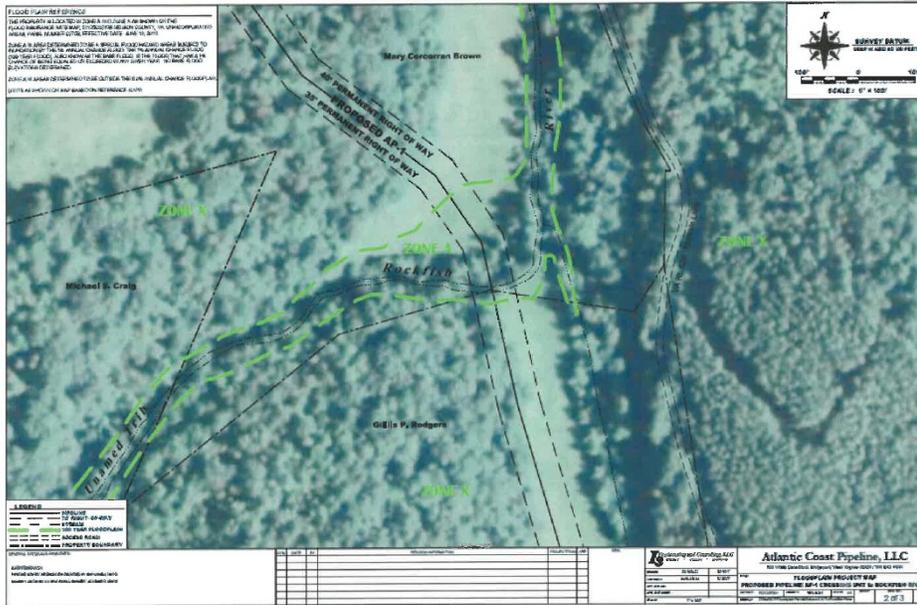
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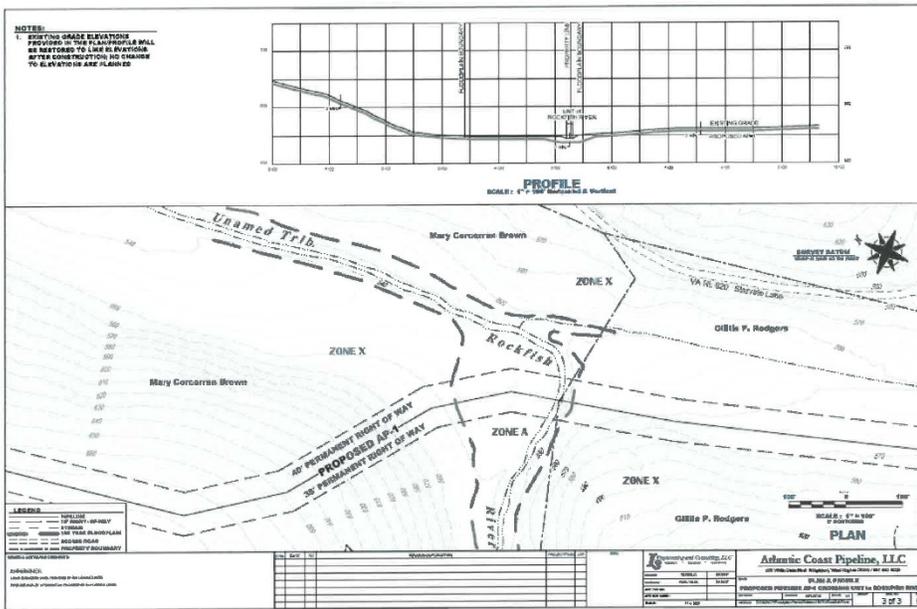


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Variance # 2018-008 UNT of Rockfish River 2



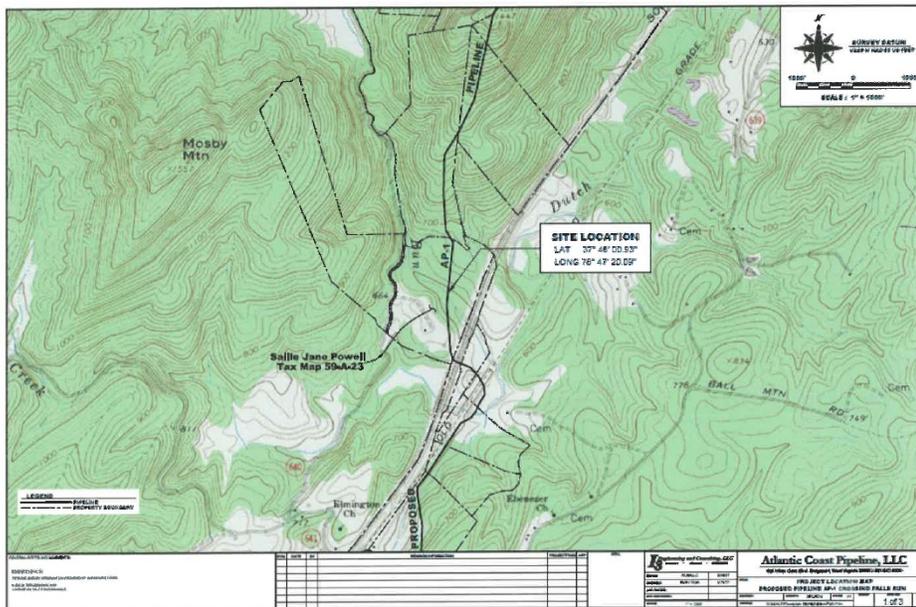
Variance # 2018-008 UNT of Rockfish River 2



Variance # 2018-009 Falls Run

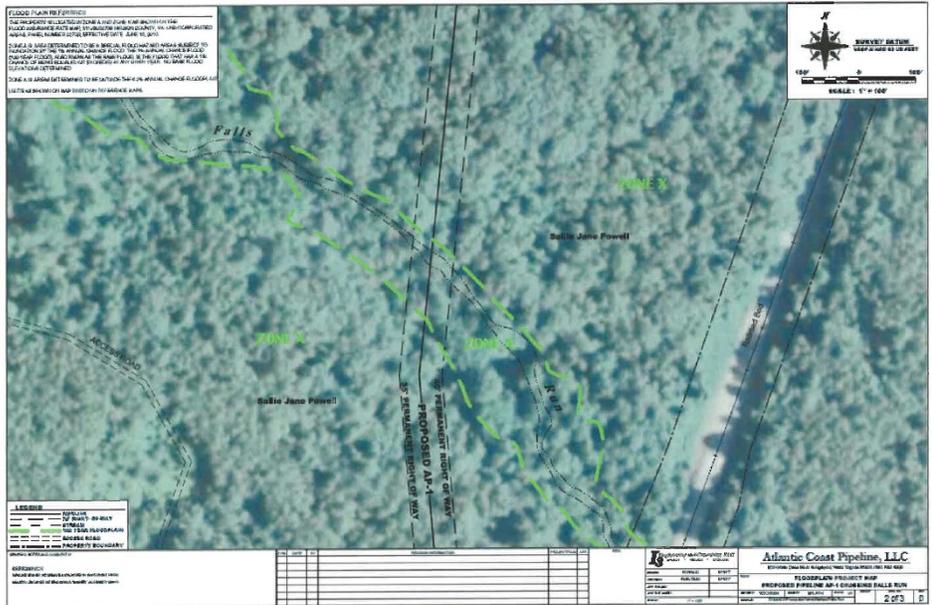
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Variance # 2018-009 Falls Run

