

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING  
ROOM 14 \* GOVERNMENTAL CENTER \* LEONARDTOWN, MARYLAND  
Thursday, July 10, 2003**

Present: J. Howard Thompson, Chairperson  
Marie Underwood, Vice Chair  
George Allan Hayden, Member  
Michael Hewitt, Member  
Sandy Mriscin, Member  
John B. Norris, III, County Attorney  
Denis Canavan, Director, LUGM  
Yvonne Chaillet, Planner III, LUGM  
Theresa Dent, Environmental Planner, LUGM  
Peggy Childs, LUGM Recording Secretary

A list of attendees is on file in the Department of Land Use & Growth Management. The Chair called the meeting to order at 7:00 p.m. All participants in all applications were sworn in by the Chair prior to commencement of each public hearing.

**PUBLIC HEARINGS**

**VAAP #02-1236 – MELVIN BROWN**

Requesting an after-the-fact variance from Schedule 32.1 (Development Standards)

to build a principal structure extending into the side yard building restriction line.

The property contains 10,126 square feet, is zoned RL (Residential Low Density)

and is located at 20710 Wolftrap Street in Lexington Park; Tax Map 51, Block 13,

Parcel 605; Lot 33 of Bay Ridge Subdivision

Owner/Applicant: Melvin Brown

Present: Mark Wells, of H. L. Smith Associates,  
Engineers

Area residents

Legal Ad published in The Enterprise on 6/25/03 & 7/2/03

#A-1 Certified Receipts of notification to contiguous property owners

The applicant is requesting an after-the fact variance in order to continue the construction of a house, which currently has a Stop Work Order (SWO) in place. The SWO was posted on April 29, 2003 when he was found to be in violation of Schedule 32.1 of the Ordinance, which requires a 15-foot setback from the side property line in the RL district.

In July 2002 the applicant was issued a building permit to construct a single-family dwelling on Lot 33 in Bay Ridge Estates. In January 2003, the applicant applied for and was granted a revised building permit to increase the overall size of the house from 2,520 square feet to 2,688 square feet. An inspection of the footings was completed and approved on March 5, 2003 by an inspector from MDIA (Middle Department Inspection Agency). In response to an inquiry from a neighboring property owner, a LUGM inspector conducted a site visit and found that the house was only five feet four inches from the side property line of Lot 34. He also found that the property had not been staked, which would have made it difficult for a footing inspector to determine that whether the footings were correctly located.

Ms. Chaillet said the applicant did not submit a letter of intent addressing the Standards for Variance as requested by the Land Use & Growth Management department, and staff finds that he has not met any of the Standards for Variance, including standard g., which is compliance with the Comprehensive Plan. Staff recommends denial of the application on that basis.

A letter was received by staff from adjoining property owners Mr. & Mrs. John Roberts, who are opposed to the variance but were unable to attend the meeting, asking that their letter be read into the record. Ms. Chaillet read the letter, which asks that the variance not be approved and that the applicant be required to comply with the original plans for the structure and with the side yard building restriction line. The letter was entered into the record as Opponents' #O-1.

**Ms. Mriscin moved to accept the 6/30/03 Staff Report. Seconded by Mr. Hayden and passed by 5-0.**

Mark Wells, of H. L. Smith & Associates engineering firm in St. Leonard, Maryland, entered the Certified Mailings and the following additional applicants' exhibits:

#A-2 Originally approved site plan

#A-3 Revised site plan with garage approved by DPI on 12/31/03

Mr. Wells said the lot was cleared and the foundation staked for the house, following which the Bay Ridge Association required them to add a garage, and the garage was added to the existing foundation, over the building restriction line. Mr. Wells said if they had shifted the foundation over 7-1/2 feet as they should have they would have been fine, but there was a period of 6-7 months between when the foundation was put in and when the revised plan with the garage was approved and, in the intervening 7 months, they overlooked the fact that the foundation should have been relocated on the lot. Mr. Wells said he didn't see the garage until it was constructed and he didn't know how close it was to the property line until he went out to the site and measured it.

The Chair opened the hearing to public comment.

Several residents of the Bay Ridge community testified in opposition to the variance request. Roy Costen, of 20704 Wolftrap Road, the

owner of adjoining Lot 34, said at the time he bought the model home from Liberty Home Builders, the subject lot was vacant. Mr. Costen was transitioning to the County at that time and said he thought the builder realized the lot was not large enough to construct a quality home to the standard of the community, but on his subsequent visits, there was material on the lot and then the house was up. He said when the community made Mr. Brown add a garage, he ignored the property line and built the garage 5-1/2 feet from his property line. Mr. Costen then had his own survey done, which resulted in the Stop Work Order being posted.

