

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING
CHESAPEAKE BUILDING * LEONARDTOWN, MARYLAND
Thursday, May 22, 2014**

Members present were George Allan Hayden, Chairman; Randy Guy, Robert Moreland, William Greene, and Ronald Payne. Alternate John Brown was also present. Department of Land Use & Growth Management (LUGM) staff present were Yvonne Chaillet, Zoning Administrator; 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 #14-0347 - Kirscht

Ms. Yvonne Chaillet, LUGM was sworn for the record. The applicant is requesting a variance to disturb the Critical Area Buffer to construct a deck. The property contains 1.19 acres; is zoned Rural Preservation District, Limited Development Area (LDA) Overlay; and is located at 38884 Cottonwood Drive, Abell, Maryland; Tax Map 47, Grid 2, Parcel 260.

Owner: Edward and Jennifer Kirscht

The property and variance request were advertised in The Enterprise on May 7, 2014 and May 14, 2014. Ms. Chaillet submitted the 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 12, 2012 and the specific standards for granting variances in the Critical Area and the Critical Area Buffer. Ms. Chaillet submitted the staff report for the record, *hereby labeled as Exhibit 2 by the Recording Secretary*.

Mr. Kirscht gave a brief overview of the request for the variance stating he is asking for a very modest size deck that is in keeping with the surrounding properties.

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

Mr. Green made a motion in the matter of VAAP #14-0347, Kirscht, having made a finding that the standards for granting a variance in the Critical Area 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 400 square-foot deck and Mr. Guy seconded. The motion passed by a 5-0 vote.

CUAP #12-135-001 – Piney Point Commercial Communication Tower – Cont. from May 8, 2014

Chairman Hayden indicated this case is continued from the May 8, 2014 hearing. Mr. Moreland recused himself from voting on this case. Alternate, Mr. Brown indicated he has been present for all hearings.

Mr. Sparling indicated there seems to be a lack of authority regarding cell towers other than a case in Frederick County where the Board of Appeals denied a cell tower and the cell company sued the County and won finding that the Board of Appeals had violated the Telecommunications Act. Mr. Sparling indicated the Board needs to determine a gap in coverage and whether this particular cite will cause adverse effects to be worse than in another cite.

Mr. Wyrrough, for the applicant, agreed with Mr. Sparling's comments.

Mr. Green made a motion in the matter of CUAP #12-135-001, Piney Point 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 160 feet above ground level subject to the following condition:

- 1. That the generator has a Level 3 Sound Barrier.***
- 2. That 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.***
- 3. 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.***
- 4. No commercial advertising or other signage shall be permitted on the tower.***
- 5. 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.***
- 6. The tower enclosure shall be buffered from adjoining properties with at least two rows of fast growing evergreen species such as red cedar or Leyland cypress.***
- 7. 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.***

Mr. Guy seconded and the motion passed by a 5-0-1 vote with Mr. Moreland abstaining.

MINUTES AND ORDERS APPROVED

The minutes of May 8, 2014 were approved as recorded.

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

VAAP #05-0386 - Sohl

ADJOURNMENT

The meeting was adjourned at 7:15 p.m.

Jada Stuckert, Recording Secretary

Approved in open session: June 12, 2014

George Allan Hayden
Chairman