

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS  
ROOM 14 \* GOVERNMENTAL CENTER \* LEONARDTOWN, MARYLAND  
Thursday, August 10, 2006**

Members present were George Allan Hayden, Chair; Gertrude Scriber and Wayne Miedzinski. Greg Callaway and Ronald Delahay were excused. Department of Land Use and Growth Management staff present was Denis Canavan, Director; Yvonne Chaillet, Zoning Administrator; Susan Mahoney, Planning Specialist; and Keona Courtney, Recording Secretary. George Edmonds, Board of Appeals First Alternate, was also present. Christy Holt Chesser, County Attorney, and Colin Keohan, Deputy County Attorney, were present.

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

**PUBLIC HEARING**

**VAAP #06-1782 – DECORATOR'S TRADING COMPANY (continued from 7/13/06)**

The Applicant is requesting an after-the-fact variance from Section 65.3 of the St. Mary's County Comprehensive Zoning Ordinance to increase the size of a permanent wall sign. The property contains 29.17 acres; is zoned Corridor Mixed Use (CMX) District; and is located at 22599 Macarthur Boulevard in California, Maryland; Tax Map 43, Block 2, Parcel 20.

Owner: San Souci Associates, LLC  
Present: Richard Shin, Business Owner

The property was advertised in *St. Mary's Today* on 6/25/06 and 7/02/06.

Mr. Shin's Exhibit 1: Packet of signage options with costs and approximate sign square footage listed for each option from Waldorf Signs.

Ms. Chaillet's Exhibit 1: Pictures of the current sign.

Mr. Shin explained he contacted Waldorf Signs and asked for suggestions on how to reduce the size of the sign. He explained removing the letters "CO" and the period from the end of the sign is not a viable option because it is part of the business name. He explained he would rather decrease the letters "CO," but the sign will still be larger than 99 square feet. He further explained reducing the size of the words "Trading CO." on the sign as shown in option A on page two of Exhibit 1 will decrease the size of the sign, but will cost \$4,685. Mr. Shin emphasized he contacted staff to try and comply with the Ordinance and did not intentionally violate it. Mr. Miedzinski inquired if the word "Decorator's" will be moved in option A. Mr. Shin confirmed "Decorator's" will need to be removed and re-centered for option A.

Mr. Shin explained he contacted the landlord for San Souci Shopping Center, Ron Becker, and was told San Souci does not have a position on this issue. Ms. Chaillet stated property owners are required to ensure their tenants are in compliance with the Ordinance and will be fined along with the tenant if there is a violation. Mr. Shin clarified San Souci does not want to be involved in this issue, but San Souci is not opposed to his request. Mr. Edmonds asked if Mr. Shin talked to staff to discuss the sign options presented by Waldorf Signs. Ms. Chaillet explained staff cannot negotiate Ordinance regulations and stated it is not staff's responsibility to decide how Mr. Shin should display the business name on the sign. Ms. Scriber inquired if reducing the letters will bring the sign into compliance. Ms. Chaillet stressed the Ordinance regulations allow wall signs to measure 99 square feet. Mr. Shin stressed bringing the sign into compliance by redesigning it according to option A will bring the total cost of the sign to approximately \$20,000.

Ms. Chaillet explained Mr. Shin's exhibit gives a calculation of only 160 square feet for the current sign but the correct size is 175 square feet. She explained Mr. Shin's calculation of the size of the sign includes the overhanging roofline of the store front; whereas, staff's calculation of the sign according to Ordinance regulations only includes the length of the store front. Mr. Shin explained his sign is similar to other signs in the San Souci Shopping Center, some of which are also visible from MD 235, and he feels his sign does not distract from the appeal of the surrounding area. Ms. Scriber asked if reduction of the width of the sign will bring it into compliance. Mr. Shin replied reducing the size of all of the letters will be more expensive.

Mr. Miedzinski inquired about the time frame in which Mr. Shin must comply with the Ordinance regulations. Ms. Chaillet explained Mr. Shin can leave the current sign in place until 30 days after the order is signed by the Board. Mr. Hayden inquired if the sign will be in compliance if it is redesigned as shown in Option A of Exhibit 1. Ms. Chaillet said that it will be in compliance as long as the sign is not more than 99 square feet. Mr. Hayden asked how long it will take to get a new sign in place. Mr. Shin explained new signs take approximately six to eight weeks.

Mr. Shin explained he feels he is bearing all of the liability to come into compliance with the Ordinance, even though he asked staff if he needed to obtain a sign permit prior to installing the current sign. Mr. Shin explained he was misinformed by staff when he was told he did not need a sign permit. Ms. Chaillet explained the Permits Coordinator informed Mr. Shin a sign permit is not required when replacing or refacing an existing sign.