Mr. Costen said one of his concerns here is that there is not enough space between his house and the garage to maintain the property properly. There is also a difference in levels that will always be an issue, and he said he is afraid he will be left with a drainage problem. He said Mr. Brown is building the house to sell, not to live in, and is building other homes throughout the community as well.

Brandon Munday, of 20890 Ark Court, said Lot 33 was originally intended for a park, but the community decided they wouldn't have a formal homeowners association because they didn't want to pay dues, and the park was not constructed. He said when you build a house in this community you sign a document that the house you build will be in accordance with community standards, and the residents got together and requested the garage to bring the house up to community standards. Mr. Munday spoke of two other lots on his street owned by Mr. Brown where the foundations have been poured and graded over again. He said he would very much like to see this property corrected in a professional way so they don't lose their property values and he would like to see the variance denied.

Terrence Miles, of 20709 Wolftrap, which is across the street from the subject property, said there are three different phases of Bay Ridge; he and his family are part of Phase 1 and there is a Phase 2 which he thinks does have an association. He said the community of all three phases had a meeting and Mr. Brown was told he had to meet the community standards which required a garage. Mr. Hewitt asked if the community had a common area, because typically the association would pay for the maintenance. Mr. Miles replied that Phase 1 does not but, from discussion with neighbors in the newer houses, they either have an association or are putting one together, and they are looking at sites for parks.

Mr. Hayden noted that probably half of the houses on Wolftrap don't have a garage. Mr. Miles replied that, at the time he built, he did not have to have a garage. But the community had some concerns about the size of this lot and the size of the home, and told Mr. Brown, if he was going to build there, he had to build to a certain standard and one of the standards of the new houses is that a garage is required.

Joyce Costen, of 20704 Wolftrap Street, told the Board she and her husband paid \$350.00 to have a survey done, which they shouldn't have had to

do, because if the builder had done his homework he would have known he was too close to the property line. Ms. Costen said their survey showed right away that the structure was too close to their line. She said she does not want the garage to remain there, 5-1/2 feet from her property line, and she will not grant any kind of easement to allow the garage to remain. Entered into the record as Opponents' #O-2 was a copy of the Costen's survey done by Southern Maryland Surveys dated 5/06/03, which shows the garage to be 5'5" from the property line.

County Attorney John Norris told the Board that the Ordinance requires that the applicant demonstrate either practical difficulty or undue hardship in order for the variance to be approved, and the fact that the covenants, conditions, and restrictions of homeowners associations imposed a hardship on him does not satisfy the requirements of the Ordinance. If the Board wishes to grant the variance, Mr. Norris said they must find that something in the Zoning Ordinance is creating the undue hardship or practical difficulty.

**There being no further testimony, Ms. Mriscin moved that, having adopted the Staff Report and making a finding that the standards for variance have not been met, the application be denied. Seconded by Ms. Underwood and passed by 5-0.**

**CUAP #03-135-002 – OMNIPOINT COMMUNICATIONS**  
**(T-Mobile at Holly II)**

Requesting Conditional Use approval, pursuant to Chapter 25 of Zoning Ordinance

#Z-02-01 to allow the location of cellular communications antennae atop an existing building. The property contains 3.56 acres, is zoned OBP, and is located at

44427 Airport Road in Hollywood; Tax Map 34, Block 9, Parcel 576.

Owner: Holly II, LLC

Present: Attorney Amy Cavero, of Saul Ewing LLP, representing the applicant

Representatives of Omnipoint Communications (T-Mobile)

Legal Ad published in The Enterprise on 6/25/03 & 7/02/03

#A-1 Certified Receipts of notification to contiguous property owners

This application to allow nine (9) rooftop communication antennae on the façade of a mid-rise commercial building is the first of its kind in St. Mary's County. Six (6) antennae will be mounted directly to the façade of the building, with an antennae centerline of 59 feet. The remaining three (3) antennae will be mounted onto a new support structure located at the rear of the building, also with an antennae centerline of 59 feet. The antennae will be painted to match the façade of the building to minimize visual impact. The cables that connect the antennae to the equipment cabinets will run down the rear exterior of the building

and will be concealed within newly installed covering, which will also be painted to match the exterior of the building.

