

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, June 11, 2015**

Members present were George Allan Hayden, Chairman; William Greene, John Brown, Wayne Miedzinski and Ronald Payne.; Department of Land Use & Growth Management (LUGM) staff present were Yvonne Chaillet, Zoning Administrator; Phil Shire, Director and Shelia Smith, Recording Secretary. Attorney George Sparling was also present.

A sign-in sheet is on file at LUGM. All participants in all cases were sworn in. The Chair called the meeting to order at 6:30 p.m.

PUBLIC HEARINGS

ZAAP #14-131-0042 Consideration of a report for the Hearing Examiner – Appeal by David C. Quade and Carol C. Stockman-Quade of the Planning Director's approval of the site plan for Jeff's Tree Service. Mr. Miedzinski was unable to review the case. Another member has had communication with the applicants. Chairman Hayden asked if Jeff's Tree Service or Mr. Quade have any issues or comments? Hearing none, Chairman Hayden requested a motion from the board to reschedule the case until July 9, 2015. Mr. Miedzinski made a motion. Mr. Brown seconded and the motion passed by a 5-0 vote.

VAAP #14-1817 Tippett Property

Ms. Yvonne Chaillet, LUGM, was sworn for the record. The applicant is requesting a variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to disturb the Critical Area Buffer to construct a replacement deck. The property consists of 15,246 square feet; is zoned Rural Preservation (RPD) District, Limited Development Area (LDA) Overlay; and is located at 21690 Joe Hazel Road, Leonardtown, Maryland; Tax Map 39, Grid 24, Parcel 117, Election District 3.

Owner: Thomas P., Jr and Margaret Elizabeth Tippett
Present: Margaret Elizabeth Tippett, 20690 Joe Hazel Road, Leonardtown, Maryland 20650
Chris Longmore, Dugan, McKissick & Longmore

The property and variance request were advertised in The Enterprise on May 27, 2015 and June 3, 2015. Ms. Chaillet submitted the certification of publication, certification of property posting and mailing receipts for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. Ms. Chaillet gave an overview of the staff report dated May 29, 2015 and the applicable regulations pertaining to the application. Ms. Chaillet submitted the staff report with (4) attachments for the record, hereby labeled as Exhibit 2 by the Recording Secretary .Ms. Chaillet indicated the Critical Area Commission has reviewed the application and do not oppose the variance request.

Chairman Hayden swore in the following applicant and representative;
Margaret Tippett, 21690 Joe Hazel Road, Leonardtown, MD 20650

Mr. Longmore for the applicant gave an overview for the need for the variance to construct a replacement deck; .submitted photos of the property for the record hereby labeled as Exhibit # 3 by the Recording Secretary. Mr. Miedzinski asked if the deck would be covered ? Mrs. Tippett stated no, just a deck Mr. Payne inquired the staff report house drawing about the Critical Area three to one mitigation and what the level of disturbance was and Ms. Chaillet concurred that was what staff concluded.that the site plan was 450 square feet. Chairman Hayden and Mr. Sparling questioned just constructing a deck, is that considered disturbance? Ms. Chaillet, yes disturbance associated with getting the equipment there and used to put in footers and posts. Staff is currently working on a Critical Area Text Amendment and the mitigation for granting a variance based on the square footage disturbance in the buffer.

Chairman Hayden opened the hearing to public comment, hearing none, closed the hearing to public comment.

Mr. Brown made a motion in the matter of the VAAP # 14-1817, Tippet, having made a finding that the standards for granting a variance and the objectives of Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the variance request to disturb the Critical Area Buffer to construct a 240 square-foot deck.

Mr. Greene seconded and the motion passed by a 5-0 vote.

VAAP #13-132-010 – Lexington Park Ford

Ms. Yvonne Chaillet, LUGM, was sworn for the record. The applicant is requesting two variances from Schedule 63.3.b of the Comprehensive Zoning Ordinance: 1) to reduce the required buffer from an arterial road; and 2) to reduce the required buffer yard in the southeast corner of the property fronting planned FDR Boulevard.. The property contains parcel 10 - 13.86 acres (DAT); parcel 414 7.58 acres (DAT) is zoned Corridor Mixed Use (CMX) District (north of proposed FDR Blvd) and Community Commercial (CC) District (south of FDR Blvd) and is located at 22667 Three Notch Road, California, Maryland; Tax Map 43, Grid 01 and 02, Parcel 10 and 414, Election District 8.