**Mr. Miedzinski moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Ms. Scriber and passed by a 4-0 vote.**

**Mr. Miedzinski moved that having accepted the staff report and having made a finding that the standards for variance and the objectives of Section 65.3 of the St. Mary's County Comprehensive Zoning Ordinance have not been met, the Board deny the variance to increase the size of a permanent wall sign; and grant the Applicant 120 days from the date the order is signed reflecting the Board's decision, to bring the wall sign in to compliance with applicable Zoning Ordinance regulations. The motion was seconded by Ms. Scriber and passed by a 4-0 vote.**

#### **VAAP #05-0363 - EVANS**

The Applicant is requesting a variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to disturb the Critical Area Buffer and variance from Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance to clear in excess of 30 percent of the existing vegetation to construct a single family dwelling and appurtenances. The property contains 46,609 square feet of which 35,938 is tidal wetlands, leaving a balance of 10,671 square feet of land; is zoned Rural Preservation District (RPD), Limited Development Area (LDA) Overlay District; and is located at 16490 Ball Point Road in Piney Point, Maryland; Tax Map 69, Block 9, Parcel 136B.

Owner: Michael & Teresa Evans  
Present: Timothy Evans

The remaining properties were advertised in *St. Mary's Today* on 7/23/06 and 7/30/06. Certified mail receipts were submitted to staff for the files.

Mr. Evans stated his parents, Michael & Teresa Evans, purchased a lot on St. George's Island over 30 years ago and it is a grandfathered lot. He explained the entire lot is constrained by the Critical Area Buffer and consists mainly of wooded land. He explained he desires to build a single-family dwelling less than 1,700 square feet, but will need to clear more than 30 percent of

the vegetative cover in order to construct the dwelling. Mr. Evan stressed the family is willing to comply with any reasonable instructions in order to minimize environmental impact.

Mr. Edmonds asked if the dwelling will be constructed on pilings. Mr. Evans replied he contacted an engineer to obtain a soil sample and was advised to construct the dwelling on a solid foundation rather than pilings. Mr. Miedzinski asked if the trailers on the lot are located in the wetlands. Mr. Evans explained he thinks they are in the wetlands.

Ms. Chaillet explained the property is located in a floodplain, but not a high hazard coastal floodplain. She explained the proposed dwelling and existing driveway and shed will equal 2,470 square feet of impervious surface, which is 23.2 percent of the usable acres. Ms. Chaillet explained half of the usable land is covered with vegetation and 68 percent of the vegetation will need to be cleared to make room for the dwelling. She stated the Applicant has done what is necessary to minimize disturbance.

The Board discussed the fact the property is located in a flood plain and will need an engineered foundation.

**Ms. Scriber moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Mr. Miedzinski and passed by a 4-0 vote.**

The Chair opened the hearing to public comment. The public hearing closed with no comments.

Mr. Miedzinski noted the Board needs to add requirements for removal of the unnatural debris from the wetland areas.

**Ms. Scriber moved that having found that the standards for variance in the Critical Area and the objectives of Section 71.8.3 and Section 72.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board approve the variance to disturb the Critical Area Buffer and to clear in excess of 30 percent of the existing vegetation to construct a single family dwelling upon the following conditions:**

- 1. The Applicant must adhere to the Planting Agreement**
- 2. The dwelling must be constructed on an engineered foundation; and**
- 3. All trailers and unnatural debris must be removed from tidal wetlands**

**The motion was seconded by Mr. Miedzinski and passed by a 4-0 vote.**

#### **VAAP #06-2026 – DENNISON**

The Applicant is requesting a variance from Section 51.3.119 of the St. Mary's County Comprehensive Zoning Ordinance to reduce the required 100-foot setback from the property lines. The property contains 3.37 acres; is zoned Rural Preservation District (RPD); and is located at 28969 Shannon Court in Mechanicsville, Maryland; Tax Map 5, Block 21, Parcels 309.

Withdrawn from the agenda.

#### **CUAP #04-135-003 – BUZZ'S MARINA TOWER**

The Applicant is requesting modification of a conditional use approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance to amend the location of the access road. The property contains 80.9 acres; is zoned Rural Preservation District (RPD); and is located at 49675 Buzz's Marina Way in Ridge, Maryland; Tax Map 71, Block 20, Parcels 246.