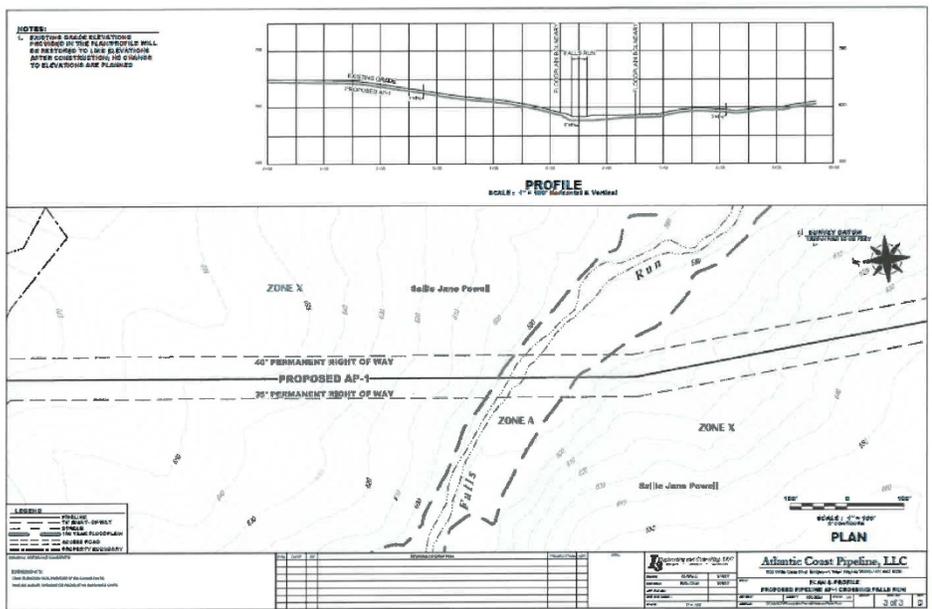


Coast
Pipeline

Variance # 2018-009 Falls Run



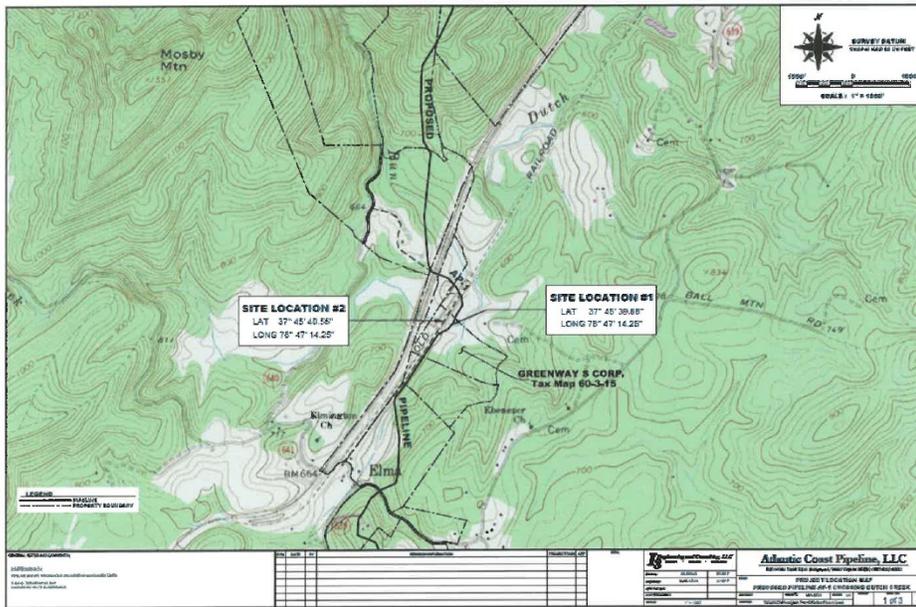
Variance # 2018-009 Falls Run



Variance # 2018-010 Dutch Creek

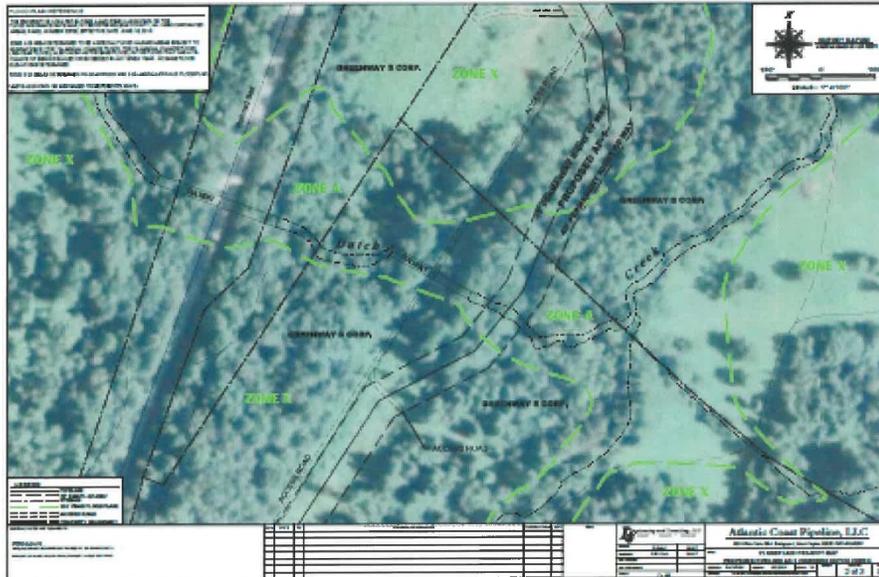
Atlantic
Coast
Pipeline

Variance # 2018-010 Dutch Creek

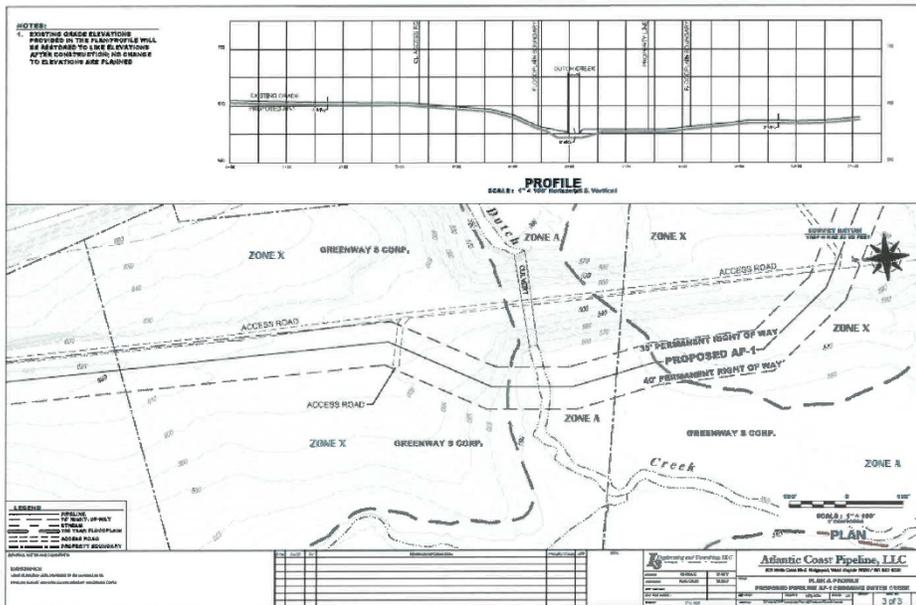


Atlantic
Coast
Pipeline

Variance # 2018-009 Falls Run



Variance # 2018-009 Falls Run



Draft 12-03-2018

Final 05-06-2019

Ms. Allen noted that they would hold a public hearing for speakers wishing to refer to all variances at once:

Suzanne Latchford lives at 154 White Cedar Rd, Barbersville, Virginia. She owns the property at 8 Starvale Ln and adjoins the property owned by Gillis Rogers at 1434 Starvale Ln. She noted that the Atlantic Coast pipeline is seeking a variance on his property with application 2018-008. She noted that Nelson County was completely cut off by the flooding of hurricane Camille and that it devastated Nelson County. She explained that at the time they thought that hurricane Camille was the hurricane of the century but that today it is not true as demonstrated recently by hurricane Florence. She noted that the fourth national climate assessment report was released November 23, 2018 produced by 14 federal agencies and departments. She noted that the report states that the continental United States temperature has increased 1.8 degrees over 100 years and that the oceans have raised 9 inches. She noted that all regions will be affected by climate change, natural gas, and that the intensity of hurricanes will increase. She noted that article 10.2 in the zoning ordinance (in regards to floodplains) is what the ACP is seeking a variance against. She noted that we have to be prepared for more flooding and more rain. She noted that the BZA's only option is to deny all of these variance requests.

Lee Giehl of 3091 Spruce Creek Ln in Nellysford, VA. He explained that he is a representative for his family that lives on the farm at that address. He explained that three generations have been born and raised on that farm. He noted that the applicant's presentation had many things that could be argued. He noted that natural science was used in the making of this ordinance and that this request is for profit. He noted that any vote in support of this variance would be from an ignorant or corrupt person.