Owner: Kody Holdings, LLC
Present: Tom Kody

The property and variance request were advertised in The Enterprise on May 27, 2015 and June 3, 2015. Ms. Chaillet submitted the certification of publication, certification of property posting and mailing receipts for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. Ms. Chaillet gave an overview of the staff report dated June 2, 2015 and the applicable regulations pertaining to the application. Ms. Chaillet submitted the staff report with (2) attachments for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*.

Mr. Miedzinski asked Ms.Chaillet: In reference to FDR Blvd, what is considered a major connector ? Ms. Chaillet's reply, based on the road width, in this case not all of FDR Blvd has been constructed and the estimated volume of traffic for example, and that designation is done by the Department of Public Works & Transportation. Mr. Miedzinski asked what is a type C buffer ? Ms. Chaillet replied 30 foot width.

Chairman Hayden swore in the following applicant and representative:

Jim Gotsch, P.E., Soltesz 23140 Moakley Street, Leonardtown, MD 20650
Tom Kody, Kody Holdings, LLC 8548 Georgetown Pike, McClean, VA 22102
Dale Leads, Owners Project Manager

Mr. Gotsch submitted the following applicants' exhibits for the record, hereby labeled as Exhibit 1-5 respectively for the Recording Secretary.

AP Exhibit 1- Storm water Management, Sediment & Erosion Control Concept Site Plan
AP Exhibit 2- FDR Blvd Buffer Yard Variance Plan
AP Exhibit 3 - Front Buffer Yard Variance Plan
AP Exhibit 4- Vicinity Map
AP Exhibit 5- Adjacent Property Buffer Yard Pictures

Mr. Gotsch gave a PowerPoint presentation explaining the uniqueness and the practical difficulty in reference to the project request for buffer yard standards. Department of Public Works and Transportation is taking a portion of the property for FDR Blvd storm water management. The track two parcel of property will be part of the Forrest Conservation. The property contains the

following : Commissioners Railroad Right of Way, SMECO Transmission Main Easement, METCOM Trunk line Sewer, Three Notch Trail and Future FDR Blvd (currently under design and not owned by the County yet).

Mr. Sparling requested to see if there was anything available that shows the exact area for which the variance is requested? Mr. Gotsch provided an arial exhibit 2 b photo in the presentation. Mr. Sparling stated "If the variance is to be granted, we need to define what the variance would be."

Mr. Gotsch presented the Adequate Public Facilities Road Options:

- 1) Retime the signal at Chancellors Run Road, which the State Highway Administration does not want to do because it would only be a tenth of a second difference in the timing of the light.
- 2) Pay a \$ 63,000 Fee in Lieu for the county to make improvements to FDR Blvd.
- 3) Donate FDR Blvd Right of Way and the piece of property for the storm water management pond which we plan to do.

Ms. Chaillet submitted page 63-6 of the St. Mary's County Comprehensive Zoning Ordinance for the record, hereby labeled as Exhibit 3 respectively by the Recording Secretary.

Mr. Sparling and Mr. Shire verified that the concept plan that was presented to the Planning Commission has been approved with the C buffer option. Mr. Gotsch agreed. Mr. Longmore's applicant agreed to request a 30 foot variance with a C buffer.

Chairman Hayden swore in Phil Shire for the record.

Phil Shire Planning Director, Department of Land Use and Growth Management

Mr. Shire agreed to the 30 foot variance and the C buffer without the requirement of a berm or fence due to the amount of fill dirt required to build up the property.

Mr. Payne asked about Mr. Armsworthy's satisfaction with the upgraded standard commercial driveway being installed from MD 235. Mr. Kody explained that the entrance is a significant benefit, which includes the 30 foot C density buffer overlapping the two properties.

Mr. Sparling indicated that FDR Blvd property has not been acquired by the County and is currently in the design phase and considered a proposal, for all intents and purposes.

Mr. Shire indicated that since FDR Blvd property is not planned or recorded and would not be considered a county collector the Commissioners Right of Way would not require the need for a buffer at this point.

Chairman Hayden opened the hearing to public comment, hearing none, closed the hearing to public comment.

Mr. Miedzinski made a motion in the matter of the VAAP # 13-132-010, Lexington Park Ford, having made a finding that the standards for granting a variance and the objectives of Schedule 63.3.b of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the variance request to reduce the required buffer yard from MD Route 235, an arterial road, from a 65-foot Type B buffer to a 30-foot Type C buffer without a berm or fence due to the amount of fill required to build up to a reasonable elevation. Mr. Brown seconded and the motion passed by a 5-0 vote.