Ms. Chaillet said a few of the standards would cause some concern if the RF exposure plan were not initiated, as RF radiation exposure was deemed high in limited areas of the rooftop. The Radio Frequency Exposure Compliance Report states that certain areas adjacent to the antennae would exceed FCC recommended guidelines for exposure. However, the RF exposure plan developed by RFpeople, dated 2/12/03, states that safety procedures can be implemented to minimize or eliminate any adverse impacts to public health and safety, and staff recommends that these procedures be established and monitored as a condition of approval. Staff recommends approval of the conditional use, subject to implementation of the RF exposure plan and other conditions listed in the June 27, 2003 staff report.

**Ms. Underwood moved to accept the June 27, 2003 staff report. Seconded by Mr. Hayden and passed by 5-0.**

Amy Cavero, representing the applicant, said it is common practice in the industry to place antennae on existing buildings and the County's preference is to co-locate antennae whenever possible. Ms. Cavero said the antennae will be shorter than the tallest point of the structure; they will be placed at the centerline of the structure at a height of 59 feet. The equipment cabinets will be located behind the building in an existing compound surrounded by a board-on-board fence, and no emissions will come from the equipment cabinets. There are already some transformers and a dumpster in the compound area. The area is industrial in nature and the structure itself is a commercial building which is part of an office complex. Ms. Cavero said you almost can't see the office complex from the road until you are right on top of it. The only residences are located across MD 235 and Ms. Cavero said she doubts if the residents can even see the building, let alone the antennae when they are installed. No traffic will be generated by this proposal other than a once-a-month routine maintenance visit to the site, and the existing road and parking will be used.

Ms. Cavero said the antennae do not emit any more radio frequency than antennae on top of monopoles, they are the same exact antennae. T-Mobile personnel are used to working around antennae but, because HVAC maintenance personnel will also access the roof, they will have signs in place warning them not to stand directly in front of the antennae for a sustained period of time. Ms. Cavero said you would have to stand directly in front of an antenna for a significant length of time to sustain any injury at all, but injury could occur if someone did that. Workers need to wear protection when working around the antennae or another option is that the antennae could be shut down.

Ms. Mriscin said the Board cannot bind the owner of the building to protect their employees but the Board can bind T-Mobile to ensure that they do. Ms. Cavero said the Board can bind T-Mobile to take measures to implement safety precautions around their lease space. County Attorney John Norris stated

the Board may impose a condition that the applicant must provide for the safety of workers; if they don't do that or if the building owner does something different, they risk losing their conditional use.

Patrick Sazu, of T-Mobile, said the FCC requires they post a sign at the door to the rooftop to warn personnel to not stand directly in front of the antennae and they will provide portions of the RF report to the landlord to let him know about the equipment. Mr. Hayden asked about the safety of people who work on the air conditioners? Mr. Sazu replied that the antennae will be on the side of the building façade and two receptors will sit at the back of the roof, so they will not be close to the air conditioners. He said any danger would be at the front of the antennae, and the air conditioning workers will be at the back of the antennae. In order for the workers to be in front of the antennae, they would have to be hanging off the front of the building. Ms. Underwood asked if window-washers would be in danger of RF exposure? Mr. Sazu replied they will not be in front of the antennae because the windows are probably 12 feet below where the antennae will be located.

Mr. Sazu said people working on the top floor of the building will have no RF exposure. He said the beam from the antenna is about 65 degrees wide and goes out in front of the antennae; by the time it gets out beyond the building, it is high enough that it won't impact anyone. The antennae will be tied directly to the wall of the building; they are constructed strong enough to withstand the wind load at this location and the height will not exceed the height of the building, so they should never fall. Ms. Cavero said, even if someone were to stand directly in front of the antennae, they would still receive less than one-half percent of the FCC allowable emissions.

The Chair opened the hearing to public comment. There were no comments.

Ms. Mriscin repeated her earlier question; i.e., how can the Board bind the owner of the building to protect his employees or contractors that go onto the roof? Ms. Cavero replied that that is the purpose of the signs. She said they cannot anticipate each person who goes onto the roof, so the roof has to be clearly marked, and she doesn't think the Board can bind the owner other than requiring the safety procedures.

**Ms. Underwood moved that, having adopted the June 27, 2003 Staff Report and making a finding that the Conditional Use Standards of Chapter 25 of ZO #Z-02-01 have been met, the Board grant conditional use approval to allow the location of nine (9) roof-mounted communication antennae on an existing commercial building, subject to the following conditions:**

- (1) The Applicant shall fully implement the RF exposure plan developed by RFpeople, dated February 12, 2003.**
- (2) Prior to final site plan approval, the applicant shall submit a report to the County describing the safety**

measures T-Mobile plans to implement and how they intend to monitor compliance.

