

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, February 12, 2015**

Members present were George Allan Hayden, Chairman; William Greene, John Brown, Wayne Miedzinski and Ronald Payne. Alternate James Andreacci was also present. Department of Land Use & Growth Management (LUGM) staff present were Bill Hunt, Deputy Director; Yvonne Chaillet, Zoning Administrator; Sue Veith, Environmental Planner; and Jada Stuckert, 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

VAAP #14-1771 – Masica Property

Ms. Yvonne Chaillet, LUGM was sworn for the record. Ms. Sue Veith, LUGM was sworn for the record. Ms. Chaillet indicated the property posting, mailing receipts and staff report with attachments were submitted as evidence at the January 8, 2015 hearing. Ms. Chaillet gave an overview of the January 8, 2014 meeting and indicated Mr. Masica has since revised the site plan and proposes a reduction of only five (5) feet rather than 15 feet from the north lateral line. Ms. Chaillet submitted the revised site plan with aerial overlay for the record, *hereby labeled as Exhibit 1 by the Recording Secretary.*

Ms. Veith gave an overview of the property and request indicating how the bisect lines are calculated. Ms. Veith indicated in order to have any type of pier on this property it will have to cross the lateral line which creates a 2.5 foot encroachment over the north side lateral line.

Ms. Chaillet indicated Mr. Masica has received approval from the Maryland Department of the Environment. Chairman Hayden indicated the revised site plan encroaches less than the original site plan.

Mr. Richard Masica was sworn for the record. Mr. Masica clarified that his original request was for 10 feet on the North side, which he did not need. Mr. Masica addressed the standards for granting a variance based on the new site plan.

Mr. Charles Hatcher and Mr. Herbert Redman were sworn for the record. Mr. Charles Donnelly, attorney for the applicant, submitted Lot Line Overlay Exhibit A for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*; Overlay Exhibit B, *hereby labeled as Exhibit 3 by the Recording Secretary*; and Binder of Exhibits A-J, *hereby labeled as Exhibit 4 by the Recording Secretary*. Mr. Hatcher gave an overview of the property and referenced Exhibit 4F stating there is already a pier on out-lot C. Mr. Donnelly indicated the community pier is within walking distance from the Masica property. Chairman Hayden indicated this property is grandfathered. Mr. Sparling indicated if the Scotch Subdivision was recorded in 1973, which pre-dates our Zoning Ordinance, the riparian rights would be reserved.

Mr. Donnelly indicated Outlot AA was specifically set aside for a sewage reserve area. If there is a community pier available you are not eligible for a pier permit, this is what the zoning ordinance says. Sparling indicated the subsequent revisions of the ordinance do not hold steady. Mr. Donnelly stated he is not aware of any authority for Board of Appeals to grant a variance when the ordinance prohibits it. Mr. Sparling disagreed.

Mr. Redman referenced Exhibit 2A indicating the orange lines are from the first plat, the rose color lines are from the second plat, and the green lines are from the new plat for the property. Mr. Redman indicated each line has conflicting boundaries.

Mr. Hatcher indicated other properties in this area do not face the same problem, all properties in the cove are confined and all other piers are grandfathered. Mr. Brown indicated what looks like an extension added to the Hatcher pier. Mr. Hatcher stated this was existing. Chairman Hayden indicated if the boat lift is on the opposite side of the pier there should be no hindrance by the placement of the Masica pier. Mr. Hatcher indicated he disagrees, requesting a straight line to come in and out of his boat lift. Chairman Hayden stated the proposed pier doesn't even come close to the straight line approach for the Hatcher pier.

Chairman Hayden asked who decides where the mean high water line is. Ms. Veith indicated in practice Maryland Department of the Environment (MDE) goes out and looks at vegetation and water lines. Ms. Veith indicated in reviewing permits we use aerial photos and a detailed survey.

Mr. Donny Estivez, Nokleby Surveying was sworn for the record. Mr. Estivez testified that he drew the site plan. Mr. Estivez indicated a field crew was sent out to determine mean high water line based on calculations and regulations provided by LUGM. Mr. Miedzinski stated regardless of where the shoreline is or the length of pier, we're only talking about 2.5 feet encroachment into the lateral lines which seems reasonable.