Owner: Buzz's Marina LLC  
Present: Christopher Longmore, Attorney; Barbara Pivec, Atlantic Site Acquisition;  
both representing Summit Tower, LLC. Matthew Trasier of Summit Tower,  
LLC

Mr. Longmore stated Summit Tower, LLC owns and operates a cell phone tower located on Buzz's Marina, LLC property. Mr. Longmore explained the applicant constructed the access road along a path already in use by the Department of Public Works & Transportation (DPW&T) and the Army Corps of Engineers to reach a dredge spoils storage site. He said this was not the route approved by staff, but is preferred by the property owner. He stressed the Applicant has been working closely with staff to reach a resolution, especially since moving the current access road to the approved route will require redirection around a newly discovered septic drain field.

Ms. Pivec explained the tower is constructed at the approved site and complies with all building permits. She explained the turn at Buzz's Marina Way on the approved route is too sharp for construction equipment. She stated the current access road was widened during construction because the weather created a need for additional gravel. Ms. Pivec explained the Applicant and staff discussed moving the access road to the approved route, but the property owner alerted the applicant of a possible septic drain field in the area. She said the Health Department assisted in excavating the area and discovered a septic field is in the path of the approved route.

Mr. Miedzinski inquired about the route of the current access road. Ms. Pivec explained the current road turns off Buzz's Marina Way at Dean's Way, then leads to the tower site along a road not previously in existence. Mr. Longmore stressed the current road creates less disturbance and is preferred by the property owners.

Ms. Chaillet explained the tower is not in the Critical Area, but both the current and approved access roads are. She said staff has no concerns with leaving the current access road because moving it will create more impervious surface and result in higher Critical Area disturbance. She also noted the Health Department did not have any record of the septic drain field at the time of approval of the original access route.

**Mr. Edmonds moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Mr. Miedzinski and passed by a 4-0 vote.**

The Chair opened the hearing to public comment. The public hearing closed with no comments.

Mr. Miedzinski inquired about who owns the access road. Ms. Pivec explained the lease agreement the Applicant has on the property includes an access easement. Mr. Miedzinski asked if there is an agreement on who can use the road. Mr. Trasier explained the property owner can grant access rights to other people. Mr. Hayden asked who maintains the access road. Mr. Trasier explained the applicant is required to maintain the road, but the property owner is responsible for damage caused by a third party.

**Mr. Miedzinski moved that having made a finding that the conditional use standards of Sections 25.6 and 51.3.89 of the St. Mary's County Comprehensive Zoning Ordinance have been met, the Board approve conditional use approval to modify the access road for an existing commercial communication tower. The motion was seconded by Ms. Scriber and passed by a 4-0 vote.**

#### **CUAP #06-131-009 – VERIZON WILDEWOOD WATER TOWER SITE**

The Applicant is requesting conditional use approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance to add cellular antennas to an existing water tower. The property contains .49 acres; is zoned Planned Unit Development

(PUD), Residential Low-Density (RL) District; and is located on White Elm Court in California, Maryland; Tax Map 34, Block 14, Parcels 604.

Owner: St. Mary's County Metropolitan Commission

Present: Jacqueline Karp, Network Building & Consulting, LLC; Roque Fial, Verizon Wireless; Barbara Pivec, Atlantic Site Acquisition; Steve King, St. Mary's County Metropolitan Commission (MetCom)

Ms. Karp explained Verizon Wireless is requesting a conditional use permit to place 12 antennas in a triangular array on top of an existing water tower, which will increase the height of the tower by 14 feet to a total of 142 feet. She explained Verizon Wireless is also proposing an 11-foot by 30-foot shelter at the bottom of the tower within the existing chain link fence for equipment. Ms. Karp stated the requested non-interference statement and radio frequency analysis report have been submitted, and the applicant is willing to provide a structural analysis report if the site is approved. She stressed that a coverage gap in Verizon Wireless service exists along MD 235 near the intersection of MD 4. She pointed out that EEE Consulting found the applicant's proposal to be in compliance with the Ordinance and beneficial to the County's goal of minimizing construction of new towers.

Mr. Hayden inquired about how many more sites are needed to reach total coverage. Mr. Fial, a radio frequency engineer for Verizon Wireless, replied the proposed antennas presented in this case will allow adequate coverage along MD 235 and MD 4. Mr. Hayden asked if more coverage is provided by increasing antenna height. Mr. Fial explained placing antennas on a taller structure will increase the coverage area. Ms. Pivec stated there is a height restriction due to the tower's proximity to the airport. Mr. Hayden asked if there are any other towers in the area. Ms. Pivec replied there are no other towers in the area.

Ms. Chaillet stated Verizon Wireless must comply with Federal Aviation Administration (FAA) regulations. Mr. Hayden inquired about current FAA guidelines. Ms. Karp responded FAA requires antennas to be no more than 15 to 17 feet higher than an existing structure. Mr. Hayden asked about the radius of the coverage area. Ms. Karp answered coverage will be improved by a radius of one to two miles.