- (3) The conditions for approval shall be noted on the final site plan along with the safety measures T-Mobile plans to implement.
- (4) The Applicant shall provide a copy of the final approved site plan to Phil Cooper, at the County's Emergency Operations Center (EOC), to update the previous information provided to Fire and Rescue.

The motion was seconded by Ms. Mriscin and passed by 5-0. Subsequent to the meeting, Mr. Hayden determined that five (5) copies of the approved final site plan will be required by the EOC for distribution to Fire and Rescue.

### CONTINUATION OF PUBLIC HEARING

#### CUAP / VAAP #03-132-004 – MARYLAND ROCK Modification "A"

Requesting Conditional Use approval, pursuant to Chapter 25 of ZO #Z-02-01 to allow an extractive industry of more than five (5) acres. Also requesting Critical Area Variance approval to remove 5.1 acres of vegetation in the Critical Area Buffer to conduct the mining operations, including disturbance of 13,896 sq. ft. of tidal and non-tidal wetlands, wetland buffer, and steep slopes necessary to construct a pipeline crossing within and adjacent to Medley's Creek. The property contains 104.1 acres, is zoned RPD (partial RCA Overlay), and is located at the end of Hampton Road, approximately 6,600 feet south of Medley's Neck Road; TM 48, Blk 23, Parcel 064, TM 48, Blk 11, Parcel 177, TM 48, Blk 23, Parcel 188, and TM 49, Blk 13, P 011.

Owner: Florida Rock Properties and Clara Artemesia Limited Partnership  
Present: Parran Bean, Vice President, Maryland Rock  
Jerry Soderberg, of DH Steffens Company, Agent  
Attorney Warren Rich, representing Maryland Rock

This hearing was continued from the meeting of June 12, 2003 for the Board and staff to visit the site. This tour of the site was hosted by Maryland Rock on July 3, 2003. Although the site visit was video-taped and is part of the record, the Board was allowed only to question the applicant, and no testimony

was taken. Although he was not present at the site visit, Mr. Hewitt has reviewed the tape and will vote on the application. All participants were sworn in by the Chair.

Mr. Hayden asked that the applicant show him the location of the generator, stating that the whine of the generator all day long was his only concern. Ms. Mriscin asked whether this company has ever, over a period of 5-6 years, successfully run a pipeline over a marshland? Mr. Bean said that Maryland Rock has had a similar pipeline in Florida for probably 10-12 years. Ms. Mriscin asked if the pipeline will stay on the property? Mr. Rich replied they have received a letter of authorization from the State under a general permit for a 5-year period. Depending on market conditions, they may have to reapply for another 5 years. Mr. Bean added that the pipeline will not remain on the property permanently.

Ms. Mriscin said she thought she read that the State was requiring floats under the pipeline as a condition of approval. Mr. Rich responded that there is no requirement for floats under the pipeline, but they will have floats on either end. Mr. Bean said they were required by MDE to do a maintenance plan showing how they would maintain the pipeline if it started ponding up behind the pipe and, if that happens, they will place pontoons under the pipe to raise it up. Mr. Bean said the generator will be enclosed in a building on the south side of the crossing in the wooded area. A berm will run all the way down the side of the site to 1) screen and 2) deflect the noise. The noise generated will be less than 65 dB at the property line.

The following additional exhibits were entered into the record:

- #A-17 Wetland Protection Plan
- #A-18 Critical Area Commission letter dated July 10, 2003
- #A-19 Soil Conservation District Sediment Control approval
- #A-20 Wildlife and Heritage determination of bald eagles nest

Mr. Rich said they will comply with the requirements for protection of the bald eagle nest.

**Ms. Mriscin moved that, having adopted the June 2, 2003 Staff Report and making a finding that the Conditional Use Standards of Section 25 of #Z-02-01 have been met, the Board grant Conditional Use approval for an extractive industry involving the mining of more than five (5) acres, subject to the following conditions:**

- 1. The applicant shall obtain and submit review comments on the proposed wetland crossing and mitigation plans from the Maryland Departments of the Environment and Natural Resources and any other agencies required by state or federal law to review the application. In lieu, the applicant may obtain and submit copies of the permits including conditions of permit approval for the wetland crossing.**