Sharon Ponton lives at 8260 Thomas Nelson Hwy in Lovingston. She noted that the ACP does not currently have water crossing permits in Virginia, North Carolina, or West Virginia because they were suspended by the Army Corps Engineers. She also noted that they do not have an air permit for the compressor station in Buckingham County. She recommended that the Board wait until the ACP acquire those permits before voting on the variances. She noted that the first ACP meeting in the county that she attended had tables where she could ask why the pipeline was going through Nelson County with the history of Hurricane Camille. She explained that the people at the meeting were unaware of the hurricane and that they were shocked that it was not addressed before. She noted that the ACP did move the pipeline but that it is still a danger to nearby creeks and rivers. She asked the BZA to deny all of the permits. She also referenced a TV commercial from All-State Insurance that states "500 year storms, you'd think would only happen once every 500 years." but then one guy responds in the commercial that there have been 26 500-year storms in the United States in the last decade. She asked the BZA to deny the variance requests.

Gail Troy lives at 3036 Dutch Creek. She asked the BZA to deny the permits because of Hurricane Camille. She noted that she moved to Nelson County in 72, 3 years after Hurricane Camille, and that people were still recovering from it. She noted that disasters like this happen and that putting a large pipeline under 5 feet of dirt is dangerous. She noted that it took that much water to make the James

Draft 12-03-2018

Final 05-06-2019

River run backwards. She explained that disasters like this are becoming more and more common. She also noted that pipelines explode and that a pipeline that large and full of explosive gas could cause something extreme. She noted that the county adopted flood plain regulations for good reason and that it shouldn't be changed for a for-profit business.

Eleanor Amidon lives at 931 Tanbark Dr. n Afton. She read from the following:

Draft 12-03-2018

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Comment on Variance 2018-008 for Nelson BZA public hearing, Dec. 3, 2018
by Eleanor Amidon, 931 Tanbark Dr., Afton, VA 22920

These are general comments, and I would like these comments entered into the public record for all four variances.

Our floodplain ordinances were enacted and later strengthened to protect our land and water, and to make flood insurance available to landowners at lower premiums through the National Flood Insurance Program of Federal Emergency Management System (FEMA). FEMA, in producing their reports and databases, uses only past and current data. They are limited by their mandates from Congress. FEMA does not consider climate change as a factor in their considerations.

But scientists throughout the world do view climate change as serious and potentially devastating phenomena, as recently stated in a report by the Intergovernmental Panel on Climate Change (IPCC) released in October of this year. Impacts of global warming will have economic and environmental repercussions, regardless of agencies and individuals who insist, like ostriches, on sticking their heads in the sand. Reducing greenhouse gas emissions is imperative. The Final Environmental Impact Statement (Vol. 1, page 4-621) that ACP prepared for the Federal Energy Regulatory Commission (FERC) projected greenhouse gases from the proposed ACP would exceed 29.9 million tons per year. This is unacceptable. What's worse is that this estimate does not include the climate impacts of methane leaks from the pipeline or the fracking wells that produce the gas. FEMA's mandate does not allow them to consider the impacts of projected increases of greenhouse gases in the atmosphere. But we are the ones who will suffer the consequences if we do not use the best information available from our scientists and strive to reduce our production of greenhouse gases, which translates into moving away from using fossil fuels as quickly as possible.

In these uncertain times, with real threats from unprecedented weather events which cannot be predicted based solely on data from the past, we need to protect our land and water by strictly adhering to the ordinances that we have. The BZA must deny this variance request and protect our floodplains.

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Darlene Spears lives at 2215 Spruce Creek Lane. She noted that she was one of the 11 land owners that ACP tried to get variances from a year ago. She noted that she did not give ACP the authority to ask for a variance on her land. She noted that the BZA understood that and dismissed that request at the time. She suggested that the BZA do the same for these variances because they were not applied for by the owners. She noted that she is concerned the ACP will seek another variance on their property in the future and that the BZA's decision on these four variances could impact her property. She encouraged the BZA to consider the wording for the easements on these four properties because having an easement does not equate to ownership of property in Virginia. She explained that hazardous materials are strictly banned from FEMA designated flood plains and that this pipeline should not be an exception. She noted that the county should not make an exception to the flood plain ordinance and endanger the citizens of Nelson County.

Marilyn Shifflet lives at 4436 Rockfish Valley Hwy. She noted that floodplains are valuable sources for ground water recharge and service natural water filters. She noted that Nelson County's population is largely served by private wells and that disturbance to the flood plains are a concern for everyone. She also noted that ACPs plans are almost identical to those for Mountain Valley Pipeline. She noted that she has watched the construction very closely through contact with residents along the route of the Mountain Valley Pipeline and that it has been plagued with failed best practices for Erosion and Sediment Control. She noted that MVP and DEQ often site unusual rain events as cause of repeated failure of plans that resulted in repeated damages of streams, adjacent properties, and road closures. She noted that the baseline units to develop these standards might not apply to the mountains and valleys of Virginia. She explained that in a recent case a 40' section of pipeline washed away onto a farmer's field and caused damage to his property. She noted that flood plain variances have been requested in 7 Virginia jurisdictions. She noted that Nelson County has the most flood plain crossings (11). She added that Nelson County likely has the most prevalent flooding history of any of these districts. She explained that she doesn't believe that an earnest effort was made in finding alternative routes. She noted that the 4.5 miles of proposed floodplain crossings in Nelson County constituted about 18% of the total. She noted that the engineering "no-rise" certificate does not suggest that the ACP has done a scour analysis at the stream crossings associated with these floodplain sites. She noted that without scour analysis it is questionable if they are meeting the mark of 5 feet below the surface. She also noted that the applicant stated in their application that they will not anchor under the stream beds. She noted that in the spring of 2015 West Virginia experienced 8 ruptures of pipelines at stream crossings. She noted that these pipelines were small and only one incident resulted in explosion and evacuation of nearby residents. But, she noted that news sources pointed out that rain was typical for that time of year.

Helen Kimble of 96 Wildwood Trail. She is reading the comments from Daniel Corbin:

Draft 12-03-2018

Final 05-06-2019



Email

From: Daniel Corbin

12/3/18 6:58 AM

To: bza@nelsoncounty.org

Cc: Joyce Burton, Cindy

Dear Members of the Board of Zoning Appeals,

Regarding ACP's applications for variances to install hazardous/explosive materials in several Special Flood Hazard Areas in violation of Nelson County's Floodplain Ordinance:

Although my parcel (21-16-8) is not included in the current batch of variance requests, it is reasonable to assume that ACP will soon re-apply for a similar variance on my property. Therefore, am concerned that the decisions you make at this December 3rd hearing on the properties in question may also impact your decision in the matter of my property.

For the record: I never intended for ACP to request any zoning variance on my property. On the contrary...I expect ACP to adhere to every ordinance, policy, and regulation that applies. I am unaware of a term or condition in our easement agreement allowing ACP to seek a variance on my property. Cindy and I would have likely questioned that situation. I am seeking counsel from my lawyer and am submitting my concern about this to the Board's email address so that it will be included in the public record. I have also asked someone to read this at Monday's meeting so that, even though my comments were not submitted in time to be included in the BZA's formal meeting "packet", the Board will be sure to be aware of my position prior to voting on the issue.

Sincerely,

Daniel Corbin

Sent from my Verizon LG Smartphone

Draft 12-03-2018

Final 05-06-2019

Peter Agelasto lives at 511 Rockfish Valley Hwy and is speaking on behalf of the Rockfish Valley Foundation. He invited the members of the BZA to go to the Rockfish Valley Foundation to look at the historic resources that would be impacted by the pipeline. He noted that the project has 12 crossings of floodplain in the county and not 11. He noted that the four variances tonight could disenfranchise the other eight. He noted that it makes sense to consider the whole project at once. He noted that courts and the Army Corps of Engineer stated that no work could be done until further direction. He noted that it does not say 'construction' but it says 'work'. He noted that he spoke with a man at the Norfolk District of the Army Corps of Engineers and that he is compiling information. He noted that the BZA should not take any action until all 12 crossings are applied for with plans.