Mr. Miedzinski made a motion in the matter of the VAAP # 13-132-010, Lexington Park Ford, having made a finding that the standards for granting a variance and the objectives of Schedule 63.3.b of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the variance request to reduce the required buffer yard in the southeast corner of the Property where its fronts proposed FDR Boulevard from a 65-foot

***Type B buffer to a 50-foot Type B buffer.
Mr. Greene seconded and the motion passed by a 5-0 vote.***

CUAP #15-135-001 – Lewis Bowles Property, Commercial Communication Tower

Ms. Yvonne Chaillet, LUGM, was sworn for the record. The applicant is requesting Conditional Use approval pursuant to Chapter 25 of the Comprehensive Zoning Ordinance to construct a commercial communication tower. The property contains 72.98 acres; is zoned Rural Preservation (RPD) District; and is located at 27550 Mechanicsville Road, Mechanicsville, Maryland; Tax Map 12, Grid 06, Parcel 15, Election District 5.

Owner: Lewis C. Bowles Jr.

Present: Page Wyrrough, Attorney

Present : Mark Fisher, Manny Dureja, Telecom Capital Group, LLC

Present: Patrick Mudd, P.E., Mudd Engineering LLC

The property and variance request were advertised in The Enterprise on May 27, 2015 and June 3, 2015. Ms. Chaillet submitted the certification of publication, certification of property posting and mailing receipts for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. Ms. Chaillet gave an overview of the staff report dated June 1, 2015 and the applicable regulations pertaining to the application. Ms. Chaillet submitted the staff report with (4) attachments for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*.

Chairman Hayden swore in the following representatives for the record

Mark Fisher Telecom Capital Group, LLC, 8915 Sherbrook Court, Owings, MD 20736
Patrick Mudd, P.E..Mudd Engineering, LLC, 17764 Whitestone Drive, Tall Timbers, MD 20690
Manny Dureja, Telecom Capital Group, LLC, 10302 Southern Blvd, Suite 250,
Dunkirk, MD 20754

Mr. Greene questioned the height of the tower 195 feet or 197 feet ? Mr. Dureja verified 195 feet with a 4 foot lightning rod. Ms. Chaillet confirmed the height correction as well.

Mr. Wyrrough submitted the following applicants' exhibits for the record, hereby labeled as Exhibit 1-10 respectively by the Recording Secretary.

AP Exhibit 1 – PowerPoint Presentation

AP Exhibit 2 – Verizon Wireless Letter of Intent for Co-Location to Proposed Site

AP Exhibit 3 – Radio-Frequency (RF) Analysis and Report

AP Exhibit 4 – National Environmental Policy Act (NEPA) Report

AP Exhibit 5 – Federal Aviation Administration (FAA) Letter of Height Approval

AP Exhibit 6 – Maryland Aviation Administration (MAA) Letter of Height

AP Exhibit 7 – Site Plan

AP Exhibit 8 – ROHN Certification

Mr. Dureja gave an overview of the tower site plans, Federal, State and county approval documents .Mr. Fisher gave a brief PowerPoint presentation explaining the project request and the on- site backup generator system. .Mr. Mudd gave an overview of ingress and egress, buffers and storm water management measures to be taken.

Chairman Hayden opened the hearing to public comment.

Benjamin Payne, 27545 Mechanicsville Road, Mechanicsville, MD 20659

Cell phone and satellite users living in the area of the tower would there be any interference or loss of coverage? Mr. Dureja. No. it spreads a wide spectrum, and will increase TV and internet service. Change in zoning or property values was addressed by Mr. Sparling. No change in zoning conditional use is just for permitted use.

Will easements be needed from property owners ? Mr. Dureja replied, No, that tower is within the property lines.

Michael Farr, 27525 Mechanicsville Road, Mechanicsville, MD 20659

He currently questions the phone coverage, since he currently has none. Mr. Dureja assured him he would have 100 percent more coverage.

Rachel Ammann, 27625 Avonlea Court, Mechanicsville, MD 20659

She would like to know the time line on construction.

Mr. Mudd projected the project approval would take three months.

Mr. Dureja quoted the construction process would take approximately ninety days.

Chairman Hayden closed the hearing to public comment.