- 2. The site plan shall be revised as needed to address any agency comments prior to approval of an environmental permit.**
- 3. The subject mining operation shall be carried out in accordance with all federal, state, and local regulations that are in effect as of the date of this approval. Where the Board of Appeals' conditions are more restrictive than federal or state requirements, the Board of Appeals' conditions shall apply.**
- 4. This conditional use approval shall expire five years from the date the Board of Appeals signs the Order on the approval of the subject application.**
- 5. Applicant shall limit the number of truckloads to 160 truckloads per day during peak operational periods.**
- 6. Hours of operation shall be from 6:30 a.m. to 5:30 p.m. Monday through Friday and from 6:30 a.m. to 1:00 p.m. on Saturdays. The proposed conditional use shall not operate on standard holidays (New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day).**
- 7. There shall be no burning on site except for wood products derived from site clearing and grubbing areas from the site.**
- 8. No topsoil shall be removed from the site. All topsoil shall be used on site for reclamation purposes.**
- 9. Only materials extracted on site shall be stockpiled on site.**
- 10. The site shall be stabilized and seeded within six months following cessation of operations in accordance with final SCD and Maryland Department of the Environment approvals.**
- 11. The property shall not be used as a salvage yard or landfill operation. No concrete, asphalt, or other debris shall be stored on the site.**
- 12. The applicant shall abide by the standards contained in Section 51.3.79 (Extractive Industry) of the St. Mary's County Zoning Ordinance.**
- 13. Signs shall be erected to alert traffic that there are trucks entering and exiting the property to the satisfaction of the Department of Public Works. Signs shall be erected at the entrance of the residential access roads to indicate the roads are for private access only and to discourage commercial truck traffic.**
- 14. All of the conditions approved in this application shall be listed on the site plan submitted for approval.**

15. The Board of Appeals shall approve any additions, changes, or modifications of the approved conditional use on this site.

The motion was seconded by Ms. Underwood and passed by 5-0.

Ms. Mriscin moved that, having adopted the June 5, 2003 Staff Report and making a finding that the Critical Area Standards for Variance of ZO #90-11 have been met, the Board grant a Variance from Section 38.2.13.e to allow the clearing of 5.1 acres of vegetation, or less, within the Critical Area and Critical Area Buffer to conduct mining operations, subject to the following conditions:

1. All TEC comments shall be addressed prior to final site plan approval.
2. Copies of any State & Federal permits necessary for the mining operation or the wetland crossing shall be submitted to the County prior to issuance of any permits for activities on site.
3. A Planting Agreement shall be executed for 3:1 mitigation of the clearing in the Critical Area Buffer and for 1:1 mitigation of the balance of the clearing on the site, and the planting requirements shall be coordinated with the overall reclamation plan for the site.

The motion was seconded by Ms. Underwood and passed by 5-0.

## **DISCUSSION**

### **Easements for Cellular Communication Towers**

Ms. Chaillet said the Zoning Ordinance requires that the fenced compound areas which house equipment for cell towers be buffered with two rows of Leland Cypress trees and staff has, in the past, recommended that a double row of evergreens equivalent to 50 feet also be preserved in an easement. The issue is whether staff should be recommending that as a condition or whether it should be left to the Board of Appeals, if the Board wants to impose it as a condition, as this is an easement on property not owned by the lease holder. Mr. Norris said he would caution the Board against requiring a buffer that is not required by the Ordinance. However, the Board may impose any condition they feel is warranted.

Following discussion, the Board determined it would impose the condition as applicable.

Mr. Canavan advised that there is nothing that prohibits staff from suggesting to the applicant that it would be advantageous to seek such an easement from the landowner. That would make it a self-imposed condition that the Board could also apply as one of its conditions.

Ms. Mriscin commented that it is also imperative that the Board be notified of the balloon test so the members can attend if they wish to do so. Otherwise, a photo simulation of the test must be provided.

### **Quarterly Report**

The members thanked staff for the Quarterly Report, stating it was very helpful.

### **MINUTES AND ORDERS APPROVED**

Minutes of June 12, 2003  
CUAP #02-130-029 – McIntosh Pit Order  
VAAP #02-130-029 – McIntosh Pit Variance Order  
VAAP #03-0627 – Finley W. Cooper Order - approved by the members and signed by the Chair  
on 6/30/03

### **RESOLUTION FOR OUTGOING CHAIRMAN**

As this was Mr. Thompson's last meeting as a member, Ms. Underwood read a Resolution from the members and LUGM staff thanking him and honoring him for his years of service.

### **ADJOURNMENT**

The meeting was adjourned at 9:15 p.m.

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Peggy Childs  
Recording Secretary

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Approved in open  
session: August 14, 2003

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Marie E. Underwood  
Chairperson