James Bolton lives at 312 Perry Lane on Davis Creek. He noted that since June 7th of this year there have been at least two nearby pipeline explosions. One explosion being near Mountainsville, West Virginia involving a pipeline that had only been in service for five months and one that occurred three months later in Beaver County, Pennsylvania following heavy rains and with a pipeline that had only been in service for one week. He noted that in both cases the cause was determined to be earth movement or land slide. He noted that soil slippage following heavy rainfall can also happen in low land flood plains as well as steep slopes. He noted that movement like this in a flood plain can also be damaging to the pipeline. He noted that in 1969 this was seen with Hurricane Camille and that the floodplains today are basically defined from that event. He noted that the climate change could increase the frequency of events like this. He also noted that with each additional event, future events become more likely. He noted that the board must determine that this construction would not affect public safety. He noted that this pipeline would add a whole new level of risk to public safety during future flooding events. He urged the Board to deny the requests.

Ronald Enders lives at 395 Goodwin Creek Trail. He read from the following:

*Ronald Enders
Submitted
12/3/2018*

Comments for Dec 3 Board of Zoning Appeal Hearing on the waiver for the Atlantic Coast Pipeline.

By Ron Enders 395 Goodwin Creek Trail, Afton VA 22920

I am here to talk about property rights.

For the safety and protection of all of us our local government through our zoning ordinances has taken away some property rights by limiting what landowners can do in flood plains.

As Nelsonians we know the powers of floods in our mountains, streams, valleys and plains.

The ACP is using eminent domain as a weapon against property owners to force the pipeline through our mountains. The owners of adjoining properties have no legal standing although their properties will also be harmed.

In the flood plains all of us have standing through our zoning ordinances, including the adjoining owners in the flood plains who have given up some of their property rights through the zoning ordinances.

Dominion is asking to do what we as landowners are not allowed to do.

This pipeline is of no importance to our county. It is certainly not a critical need, and it does increase the risk of loss of life and property to the adjoining and downstream property owners while impairing our tax base.

This high pressure natural gas pipeline will create a liability on the part of Nelson County.

Imagine the pipeline crossing a body of water at 90 degrees, a flood washing the dirt away exposing the buried pipe. Imagine the flood waters carrying a large boulder or fast moving large stump directly into the pipeline.

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Who will be financially responsible if there is a serious accident? Does the private easement agreement dissolve the landowner of all responsibility? The ACP is a Limited Liability Company with many independent contractors, perhaps also limiting their liability. Who will be responsible? Nelson County?

There is no public benefit for Nelson County to grant to a large LLC a waiver to violate our zoning laws, zoning laws which our citizens are expected to obey.

In an easement property owners can not grant rights which they do not have under the zoning laws to the ACP.

Thank you for protecting all of our property rights.

Joyce Burton lives at 82 Wild Orchard Ln. She is speaking on behalf of Friends of Nelson. She read from the following:

Joyce Burton
Submitted
12-3-2018

December 3, 2018

To the Board of Zoning Appeals:

First of all, I am concerned about incomplete and inaccurate information given to the BZA.

For example, in the BZA packet, maps and drawings for the "UNT Rockfish River" depict an area in Gullysville which was part of a completely different permit application, rather than plans for the correct crossing which is actually several miles south of there.

A more sweeping problem is that all the maps and drawings show only a 75'-wide ROW even though the actual land disturbance will be at least 125' wide throughout. It is disturbing to me that ACP's so grossly misrepresented its plans in its original application to the BZA and it underscores the need for continuous, diligent citizen scrutiny of every aspect of this project.

Neither did those maps show the numerous access roads or the flanking "Additional Temporary Workspaces" which we know will widen the ROW to 175 or even 225'. How can we possibly ascertain whether they fall within or have the potential to impact the Special Flood Hazard Area if they aren't even included on the maps?

I presume explicit documentation of these planned impacts was part of the "additional information" that Nelson County sought when the Board deferred the ACP's application for these four variances back in February 2018. However, when I inquired with the Planning and Zoning Office last week about whether any new materials had been submitted by ACP since the original application, I was told there were not, that the files up on the website represented everything that had been provided to the Board for review.

Yet it appears this information was inaccurate as well. In the BZA packet, the 9/14 letter from Sekiv Solutions references ACP providing the County with alignment sheets and other additional documentation. Yet NONE of these are on the BZA's website, nor in the meeting packet. Were they actually provided to you? And if so, why were they not posted for us as well?

More than four years of working closely with Nelson landowners impacted by this project has taught me to trust NEITHER DOMINION'S INTENTIONS NOR THEIR COMPETENCE in dealing with our local lands. And I have seen with my own eyes examples of ACP negotiating and recording easements with landowners that are not always consistent with the plans they had filed with government agencies.

Citizens are motivated to help the BZA do its job of ascertaining whether the impacts of the proposed project will be as benign as ACP insists so that informed decisions can be made about whether it deserves to be exempted from the standards of our local Ordinance. But the people with intimate knowledge of the parcels in question cannot scrutinize and cross-check the information ACP has provided you unless the materials are accessible to us in a timely fashion.

Draft 12-03-2018

Final 05-06-2019

As for commenting on the merits of the variance application itself, given this hearing's tight time constraints, I will leave most of those arguments to my neighbors

However, according to the Code of Virginia, one of the criteria a variance application must meet is that: "The property interest for which the variance is being requested was acquired in good faith and any hardship was not created by the applicant for the variance." Frankly, if ACP experiences any hardship if they can't go through Nelson's Special Flood Hazard Areas, I would argue that it brought it entirely upon itself when it insisted on ignoring citizen input and pushing for this ill-conceived route over steep, landslide-prone slopes, through established conservation sites and vulnerable floodplains.

It is not the BZA's responsibility to cover ACP's imprudent bet.

Please do not let Dominion bully you with thinly veiled threats that "at the end of the day" you have no power to deny them the variances they seek. Quite the contrary: if after thoughtful deliberations you conclude that this application does not meet the standards for a variance you have every right – and indeed a duty – to deny. Sure, pre-emption may ultimately become an issue and who knows, maybe FERC and FEMA will have to fight it out amongst themselves at some point? But at least you will be able to sleep at night knowing you did the best job you could to honor the intent of our Ordinance.

Respectfully,

Joyce Burton
Afton

Draft 12-03-2018

Final 05-06-2019

Ann Buteau lives at 6556 James River Rd. She noted that her comments are on behalf of Richard G. Averitt and read from the following:

BZA

For the BZA - on behalf of the Averitt's who live on Grace Glen in Nelson County Virginia and their business entity Rockfish Valley Investments, LLC which owns the Spruce Creek Property where one of the original 11 variances was requested across the FEMA floodplain.

We understand the Nelson County Board of Zoning Appeals is being asked to grant a variance to ACP for construction of their 42-inch high-pressure Liquefied Natural Gas pipeline through the high-risk FEMA floodplain. We believe this variance represents an extraordinary risk to safety and water quality and is in direct conflict with the wishes of the citizens of the county and the Board of Supervisors expressed desire to protect the county by specifically identifying these places of high risk through special floodplain zoning. On the merits, we believe the variance should be rejected for these reasons and many more you will hear tonight.

As a matter of law, we assert that this request is unlawful and a violation of Virginia Code § 15.22310 and should be rejected as an insufficient application since the applicant for the variance does not meet the required standards in the code nor have the standing to bring such a request.

Only certain entities may apply for a variance or special exception from a zoning ordinance enacted under Virginia Code § 15.2-2280.

Specifically, Virginia Code § 15.22310 provides that "[a]pplications for special exceptions and variances may be made by any property owner, tenant, government official, department, board or bureau."

ACP is not an owner, tenant, government official, department, board or bureau and therefore has no legal standing to request a variance. Even on properties where ACP has obtained an easement, they must have the property owner signed on the application to request zoning variances.

To allow any easement holder to request a change in zoning or variance on another party's land just because they have a legal easement to access some of that party's property is both unlawful and would set a very dangerous precedent in a county where thousands of homeowners have easements for access roads across other landowners' property.

For both the practical and legal issues, the BZA must refuse these requests for variance.

With respect,
Richard G. Averitt

Draft 12-03-2018

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Barbara Fuhrman lives at 215 Flying Eagle Court. She read the following information:

215 Flying Eagle Ct.
Nellysford, VA 22958
Dec. 3, 2018

Dear Members of the Board of Zoning Appeals,

My comments pertain to the ACP's applications for variances to install a pipeline containing hazardous/explosive materials in several Special Flood Hazard Areas in violation of Nelson County's Floodplain Ordinance.