Mr. Brown made a motion in the matter of the CUAP #15-135-001, Lewis Bowles Property, Commercial Communication Tower, having made a finding that the standards for granting a conditional use and the objectives of Section 51.3.91 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the request to build a monopole style commercial communication tower at a height of 195 feet above ground level, subject to the following conditions:

- 1. The tower shall be constructed so as to provide adequate capacity for future co-location of other commercial and, or, government operated antennae. The system design plan shall delineate areas near the base of the tower to be used for the placement of additional equipment buildings for other users.***
- 2. No signals, lights, or illumination shall be permitted on the tower unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.***
- 3. No commercial advertising or other language shall be permitted on the tower.***
- 4. All obsolete or unused facilities, including buildings, towers, and all other improvements associated with the tower, shall automatically be deemed abandoned upon 24 months of continuous cessation of operations and shall be removed at such time without cost to the County. The Applicant shall provide a bond, letter of credit, or other appropriate surety at time of approval as approved by the County to cover the cost for demolition of the facility and site restoration.***
- 5. Contact information shall be prominently displayed on the fence enclosing each facility. This information shall be current and shall identify the company name, responsible individual, and phone number for the contact person.***
- 6. Final site plan approval is required.***

Mr. Greene seconded and the motion passed by a 5-0 vote.

CUAP #15-135-002 – James M. Bowles Property, Commercial Communication Tower

Ms. Yvonne Chaillet, LUGM, was sworn for the record. The applicant is requesting Conditional Use approval pursuant to Chapter 25 of the Comprehensive Zoning Ordinance to construct a commercial communication tower. The property contains 66.64 acres; is zoned Rural Preservation (RPD) District and Village Center Mixed Use (VMX) District; and is located at 40483 Parsons Mill Road Leonardtown, Maryland; Tax Map 19, Grid 19, Parcel 135, Election District 3.

Owner: James M. Bowles
Present: Page Wyrrough, Attorney
Present: Mark Fisher, Manny Dureja, Telecom Capital Group, LLC
Present: Patrick Mudd, P.E., Mudd Engineering, LLC

The property and variance request were advertised in The Enterprise on May 27, 2015 and June 3, 2015. Ms. Chaillet submitted the certification of publication, certification of property posting and mailing receipts for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. Ms. Chaillet gave an overview of the staff report dated June 1, 2015 and the applicable regulations pertaining to the application. Ms. Chaillet submitted the staff report with (4) attachments for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*.

Chairman Hayden swore in the following representatives for the record
Mark Fisher Telecom Capital Group, LLC. 8915 Sherbrook Court, Owings, MD 20736
Patrick Mudd, P.E., Mudd Engineering, LLC. 17764 Whitestone Drive, Tall Timbers, MD 20690
Manny Dureja Telecom Capital Group, LLC. 10302 Southern Blvd, Suite 250, Dunkirk, MD 20754

Mr. Wyrrough submitted the following applicant's exhibits for the record, hereby labeled as Exhibit 1-10 respectively by the Recording Secretary.

AP Exhibit 1 – PowerPoint Presentation
AP Exhibit 2 – Verizon Wireless Letter of Intent for Co-Location to Proposed Site
AP Exhibit 3 – Radio-Frequency (RF) Analysis and Report
AP Exhibit 4 – National Environmental Policy Act (NEPA) Report
AP Exhibit 5 – Federal Aviation Administration (FAA) Letter of Height Approval
AP Exhibit 6 – Maryland Aviation Administration (MAA) Letter of Height
AP Exhibit 7 – Site Plan
AP Exhibit 8 – ROHN Certification

Mr. Dureja gave an overview of the tower site plans, Federal, State and County approval documents. Mr. Fisher gave a brief PowerPoint presentation explaining the project request and on site backup generator system. Mr. Mudd gave an overview of ingress and egress, buffers and storm water management measures to be taken.

Chairman Hayden has concerns in reference to the location of the cell tower and the five surrounding structures. Mr Dureja verified that the structures would be barns and shed and not habitable dwellings. Mr. Bowles has signed a written lease agreement with Verizon and has agreed to sign a written affidavit waiving the protection of the setbacks as a condition of approval for the Board. Mr. Sparling questioned, Is the pole constructed to fall in one piece or to collapse? Mr. Fisher's reply was with this Rohn pole only the top third of the pole bends itself.

Chairman Hayden advised to be prepared at a minimum to bring another engineering solution.

Mr. Greene asked How far does the signal go and what is the projection radius of the tower?
Mr Fisher replied approximately one and a half miles depending on the traffic in the area.

Chairman Hayden requested a motion from the Board to continue the case until July 9, 2015. Mr. Miedzinski made a motion. Mr. Payne seconded and the motion passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of April 9, 2015 were approved as recorded.

The Board authorized the Chair to review and sign the following orders:

VAAP # 14-1771, Richard M. Masica and Leigh E. Wierichs

CUAP # 14-135-004, Telecom Capital Group Hermanville Commercial Communication Tower

ADJOURNMENT

The meeting was adjourned at 10:00 p.m.

Shelia Smith, Recording Secretary

Approved in open session: July 09, 2015

George Allan Hayden
Chairman