TWENTY-THIRD JUDICIAL CIRCUIT
OF VIRGINIA

CHARLES N. DORSEY, JUDGE
ROANOKE COUNTY COURTHOUSE
305 EAST MAIN STREET
SALEM, VIRGINIA 24153
(540) 387-6041
FAX (540) 387-6278
E-MAIL: CDORSEY@VACOURTS.GOV

COMMONWEALTH OF VIRGINIA

CIRCUIT COURT FOR THE COUNTY OF ROANOKE
CIRCUIT COURT FOR THE CITY OF ROANOKE
CIRCUIT COURT FOR THE CITY OF SALEM

3 October 2019

VIA E-MAIL ONLY

James K. Cowan, Jr., Esquire
jcowan@cowanperry.com

Ruth Ellen Kuhnel, Esquire
rekuhnel@roanokecountyva.gov

Peter S. Lubeck, Esquire
plubeck@roanokecountyva.gov

James I. Gilbert, IV
jgilbert@gbsrattorneys.com

Re: Appeal of September 25, 2018 Decision of the Board of Supervisors of Roanoke County, Virginia, Special Use Permit Application PZ-1800595
Stan Seymour, Jane Seymour, Adrian Maver & Blaine Creasy v. 5985 Coleman Road, LLC, Roanoke County Circuit Court Case Number CL18-1555

Dear Counsel:

This matter came before the Court on July 29, 2019. Thank you all for your thorough preparation and arguments. Having reviewed the relevant pleadings, case law, and having considered both the written and oral arguments of counsel, the Court finds the Petitioners do not have standing for the reasons discussed below.

FACTS

Petitioners Stan and Jane Seymour live at 5942 Coleman Rd., Roanoke, Virginia 24018. The Seymours also own the property and residence located at 5960 Coleman Rd., Roanoke, Virginia 24018. Petitioners Adrian Maver and Blaine Creasy own and reside on property located at 5946 Coleman Rd., Roanoke, Virginia 24018, which is adjacent to the Seymour property. 5985 Coleman Road, LLC is the owner of the property located at 5985 Coleman Rd., Roanoke, Virginia 24018, access to which is only available by a recorded easement across the Seymour and Maver and Creasy properties.

The Southwest Virginia Wildlife Center of Roanoke ("SWCV") filed a Special Use Permit with the Roanoke County Department of Community Development to install a "raptor building," more commonly known as an aviary, to rehabilitate large birds at 5985 Coleman Road. Coleman Road is a partially public and partially private drive. The SWCV is accessible only through Coleman Road and an easement granted by deed which traverses Petitioners' properties. Petitioner, Stan Seymour, complained to the Zoning Administrator to stop the approval process. The Zoning Administrator replied to Seymour's complaints by letters dated March 30 and May 17, 2018. The letters described, among other things, how a special use permit was the appropriate way to start the approval process for the aviary and that animals are not "boarded" at the Wildlife Center. Dissatisfied with the Zoning Administrator's written explanations, Petitioners appealed to the Board of Zoning Appeals (BZA). The Board of Zoning Appeals dismissed the appeal on August 15, 2018, stating that Petitioners lacked standing because they are not aggrieved parties. The Board of Supervisors of Roanoke County ultimately granted the Special Use Permit, although it imposed additional requirements.

ISSUE

Do Petitioners have standing?

LEGAL STANDARD

"The purpose of requiring standing is to make certain that a party who asserts a particular position has the legal right to do so and that his rights will be affected by the disposition of the case."[1]

A party who does not have an ownership interest in the subject property must satisfy a two-step test to have standing to challenge the BZA's decision.[2]

> "First, the complainant must own or occupy 'real property within or in close proximity to the property that is the subject of' the land use determination, thus establishing that it has a 'direct, immediate, pecuniary, and substantial interest in the decision.' Second, the complainant must allege facts demonstrating a particularized harm to 'some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.'[3]

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[1] *Goldman v. Landsidle*, 262 Va. 364, 371, 552 S.E.2d 67, 71 (2001).
[2] *See, e.g., Friends of the Rappahannock v. Caroline Cnty. Bd. of Supervisors*, 286 Va. 38, 48 (2013).
[3] *Id.* (citation omitted)