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

Mr. Masica indicated there is no doubt we've had some difficulties with neighbors in the past however the issues of access and preventing enjoyment of pier, is not there. Mr. Masica asked to have the same access and usage.

Mr. Greene made a motion in the matter of VAAP #14-1771, Masica Property, having made a finding that the standards for granting a variance and the objectives of Section 71.9.6.h (1) of the St. Mary's County Comprehensive Zoning Ordinance have been met, I move to approve 1) the variance request to construct a pier within 25 feet of the extended property lines, reducing the required setback on the north side of the pier from 25 feet to 20 feet; and 2) the variance request to construct a pier within 25 feet of the extended property lines, reducing the required setback on the south side of the pier from 25 feet to 20 feet and Mr. Miedzinski seconded. The motion passed by a 5-0 vote.

CUAP #14-135-002 – Patuxent River Assembly of God Property

Chairman Hayden indicated this meeting is being continued from the October 23, 2014 meeting and the January 8, 2015 meeting. Ms. Chaillet was sworn for the record. Mr. Wyrrough referenced a letter from State Highway Administration (SHA) on December 1, 2014 and submitted for the record, *hereby labeled as Exhibit 1 by the Recording Secretary*. Mr. Wyrrough submitted a title report consisting of fifty-one (51) pages for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*. Mr. Wyrrough submitted a letter from ROHN Products LLC dated December 22, 2014 for the record, *hereby labeled as Exhibit 3 by the Recording Secretary*.

Chairman Hayden indicated Mr. Miedzinski was not at the previous hearing but has reviewed the meeting minutes. Mr. Wyrrough indicated he has no objection to Mr. Miedzinski voting on this project tonight.

Mr. Wyrrough submitted a letter from Department of Public Works (DPW) dated February 4, 2015 for the record, *hereby labeled as Exhibit 4 by the Recording Secretary*. Mr. Wyrrough submitted a DVD of the PowerPoint presentation being given during the hearing for the record, *hereby labeled as Exhibit 5 by the Recording Secretary*.

Mr. Fisher and Mr. Mudd were sworn for the record. Mr. Dureja was sworn for the record.

Mr. Fisher gave an overview of the PowerPoint presentation showing coverage areas and the lack thereof. Mr. Dureja indicated we did not contact the Wawa or Subway shopping center

because we knew we could not meet the setback requirements. Mr. Dureja indicated the generator will have a cover that significantly reduces the noise. Mr. Dureja testified that co-location would not provide the service area that is needed. Structural analysis has been done to ensure that antennas will not interfere with local emergency communication towers. Total height is 178.5 feet and we have approvals for the lightning rod.

Mr. Mudd testified to the site plan, buffers, etc. Mr. Payne referenced the letter from NEPA and asked what triggers the review by NEPA. Mr. Fisher stated this is a study of all the surrounding historical sites to make sure the tower will not interfere with any historical site. The FCC requires this. This particular site does not have any historical issues. Mr. Payne indicated if there are only 4 carriers why the pole is designed for 5 carriers. Fisher indicated this is to make the pole available to any future carriers. Mr. Miedzinski questioned the buildings on the site and the stormwater management. Mudd addressed these concerns.

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

Mr. Greene made a motion in the matter of CUAP #14-135-002, Patuxent River Assembly of God, 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 178.5 feet above ground level with amendments submitted by the county attorney and Mr. Brown seconded. The motion passed by a 5-0 vote.

MINUTES AND ORDERS APPROVED

The minutes of October 9, 2014, October 23, 2014 and January 8, 2015 were approved as amended.

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

VAAP #08-1969 - Ball

ELECTIONS

Chairman Hayden explained that Mr. Robert Moreland, who was Co-Chair, is no longer with the board therefore a new Co-Chair needs to be elected.

Mr. Greene nominated Mr. Payne for Co-Chair, having no second the motion failed.

Mr. Miedzinski nominated Mr. Brown for Co-Chair and Mr. Payne seconded. The motion passed by a 4-0-1 vote with Mr. Brown abstaining.

ADJOURNMENT

The meeting was adjourned at 9:20 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: March 12, 2015

George Allan Hayden
Chairman