Although our parcel, (21-14-A,) is not included in the current variance requests, it is reasonable to assume that ACP will soon apply for a similar variance on our property. Therefore, my husband and I are concerned that the decisions made at this hearing may also impact later decisions made in the matter of our property.

We expect the ACP to adhere to every ordinance, policy, and regulation that applies. We also expect the Zoning Board to uphold the current ordinances regarding hazardous materials in floodplains. We are unaware of any terms or conditions in our easement agreement allowing ACP to seek a variance on our property. We are also seeking counsel from our lawyer, Chuck Lollar, regarding this matter.

In addition, in case I am unable to be heard at the public meeting on Dec. 3, 2018, I am submitting our written concern to the Board to be included in the public record.

Sincerely,



Barbara T. Fuhrman



Robert E. Fuhrman

Draft 12-03-2018

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Ms. Fuhrman also noted that a month ago she saw a 3 foot wide boulder flying down her part of the river and an entire oak tree that was forced into the bank of the river resulting in a giant hole.

Douglas Wellman and his wife live at 776 Laurel Ln. He noted that this is very near where Rte 29 crosses the Rockfish River and that this was one of the most devastated sites during Hurricane Camille. He noted that in the last two decades there have been over 11,700 incidents of failure for gas transmitting pipelines like the ACP. He noted that in January of 2018 at the dedication of the 36" diameter Leach Xpress Pipeline in West Virginia the president of Trans Canada said "This is truly a best in class pipeline and we look forward to many years of safe reliable and efficient transmission on behalf of our customers." He noted that 6 months after he said this the pipeline ruptured and exploded due to land subsidence. He noted that heavy rains increase the chance of soil subsidence. He also noted that the Fourth National Climate Assessment states "Extreme rainfall events have increased in frequency and intensity in the South East and there is high confidence that they will continue to increase in the future." He noted that Nelson County's flood plain ordinance was enacted to protect the county's floodplains for the benefit of all of us. He asked for the BZA to deny the variance requests.

Deborah Kushner lives at 776 Lyons hollow. She noted that the higher standards of our current flood plain ordinance specifically prohibit the uses that the ACP plans to push through. She noted that the ACP representative said that there will be no profile of the pipeline when it is 5 feet underground. She noted that having an impervious pipeline 5 feet under the edge of the soil will not allow the soil to absorb the excess water. She noted that water velocity will increase because there is no floodplain to act as a sink. She noted that she just returned from spending several days along the Mountain Valley Pipeline route and encouraged others to see the devastation that occurs there. She noted that the flood plain ordinance was adopted for very good reasons. She noted that there are many reports of failures along other similar pipelines. She urged the BZA to honor Nelson County's horrific experience with Camille and to protect Nelson County.

Ben Cunningham lives at 171 Joshua Ln. He noted that he grew up in Nelson County and plans on staying in Nelson County after traveling to many other places. He noted that he also owns a business at the same address. He noted that he has not seen any other commenters mention the increased flow rate or velocity of flow that would occur in these floodplains from the newly cleared right of ways on the steep slopes. He noted that they would contribute to sheet flow of water, more sediment, and higher likelihood of slope failure. He noted that many of the pipes purchased by ACP have sat for over a year past their manufacturer Durabond's recommended storage date. He noted that when a manufacturer tells you not to keep something out in the sun or rain then you should not use it for an integral energy corridor after doing so. He noted that him living in Nelson County is not contingent on this pipeline not being built but that he would like Nelson County to stay as safe as it has been.

Connie Brennan lives at 524 Buck Creek Ln. She thanked the BZA for their service and noted that she had also served Nelson County for several years. She noted that Nelson County is blessed with clear and

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clean water and beautiful mountains, hills, and floodplains. She explained that these need to be protected for future generations. She noted that the ACP and Dominion do not care about the residents of Nelson County. She noted that pipelines passing through Nelson County's streams with toxic and combustible natural gas are not acceptable to anyone except those with money clouding their vision. She noted that not one person, business, or organization in the county would have access to this natural gas and that there are better alternatives for energy. She noted that when she was on the Board of Supervisors that they, the Planning Commission, the Zoning Director, and members of the public worked very hard to make sure the revised current ordinance met their mandate to protect the health, safety, and welfare of the residents of Nelson County. She noted that she personally read numerous other ordinances, attended workshops, and consulted with many people that knew much more about the pipeline than she did. She also noted that she met regularly with former Planning and Zoning Director Tim Padalino to craft the document for approval by the Board of Supervisors. She noted that the goal was to create a document that did not just address the issues of today but to consider the issues of the future as well. She explained that she believes the BZA was advised that denying these requests would cause the ACP to appeal the decision and that would cost the taxpayers a lot of money for legal representation. She noted that the county would see nothing but heartbreak from the pipeline and that she sees no better reason for taxpayer money than to protect the precious resources of the Earth.

Ernie Reed lives at 971 Rainbow Ridge Rd. and is speaking tonight as a private citizen. He noted that the applicant lacks standing to request the variances because possession of an easement does not constitute ownership for application. He also noted that last month the U.S. Army Corps of Engineers suspended their nationwide permit 12 for the ACP to cross over 1500 streams across three states (including all floodplain crossings in question). He noted that the applicant at this time has no federal or state permits to cross any water bodies and therefore does not have standing to apply for these variances. He noted that executive order 11988 requires federal agencies to avoid to the extent possible, both long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development where there is a practicable alternative. He noted that currently there is a lawsuit pending on behalf of Friends of Nelson regarding insufficient evaluation of alternatives. He noted that until the court has ruled in sufficiency of alternative route analysis, it can't be determined that the applicant has made or analyzed a practical alternative that avoids flood plains in Nelson County. In addition he noted that no risk analysis has been done regarding these variances granting proposals to cross floodplains in Nelson County. He noted that FEMA is currently undertaking a watershed analysis of the Rockfish River and James River watersheds and in generating information critical to risk analysis regarding pipeline construction through Nelson County's floodplains. He noted that a FEMA compliant analysis report should be completed on the project prior to application for the variances. He noted that it's impossible to tell if there are any threats to public safety in the absence of this analysis. He noted that the cost of ACP is reported to be approaching \$7 billion and an additional \$1 billion in straight profits. He noted that this cost of over \$1 billion will be passed off to rate payers who are being asked to bear the cost. He noted that the ACP has created a drop in property sales and values and on land uses which are economic nuisances. He noted that the impacts to roads and other inconveniences to communities during construction as well as the impacts to waterways during construction and the continuous presence of hazardous material in Violation of Article 10 of the Nelson Count Zoning Ordinance.

Draft 12-03-2018

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Variance 2018-07

Eleanor Amidon lives at 931 Tanbark Dr. She read the following information:

Comment on Variance 2018-007 for Nelson BZA public hearing, Dec. 3, 2018
by Eleanor Amidon, 931 Tanbark Dr., Afton, VA 22920

I am a member of the Virginia Master Naturalists. One of our citizen science projects is to collect information about butterflies in our area. This year, 2018, is the 19th year of the Nelson County annual North American Butterfly Association (NABA) count. NABA is a non-profit organization dedicated to increasing public enjoyment and conservation of butterflies. NABA's Butterfly Monitoring Program has amassed the largest database of butterfly occurrences and abundances in the world. These data are increasingly used by scientists to study butterfly population trends and to answer questions about butterfly biology. Citizen scientists count and report the numbers of different species sighted at the same locations each year. Count circle coordinates, once chosen, remain the same, and count data become more valuable the longer a count is run.

Grape Lawn Drive is one of five locations within our count circle, chosen as an area likely to remain unchanged over the years. The butterflies that nectar along Grape Lawn Drive, where we count them, live in the surrounding habitat.

The proposed Atlantic Coast Pipeline (ACP) would demolish the meadow beside Grape Lawn Drive. Two species of butterflies (Least Skipper and Juniper Hairstreak) that are found in this meadow are rare elsewhere in Nelson County.

The proposed ACP would both harm the butterflies' home environment and prevent continuous data collection. The adverse environmental impact cannot be "mitigated" by changing locations. After 19 years of collecting data at the same location, the data stream would be effectively terminated.

Environmental damages that cannot be avoided or mitigated make ACP's proposed use of this land unacceptable. The BZA should reject their application for this proposed variance.