ANALYSIS

Petitioners claim they are aggrieved and have standing to challenge the Special Use Permit. The only access to the SVWC is by and through a deeded easement which traverses the Petitioners' properties. Petitioners own and occupy property within close proximity to the SVWC. The Seymours own and occupy one piece of property which shares a common property line with the SVWC. A second piece of property owned by the Seymours lies approximately 793 feet from the SVWC. The Maver and Creasy property is approximately 574 feet from the SVWC. Due to the fact that the easement across Petitioners' property serves as the only access to the SVWC, Petitioners allegedly have suffered particularized injury not shared by the general public. Petitioners allegedly are uniquely subject to increased traffic, dust, light and noise due to the granting of the Special Use Permit.

Friends of the Rappahannock is the controlling authority. The authorities cited by Petitioners have been superseded by *Friends of the Rappahannock.* In *Friends of the Rappahannock*, the Caroline County Board of Supervisors issued a permit to Black Marsh Farm, Inc., subject to thirty-three (33) enumerated conditions, to conduct a sand and gravel mining operation on a tract of land bordering the Rappahannock River.[4] Although the property was zoned for industrial use, the mining operation required a special use permit. Friends of the Rappahannock, a non-profit organization, along with six individual complainants, challenged the Board's land use decision to issue the permit. The plaintiffs' complaint claimed standing for each of the individual complainants who were all neighboring land owners. The plaintiffs listed four (4) vague concerns.[5] The court found that the concerns were not supported by facts and did not show a loss of any personal or property right different from that suffered by the public generally. The court found the plaintiffs lacked standing.

Petitioners here presented conclusory allegations regarding possible harm, but failed to articulate any tangible harm that would come out of the SVWC being located in close proximity to the Petitioners' property. The Supreme Court of Virginia has established that the Petitioners must meet "their burden to provide sufficient facts in their complaint."[6] Petitioners claim that the SVWC's easement across their property subjects Petitioners to increased traffic, dust, light and noise concerns, but there is no factual background to support these claims.[7] No factual evidence or background has been presented or established to support the allegations by Petitioners of harm. Further, no evidence has been presented that the construction of an additional raptor building would cause an increase in dust, light, noise, or other harm. As *Friends of the Rappahannock* states, while plaintiffs "presented conclusory allegations as to the possible harms, the general objections pled by the individual complainants present no factual background upon which an inference can be drawn that particular use of the property would produce such harms and thus

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[4] *Id* at 42.
[5] *Id* at 42-43.
[6] *Id* at 49.
[7] Compl. ¶¶ 29-30.

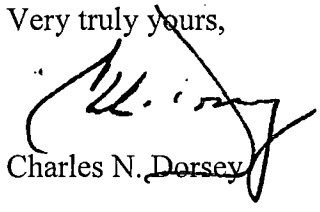
impact the complainants."[8] Additionally, Petitioners failed to articulate the loss of some personal or property right belonging to the individual Petitioners different from that which the general public might suffer.

While it is undisputed by Respondents that Petitioners have met the first prong of *Friends of the Rappahannock*, the Petitioners lack the required particularized facts to establish the second prong. In order to meet the *Friends of the Rappahannock* second prong, Petitioners must allege facts demonstrating a particularized harm to some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioners different from that suffered by the public generally.[9] Instead, Petitioner lists only generic problems that may occur with the heavier use of the easement for SVWC purposes. These generic problems are similar to those alleged by the plaintiffs in *Friends of the Rappahannock*, all of which the Supreme Court found insufficient to meet the particularized harm standard. Therefore, the Petitioners fail to meet the second prong of the *Friends of the Rappahannock* test, and do not have standing.

If Mr. Lubeck would draft an order, incorporating this opinion, and submit it for entry, after obtaining endorsements of all counsel, and preserving all objections, it would be appreciated.

With best regards, I am

Very truly yours,



Charles N. Dorsey

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[8] *Id* at 49.
[9] *Id* at 48.