Ms. Chaillet explained the Ordinance encourages applicants to locate antennas on existing structures. She said the tower will not impair any scenic views in the Wildwood Subdivision or along MD 235. Ms. Chaillet stated there will be no interference with public safety equipment. Mr. Hayden asked if the Applicant has a lease agreement with MetCom for the use of the tower. Ms. Karp explained the lease agreement is ready to be signed. Mr. King further explained the property deed needed to be transferred to MetCom for ownership before the lease agreement can be signed. Ms. Chaillet added access to the tower is via White Elm Court and planting of additional trees is not recommended since the tower is located in an area of dense vegetation. She noted staff did not receive any comments from any residents in the area regarding the proposed use of the water tower for cellular antennas.

**Ms. Scriber moved that having accepted the staff report, the Board adopt the findings of fact contained therein as their findings in this matter. The motion was seconded by Mr. Miedzinski and passed by a 4-0 vote.**

The Chair opened the hearing to public comment.

Mr. Merrill Erichsen, a local resident, stated he supports the proposal because he is a Verizon Wireless customer and wants better coverage. He questioned if the frequencies affect the local airports, Patuxent Naval Air Station (PAX), household electronics, and vice versa. He also inquired about increased lightening strikes and if the antenna frequencies can travel through the water into area residences. Mr. Erichsen asked if he could lose cell phone coverage if he lives too close to the tower.

Mr. Samuel J. Mohammed, a local resident, stated he supports the proposal but he expressed concern about possible negative health effects on residents living in close proximity to the antennas.

Mr. Chris Harritt, a local resident, stated he supports the proposal but expressed concern about children playing in the area and if it is possible for them to access the equipment building at the base of the tower.

The Chair closed the hearing to public comment.

Ms. Karp responded the Verizon Wireless radio frequency signal will not interfere with any emergency, airport or PAX communications. She explained Verizon Wireless is assigned a specific band within the radio frequency spectrum; therefore, the signals will not interfere with any other Federal Communications Commission (FCC) licensed communications, including those to household radios, televisions or computers. Ms. Karp confirmed the antennas are grounded and the steel water tank is grounded into the earth; thus, providing protection against lightening strikes.

Ms. Karp explained this site, along with all other Verizon Wireless sites, are operated within FCC radio frequency safety standards and emissions from this site will be less than those a person would be exposed to standing in front of a microwave or television.

Ms. Karp explained the eight-foot chain link fence that will surround the tower compound will provide adequate protection against access by neighborhood children. She also pointed out the building will be locked and only visited once a month for maintenance.

**Mr. Miedzinski moved that having made a finding that the conditional use standards of Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance (Z02-01) have been met, the Board approve conditional use approval to add cellular antennas to an existing water tower. The motion was seconded by Ms. Scriber and passed by a 4-0 vote.**

#### **VAAP #03-135-003 – HOLLYWOOD VFD TOWER**

The Applicant is requesting modification of a conditional use approval pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance to construct an extension to the existing cellular tower. The property contains 9 acres; is zoned Rural Preservation District (RPD); and is located at 24801 Three Notch Road in Hollywood, Maryland; Tax Map 26, Block 11, Parcels 421.

Withdrawn from the agenda.

#### **ACTIONS TAKEN BY PLANNING DIRECTOR ON VARIANCE APPLICATIONS RECEIVED FOR ADMINISTRATIVE REVIEW**

**VAAP #06-0664 – Smith – 14,820 square feet – The Applicant is requesting a variance from Section 41.7.4 of the St. Mary's County Comprehensive Zoning Ordinance to place a structure closer to the water than the principal structure on the adjoining property. Variance approved with signed planting agreement.**

#### **MINUTES AND ORDERS APPROVED**

The minutes of July 13, 2006 were approved.

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

**CUAP #03-131-062 – Big Foot Hunt Club, Inc.**

**GENERAL DISCUSSION**

The Chair announced the fall retreat will be on September 29, 2006 from 9:00 a.m. to 3:00 p.m. the Harry Lundberg School in Piney Point. Ms. Chaillet asked the Board to advise staff of ideas for the retreat agenda. She stated Mary Owens and Jennifer Lester from the Critical Area Commission will be in attendance.

**ADJOURNMENT**

The meeting was adjourned at 8:35p.m.

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Cindy R. Koestner for Keona L. Courtney  
Recording Secretary

Approved in open session: September 14, 2006.

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George Allan Hayden  
Chairman