On Nov. 28, 2018, The New York Times printed an article entitled "The Insect Apocalypse is Here" which chronicles the decline of insect populations in Europe and the US, quoting several scientific studies. For example, "In the United States, scientists recently found the population of monarch butterflies fell by 90 percent in the last 20 years, a loss of 900 million individuals; the rusty-patched bumblebee, which once lived in 28 states, dropped by 87 percent over the same period. With other, less-studied insect species, one butterfly researcher told me, "all we can do is wave our arms and say, 'It's not here anymore!' " Still, the most disquieting thing wasn't the disappearance of certain species of insects; it was the deeper worry, ... that a whole insect world might be quietly going missing, a loss of abundance that could alter the planet in unknowable ways. " Insects are low on the food chain. We need them. They are not an insignificant loss, just because they're small. Since federal and state agencies fail to address these issues adequately, we at the local level need to exercise our good sense and protect what we have. The BZA should deny a variance to disturb the floodplain near Grape Lawn Drive.

Draft 12-03-2018

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Variance 2018-08

Variance 2018-09

Wisteria Johnson lives at, and noted that her sister Elizabeth Miles is a landowner at, 2016 and 2512 Wheeler's Cove Rd. She noted that Falls Run Creek runs through their land. She explained that she has had 67 years of witnessing events in the county. She pointed out that all three of the flood zones in Variances 2018-09 and 2018-10 are at the foot of mountains. She noted that placing a pipeline near her in the flood plain increases the chance of flood damage and would affect their lives and potentially trap them from leaving or going to their home. She noted that she has witnessed rapid rushing waters from their mountains and that with global change and predictions of more rainfall she is frightened. She explained that these waters have dug 2-3' holes in their road as well as dislodging road pipes. She noted that she understands the BZA's difficult position but that she asks them that if they are prone to error that they error on the side of Nelson County and not the ACP.

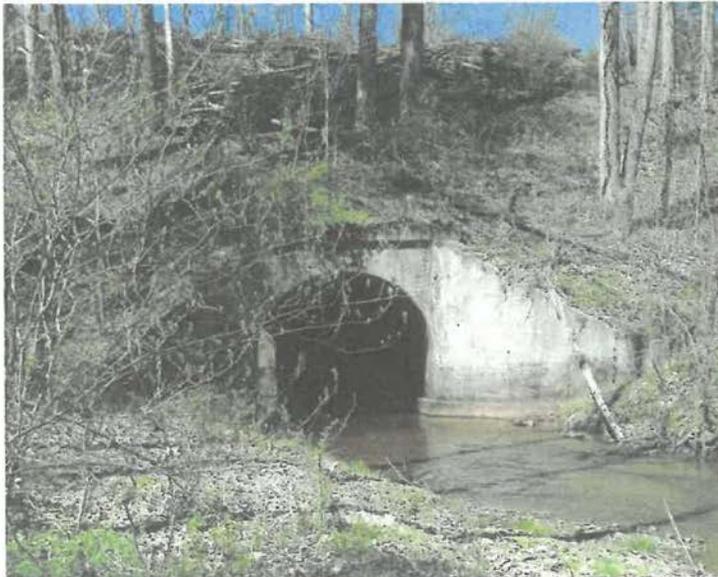
Janice Jackson lives at 6438 Laurel Rd. in the Dutch Creek area. She noted that she is in close proximity to 2018-09 and 2018-10. She explained that she is part of the Dutch Creek Agricultural Forest district that also borders these flood plains. She noted that one of the criteria to be evaluated when issuing a variance is that this should not be of substantial detriment to nearby properties and that the granting of the variance will not change the character of the area. She explained that this is not possible for the pipeline. She noted that she is in strong opposition to these variances being granted. She noted that the standards listed in 10.14F of the Floodplain Ordinance state that in a special flood hazard area even a slight chance of flooding poses too great a threat to public health, safety, and welfare. She noted that the steep slopes add to the likelihood of sediment and mud in the flood plain. She also provided the following photos:

*Janice
Jackson*

Dutch Creek and Falls Run Water Crossings



Falls Run Crossing – Variance 009



Dutch Creek Crossing – Variance 010

Steep slopes with likelihood of sediment and mud in the floodplain



Debris and sediment at confluence of Dutch Creek and Falls Run just downstream from pipeline crossings after recent storm



Mudflow to floodplain

Water crossings and floodplains from Starvale to Dutch Creek, the Rockfish and toward the James



12/10/2017, 12:26:09 PM

⊗ ACP MilePosts (12/30/2016 Route)

● ACP River & Stream Crossings

□ ACP Current Route

□ ACP Access Roads - Current Route

— NHD Rivers and Streams ACP

FEMA_Floodplains

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Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community

Pipeline in red. Falls Run and Dutch Creek Crossings between MP 175 – 176 at bottom left. Flood plain all along Dutch Creek to the Rockfish.

Judith Wright lives at 1315 Dutch Creek Ln in Shipman. She presented the following information:

Judith Wright

(name, address)

I ask that you reject the requested variance.

The variances would impact two of the properties that make up the Dutch Creek Agricultural and Forestal District. The district was formed in 2003 under the code of Virginia, paragraph 15.2-4301 which declares:

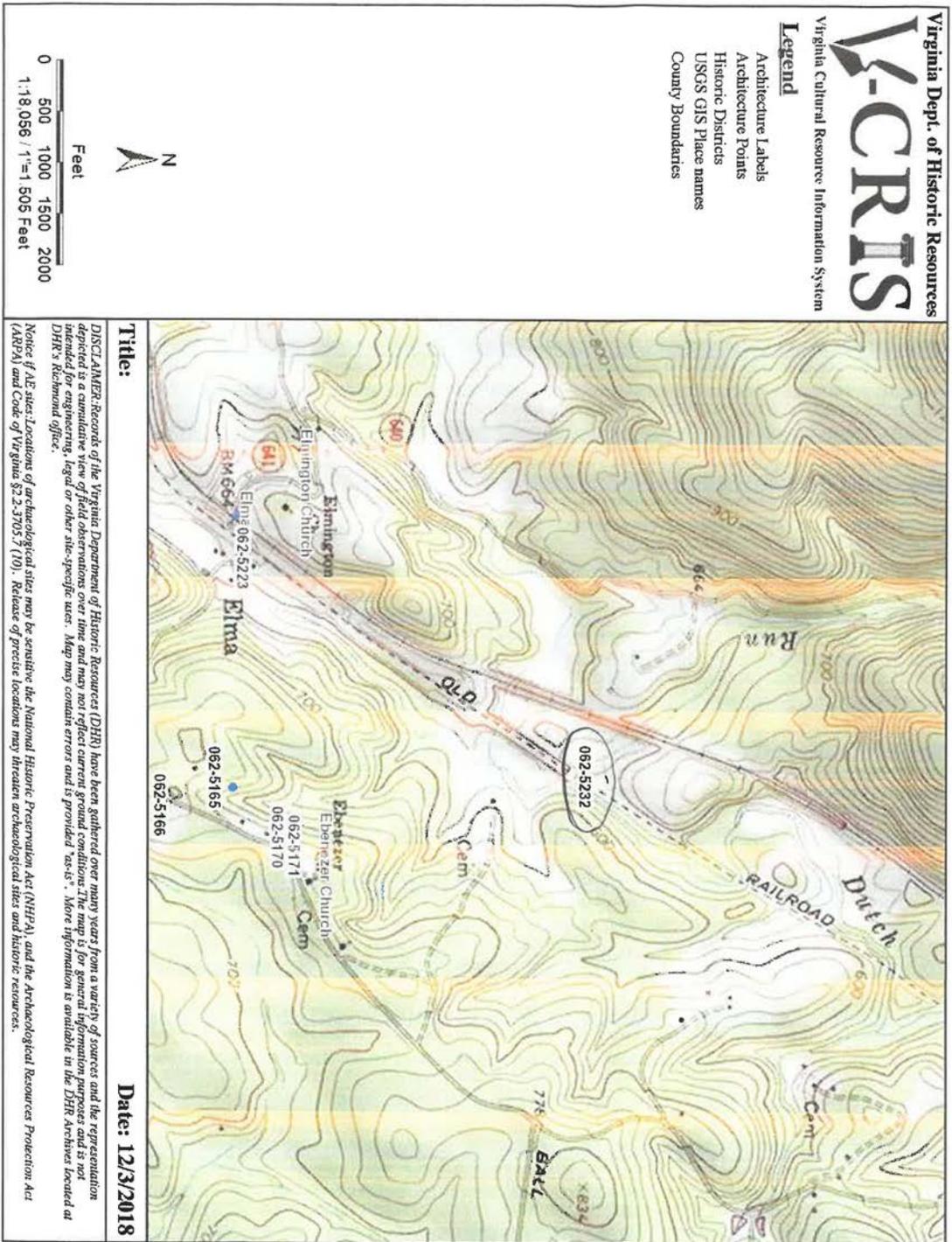
It is the policy of the Commonwealth to conserve and protect and to encourage the development and improvement of the Commonwealth's agricultural and forestal lands for the production of food and other agricultural and forestal products. It is also the policy of the Commonwealth to **conserve and protect agricultural and forestal lands as valued natural and ecological resources which provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes.**

The variance(s) will be contrary to **all** these goals.

