

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
ROOM 14 * POTOMAC BUILDING * LEONARDTOWN, MARYLAND
Thursday, July 24, 2008**

Members present were George Hayden, Chairman; Wayne Miedzinski, Ronald Delahay, Veronica Neale, and George T. Edmonds and 1st Alternate Ronald Payne were also present. Department of Land Use & Growth Management (LUGM) staff present were Denis Canavan, Director; Yvonne Chaillet, Zoning Administrator; and Jada Stuckert, Recording Secretary. George Sparling, Attorney 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

VAAP #08-1110 - Miles

Ms. Chaillet stated the applicants would like to continue this case to another meeting. Mr. Brad Richardson requested a continuance to give the applicant time to submit a revised site plan. Mr. Hayden asked if staff has received the certified mailing receipts. Ms. Chaillet stated she has not received them to date.

Mr. Miedzinski made a motion in the matter of VAAP #08-1110, Miles, I move to continue the case to September 11, 2008 with the condition that the applicant submit the certified mailing receipts to the Department of Land Use and Growth Management prior to the September 11, 2008 meeting and Ms. Neale seconded. The motion passed by a 5-0 vote.

Ms. Chaillet stated for the record we will be meeting in the new Chesapeake Building beginning in August.

VAAP #07-0744 - Boling

Ms. Chaillet explained the Board of Appeals granted variance approval in 2007 to clear in excess of 30% on the property. Ms. Chaillet stated the Board approved the variance with a condition that the applicant reverses the mound system. Ms. Chaillet stated the reviewing staff approved the site plan without the mound systems reversed. Ms. Chaillet stated staff is requesting the Board lift this condition.

Mr. Miedzinski questioned the applicant about the additional clearing on the property. Mr. Boling claimed he did not clear any more than what was approved. Mr. Miedzinski stated he was on the property and saw the clearing. Mr. Miedzinski asked staff about the applicant clearing more than the allowed 30% of the property. Ms. Chaillet stated if the applicant cleared more than the allowed amount, staff would require mitigation at a ratio of 3:1 for the extra clearing. Mr. Miedzinski stated he would like to see the applicant mitigate at a ratio of 3:1 and Mr. Hayden agreed.

Ms. Neale made a motion having made a finding that the standards for variance in the Critical Area and the objectives of Section 72.3 of the St. Mary's Comprehensive Zoning Ordinance have been met, the variance to clear in excess of 30 percent of the existing woodland is approved with the condition to adhere to the Critical Area Planting Agreement and work with the new site plan with the revised planting agreement and remove the original condition of reversing the mound system and Mr. Edmonds seconded. The motion passed by a 3-2 vote with Mr. Miedzinski and Mr. Delahay opposed.

VAAP #04-0876 - Konecny

Mr. Hayden stated this property was posted improperly by citing the meeting time as 6:30 a.m. rather than 6:30 p.m. Mr. Hayden stated this hearing will need to be re-scheduled and re-posted. Mr. William Higgs stated the certified letter that was sent had the correct time listed. Mr. Hayden

stated unfortunately the applicant will be required to re-post and re-mail the certified letters. Mr. Hayden thanked Mr. Higgs for his time.

CUAP #08-135-001 – Commercial Communication Tower (Avenue)

The applicant is requesting a conditional use approval to construct a commercial communication tower. The property contains 112.70 acres; is zoned Rural Preservation District (RPD); and is located on the North side of Oakley Road immediately adjacent to West of 21569 Oakley Road, Avenue, Maryland; Tax Map 38, Block 24, Parcel 219.

Owner: Renie O. Quade
Present: Chris Longmore

The property and conditional use request were advertised in The Enterprise on July 9, 2008 and July 16, 2008.

Mr. Longmore stated this is a conditional use application and we have ample technical staff to testify if the Board so chooses. Mr. Longmore stated for a communication tower we have to meet the general standards for conditional uses, as well as the specific ones for a communications tower. Mr. Longmore submitted AP Exhibit 1-Supplemental Development Review and Conditional Use Application for a Proposed Monopole Commercial Communication Tower Binder of 100 + pages.

Mr. Longmore stated the proposed motion included in the staff report references the idea that we may need an easement for a 75-foot buffer around the cell tower. Mr. Longmore stated we believe we have met this requirement as it is written in the lease agreement that allows the applicant to build the tower on the site and it is signed by Ms. Quade. Mr. Longmore read the following language into the record cited from Exhibit 1, Tab "Property Information", and Page 24.

"In addition to the Leased Space granted and conveyed herein, Lessor does hereby grant and convey to Lessee, during the term of this Lease and all extensions thereof, an easement for the preservation and maintenance of all trees, shrubs, and other vegetation, and all other matters as required by the local zoning authority, in an area located within Seventy Five (75) feet of the Leased Space (hereinafter "Forested Buffer Easement")."

Mr. Longmore submitted AP Exhibit 2-Letter dated 7/17/08 to Frank Marco from Jose Espino of Verizon Wireless and AP Exhibit 3- Engineering Statement from AT&T containing nine (9) pages. Mr. Hayden asked if there would be a site available on the tower for emergency communication. Mr. Longmore stated we will make available the right of first refusal for emergency communication. Mr. Longmore submitted AP Exhibit 4- Letter dated 7/22/08 to Chris Longmore from State Highway Administration; and stated SHA has provided additional comments regarding the entrance and the location of the entrance. Mr. Longmore submitted AP Exhibit 5- AT&T Mobility Proposed and Existing Coverage with Bushwood Summit Tower at 185 feet Map and AP Exhibit 6- AT&T Mobility Existing Coverage Map.

Ms. Chaillet read the staff report which recommended approval of the commercial communication tower. **Mr. Miedzinski made a motion to accept the staff report as findings of fact in this case and Ms. Neale seconded. The motion passed by a 5-0 vote.**

Mr. Hayden opened the hearing to public comment. Mr. Gerald Dewinter asked if the tower would create RF and interfere with his Direct TV. Mr. Frank Marco stated no, unless the tower was placed directly in front of the dish blocking it and in this case the tower would not be directly in front it would in fact be at least 100 feet away. Mr. Hayden closed the hearing to public comment.

Ms. Neale made a motion in the matter of CUAP #08-135-001 having made a finding that the standards for granting a conditional use and the objectives of Section 51.3.89 of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve the

request to construct a 195-foot monopole tower and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of June 12, June 19, and June 26, 2008 were re-approved as amended and the minutes of July 10, 2008 were approved as presented.

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

VAAP #02-0969 - Hart
ZAAP #02-0969 - Hart

ANNOUNCEMENT

Mr. Miedzinski reminded the viewing audience to support the volunteer fire carnival which begins tonight.

ADJOURNMENT

The meeting was adjourned at 8:30 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: August 14, 2008

George Allan Hayden
Chairman