Additionally, the zoning ordinance requires the consideration of all relevant factors **including the presence of historic structures.** Falls Creek, near its confluence with Dutch Creek, is the site of cut-stone bridge abutments built circa 1860 by the Orange and Alexandria Railroad as it extended its line to Lynchburg. This artifact is recorded and mapped by the Virginia Department of Historical Resources with the identification number 062-5232 in the Virginia Cultural Information System.

I will also note that this bridge was ultimately abandoned because of the difficulty keeping it open as these creeks frequently washed the railroad out. The present day track is located over a thousand feet further up the mountain.

The construction activities the variance seeks to permit will threaten this structure and I again ask that the **variance be rejected.**



Susan McSwain lives at 3254 Dutch Creek Ln. She read from the following information:

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Robert McSwain lives at 3254 Dutch Creek Ln. He read from the following information:

Robert McSwain, Dutch Creek Lane, Shipman

The Pipeline and Hazardous Materials Safety Administration states that pipelines conveying flammable or explosive material, such as natural gas, pose special safety concerns. Indeed, natural gas is specifically mentioned in the County Zoning Ordinance as a hazardous material requiring high standards in Special Flood Hazard Areas. The University of California, Santa Cruz reports that pipeline accidents over the past 20 years have resulted in 548 deaths, 2,576 injuries, and over \$8.5 billion in financial damages. These incidents were caused by corrosion, equipment failure, and flooding.

Flooding is a serious risk in Nelson to life and property, and the Zoning Ordinance requires extra permits and notifications that must be submitted before a variance can be issued in Special Flood Hazard Areas. These areas are defined by FEMA as areas with a special flood or mudflow, and/or flood related erosion hazard. Our Zoning Ordinance further defines these areas as "any land in a floodplain subject to a one percent or greater chance of being flooded in any given year." Appendix A, section F2 states that "The storage of natural gas for any time period longer than 30 days is prohibited in a Special Flood Hazard Area."

Everyone in this room has no doubt driven the 29 bypass around Lynchburg. This bypass is 150 feet wide, including the paved shoulders on either side of the road. The right-of-way that will be clear-cut for the ACP is also 150 feet wide.

According to ACP's submission to FERC, of 36 counties in the proposed pipeline route (including WV, VA, and NC), Nelson ranks first in acreage with slopes greater than 30%, and third for having major revegetation concerns. ¹

Trees are paramount to preventing soil erosion on steep slopes, and forest cover is an important factor in mountain slope stability. Studies by the USDA suggest that 78% of landslides and debris flows in the Appalachian region have been a result of human activity and clearing of forest. ²

The Right-of-Way for the ACP will be revegetated, but with grass, not trees. Dominion's own reports to FERC raised serious concerns about the ability to revegetate areas with steep slopes and thin soil. Not only will trees be removed within the Right-of-Way, but roots on the periphery will be destroyed, causing mortality among damaged trees for years into the future.

The ACP clear-cut will send rainwater and mud rushing down to our streams. Please deny the variances.

Thank you.

¹ (Resource Report 7, Soils, Tables 7.4.1-1 and 1-2 originally submitted to FERC by Dominion/ACP in September 2015, and updated in Appendix I of their July 18, 2016 Supplemental Filing)

² <https://www.fs.usda.gov/treearch/pubs/52372>

Draft 12-03-2018

Final 05-06-2019

Eleanor Amidon lives at 931 Tanbark Dr. She read from the following information:

Comment on Variance 2018-009 for Nelson BZA public hearing, Dec. 3, 2018
by Eleanor Amidon, 931 Tanbark Dr., Afton, VA 22920

These are general comments, and I would like these comments entered into the public record for all four variances.

Our floodplain ordinance lists six conditions which are deal-breakers in BZA's granting of a variance. They are:

1. Unacceptable or prohibited increases in flood heights;
2. Additional threats to public safety;
3. Extraordinary public expense;
4. Nuisances being created;
5. Fraud or victimization of the public; or
6. Conflict with local laws or ordinances.

I would like to focus on 2, 3, and 4. Given the steep slopes through which the proposed ACP would pass, there is a high likelihood of a "nuisance being created" by any heavy rainfall over steep slopes where the soil has been disturbed. Mudslides and debris flows cause havoc on agricultural lands, and when they impinge on buildings or roadways, are a "threat to public safety," with a potential for "extraordinary public expense." Mud becomes silt in waterways as it is washed downhill and downstream. One need only look at the heartbreaking and unnecessary destruction being caused by the construction of the Mountain Valley Pipeline to see what is in store for Nelson County, if the proposed ACP is allowed to proceed.

Common sense dictates that these variances will result in unacceptable destruction of land and waters, with untold nuisances, threats to public safety, and extraordinary public expense to clean up whatever messes occur in the future, if this project is allowed to proceed. The BZA should use their common sense and deny these variance applications.

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Jim Troy 3036 Dutch Creek Ln. He presented the following information:

My name is Jim Troy and I live at 3036 Dutch Creek Lane on the Shipman mail route.

I wish to address Variance #2018-10 on Dutch Creek. My home is on the upper end of Dutch Creek, about 3 miles from Elma and the projected path of the Atlantic Coast Pipeline. I have become very familiar with the parts of Dutch Creek where the crossings are projected, because I have been part of a team effort monitoring the creek at two places each month for the past two years, as part of a citizen science program.

While one of the sites is above the projected crossings in the flood plain, the other, more primary one is below the crossings at the confluence of Dutch Creek and Fall Run. This is squarely in the flood plain -- fairly level land where the creek meanders. A large causeway built for a now unused leg of the old Southern Railway rises from the flood plain some 40-50 feet, and you can still see the foundations for a trestle over Fall Run made of huge carved stones -- still in place after over 150 years.

Two years of monthly testing has shown us that the quality of the water is pretty constantly good, varying mainly with temperature and rainfall through the seasons. We record the water condition, the stage (or depth), the air and water temperatures, conductivity, pH, and turbidity, while noting any precipitation in the preceding two days. We have observed that, because of this year's above average rainfall, the conductivity readings (a measure of the water to pass an electrical current which is affected by water flow, temperature, and inorganic dissolved solids) have been lower than last year (2017). Also, turbidity, which is usually very low (indicating excellent clarity) has been somewhat higher, especially after the rains that came with hurricanes Florence and Michael. Overall, however, the readings for conductivity and turbidity are on the low end of the scale, indicating good to excellent quality.

When we first moved to the upper part of Dutch Creek in 1980, I remember seeing fish up to 6" long, and I was told back then that Dutch Creek was the last stream east of Highway 29 to have native trout. This is no longer the case, and I suspect that logging around the headwaters over the years caused enough siltation to fatally impact the fish and stream insect populations they depend on. We have observed very small fish at the lower observation site, where the water is slow, and we have hopes they will grow and make their way upstream someday. But if the pipeline is constructed, there would likely be enough siltation and other disturbances to set them back again. No matter what assurances the ACP outfit gives, there will be disturbances before, during, and after construction. We could expect higher readings for conductivity and turbidity, altered pH, and even altered stage levels. These could impact aquatic life for a long way downstream.

There are also major questions about what would happen if this pipeline goes in and we have a catastrophic flood event as we did with Camille. Undoubtedly a large gas pipeline in the ground under this flood plain would be vulnerable, and the risk for anyone who lives nearby (including wildlife) would be huge.

I ask you to say no to this variance and all the floodplain variances for the ACP for the sake of our people and for wildlife. Please follow the Nelson County Floodplain Ordinance and prohibit the installation of a dangerous industrial facility in this sensitive natural setting.

Thank you.

Variance 2018-10

Draft 12-03-2018

Final 05-06-2019

Mr. Shreve noted that Leah Young with KCI Engineers is here and should speak before the BZA closes the public hearings.

Leah Young is from KCI engineers that serves as the technical review for the BZA. She read the following notes:

Floodplain Variance Conditions

The variance is conditionally approved by the Board of Zoning Appeals subject to requirements of Part A being completed to the satisfaction of the Floodplain Administrator. Commencement of construction shall be subject to the conditions set forth in Part B.

Part A: Conditions for Approval

1. The Applicant shall provide final copies of all IFC-Alignment Sheets issued for Construction to the County, related to construction for each approved floodplain crossing, including subsequent amendment to such sheets.
2. An individual HEC-RAS model must be provided for each crossing.
3. Submitted floodplain applications must be amended, to the extent necessary, to reflect updated data.
4. For Floodplain Crossing – **Falls Run** – the following will apply:
 - a. Applicant must provide cross sections in the area of the pipeline crossing at an approximately 250 linear foot interval, measured along the centerline of the stream, up to the limits of existing field topographic data to a maximum of 500 linear feet upstream and 500 linear feet downstream of the pipeline crossing to establish the geometry of the stream and allow for a measurement of the projects Water Surface Elevation impact.
 - b. The cross sections required by section 4.a. above, must reflect the geometry of the channel at the section to establish the cross-sectional width and slope at the respective section.
 - c. Applicant shall provide a topographic location map of the cross-section locations on USGS Topographic Maps.
 - d. The Applicant must provide an updated narrative summary of all modeled cross sections and must compare existing and proposed conditions.
 - e. To the extent necessitated by the provision of the information required in these conditions, a restated “no-rise” justification shall be provided or a “no-impact” statement if a “no-rise” condition cannot be achieved.
 - *f. Any maps submitted must use an established naming convention consistent with the names given on FEMA maps so as to avoid confusion as to which stream is proposed to be crossed, *to the extent possible.*
5. Applicant shall utilize the FEMA model that is in effect as of the date of the Board of Zoning Appeals conditional approval to compare corrective effective (existing) and revised (proposed) data. Effective FEMA discharges shall be utilized to prepare any updated data.
6. Applicant shall provide topographic work map showing locations of effective and added cross sections utilizing the new naming conventions.
7. Applicant shall provide a narrative summary of methodologies utilized for the modeling exercise specific to this crossing.
8. To the extent necessitated by the provision of the information required in these conditions, a restated “no-rise” justification shall be provided or a full CLMR data package if “no-rise” cannot be achieved.

9. No modifications to the access road within the Falls Run Floodplain, specifically to include any changes to the horizontal and/or vertical alignments of the access road, shall be permitted.
10. No modifications shall be made to the Falls Run Access Road Floodplain Crossing for the duration of the Project.

Part B: Permit Conditions

1. All necessary approvals/permits for the floodplain crossings shall be acquired from all applicable regulatory bodies of the state and federal government and copies of such approvals/permits shall be provided to the Floodplain Administrator upon request.
2. No Permanent above ground pipeline appurtenances shall be located in any floodplain.
3. The duration of temporary stream impacts from diversion or dewatering activities as identified on the Erosion and Sediment Control Plans approved by the Virginia Department of Environmental Quality shall not exceed 365 calendar days from installation.
4. Applicant shall notify the Nelson County Floodplain Administrator within 72 hours of the start of construction in any floodplain, and within 72 hours of the completion of such construction.
5. Any non-compliance with these Conditions or any other application section of the Floodplain Ordinance shall be subject to the penalty provided in Section 15.2 of the Nelson County Zoning Ordinance.
6. Any structure constructed, reconstructed, enlarged, altered, or relocated in noncompliance with the Floodplain Ordinance or this variance may be declared by the Nelson County Board of Supervisors to be a public nuisance and abated as such as provided in VA. CODE ANN. §15.2-900 et seq. (Rep. Vol. 2018).

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Mr. Childs stated that he cannot support the variance requests and that he is troubled by the last minute conditional request proposal. He explained that he does not feel like the presentation from the ACP representatives listed any other than their opinions. He noted that the factors not referring to the floodplain do not matter in this case.

Ms. Saunders thanked everyone for coming out to voice their concerns and explained that she grew up in Nelson County and loves it very much. She noted that the BZA would be approving a conditional variance approval with the conditions stated by Ms. Leah Young. She noted that she has concerns about the monitoring process. She noted that she is aware of the debris from the wood cutting and the way that the streams would be altered and that it is a real concern for her.

Mr. Childs made a motion to deny the request for variances 2018-07, -08, -09, and -10 on the grounds that insufficient evidence has been provided that the applicant can meet the flood plain ordinance requirements. Ms. Saunders seconded the motion.

Yes:

Gifford Childs

Ron Moyer

Carole Saunders

No:

Mary Kathryn Allen

Angela Jones

The motion passed with a vote of 3-2.

- Discussion of the Special Use Permit section of the Zoning Ordinance:

Ms. Shackelford noted that at the November 5th, 2018 meeting the BZA had discussed the standards for vesting or establishing a special use permit and specifically the requirement that construction be commenced within a year if no other time was given by the Board of Supervisors on approval of the Special Use Permit. She explained that she has put together a few options for the BZA to discuss and presented the following:

12-3-8.b. Whenever a Special Use Permit is approved by the Board of Supervisors, the special use authorized shall be established, or any construction authorized shall be commenced and diligently pursued, within such time as the Board of Supervisors may have specified, or, if no such time has been specified, then within twelve (12) months from the approval date of such permit.

The question raised by the Board of Zoning Appeals at its last meeting on November 5, 2018 was whether this was a fair standard. If the BZA believes that this is too high of a threshold to meet in order for the applicant of a Special Use Permit to be able to continue pursuing their use, then there are a number of options that could be considered. Any change in the language in the zoning ordinance would require public hearing by the Planning Commission and Board of Supervisors.

Option 1. Remove the section specifically stating that construction shall be commenced. The requirement would then be that the use shall be established or any constructions shall be diligently pursued, within the time frame. This option creates significant amounts of leeway for interpretation by the Zoning Administrator, which is not necessarily ideal and could result in differences in enforcement as Zoning Administrators change over time. But it does reduce the threshold in which to vest the rights to continue the development of the property after a special use is authorized.

Option 2. Define what construction means in this section of the ordinance. Construction could be defined to include development of engineering plans at significant cost to the applicant; environmental impact studies; pursuit of permits from other state or local agencies; site preparation work to include land disturbance, road construction, etc. This would provide much clearer guidelines for what would be considered necessary activity to vest the rights of the applicant, but could also potentially leave out activities that are similar in nature/scope but not specifically referenced.

Option 3. Leave the ordinance written as is.

Ms. Shackelford also noted that Ms. Shelby Bruguere (not present) suggested the possibility of changing the expiration from one year to two years.

Draft 12-03-2018

Final 05-06-2019

Mr. Childs noted that he thinks the simplest solution is to extend the expiration date from 12 months to 24 months. Ms. Shackelford noted that the issue with this is that the applicant could then sit on the permit for almost two years before beginning construction. Ms. Allen noted that she agrees that 12 months sounds like a lot of time but that it does take some state agencies a minimum of 45 days to get back to an applicant. She proposed changing it to 18 months to allow for a more time for applicants to work with state agencies. Ms. Saunders noted that the Board of Supervisors should treat permit applications case by case and give each one an expiration appropriate to it. She noted that it should be clarified to the applicant exactly how much time they have until it expires and that there should be an option to do an 18 month permit if the applicant feels that they will need an extension.

Ms. Saunders noted that she agrees that 18 months is good but that they should review existing SUPs that may or may not have expired. Mr. Childs agreed. Ms. Saunders noted that they need to clarify what 'construction' means. Ms. Shackelford noted that she will check the state code to verify that they are able to change the expiration time to 18 months if that is something the BZA would like to explore doing. The Board decided to have Ms. Shackelford write up a more formal proposal.

Ms. Jones made a motion to adjourn the meeting at 9:18 PM. Mr. Childs seconded. All approved except Ron Moyer (who had to leave a few minutes earlier).

Respectfully submitted,



Emily Hjulstrom