

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Telecom Capital Group, LLC
39240 Cooney Neck Road
Mechanicsville, Maryland

Case No. CUAP # 15-135-003

DECISION AND ORDER

Introduction

Telecom Capital Group, LLC (hereinafter "Applicant") filed an application for a conditional use permit pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property located at 39240 Cooney Neck Road, Mechanicsville, Maryland (hereinafter the "Property").

After due notice, a public hearing was held at 6:30 p.m. on November 12, 2015, at the St. Mary's County Governmental Center at 41770 Baldrige Street in Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn and documentary evidence was received. The proceedings were recorded electronically.

Legal Standard

The Board shall not approve a conditional use unless it finds, based on the evidence, that:

1. The conditional use complies with the standards of the district in which it is to be located and standards applicable to that use;
2. The establishment, maintenance, and operation of the conditional use will not be detrimental to or endanger the public health, safety, convenience, morals, order, or general welfare;
3. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, and will not substantially diminish or impair property values within the neighborhood;
4. The proposed use at the proposed location will not have adverse effects above and beyond those inherently associated with the proposed use irrespective of its location within the zoning district;
5. Adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided;
6. Adequate measures have been or will be taken to provide ingress and egress following a design that minimizes traffic congestion in the public streets;

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7. The proposed conditional use is not contrary to the goals, objectives, and policies of the Comprehensive Plan; and
8. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located or to the special requirements established for the specific conditional use in Chapter 51.

Findings of Fact

The Property is a large agricultural lot containing two (2) single-family dwellings, four (4) barns, six (6) sheds, and a swimming pool. The Property is densely wooded and constrained by steep slopes. A thirteen (13)-foot wide paved driveway extends from Cooney Neck Road to the central portion of the Property where the residences and accessory structures are located.

The Applicant proposes to construct a monopole-style commercial communication tower on a somewhat open area in the southwest corner of the Property, at an elevation of one hundred ninety-five (195) feet above ground level. The Tower will be constructed within a gravel lease area measuring seventy feet by seventy feet (70 x 70), or four thousand nine hundred (4,900) square feet. The lease area will be enclosed by a ten (10)-foot high chain link fence to prevent accidental contact with the Tower or its equipment shelters. The lease area will be surrounded by the existing mature woods except for that portion of the site that will be cleared for the lease area and for access. The tower's design and structural capacity will support five (5) service providers, including Verizon Wireless. The County does not intend to locate antennae on the Tower as the Tower site is not needed to support its 911 service.

The Property is served by the gravel driveway extending from Cooney Neck Road. The Applicant also intends to construct an extension therefrom to access the fenced lease area housing the Tower and equipment cabinets.

The nearest property boundary is approximately two hundred eight (208) feet south of the proposed Tower, and approximately one hundred eighty-five (185) feet from the paved surface of Cooney Neck Road. The closest structure is a house on an adjacent lot, which is located approximately seven hundred thirty-five (735) feet from the Tower. Accordingly, the Tower's setbacks from all property lines exceed the Tower's height. The area surrounding the Property is thickly wooded and many of the residences are tucked among the woods.

Additional specific findings of fact are as follows:

1. There is a gap in the coverage provided by existing towers in the geographic area to be served by the proposed tower.
2. The proposed tower would provide coverage in the geographic area for which coverage is not provided by existing towers.

3. The RF Report containing the information required by Article 5, Section 91.b. (1) (a) through 91.b. (1) (d) of the St. Mary's Comprehensive Zoning Ordinance was submitted by the Applicant.
4. A detailed engineering analysis of the proposed new tower which included a summary of the proposed tower's capacity to provide space for future co-location by others was provided.
5. The specific type of tower to be constructed and the proposed materials to be used in the construction of the tower were identified.
6. The design of the proposed tower has been sealed by a licensed engineer licensed to practice in the State of Maryland.
7. All noise, odor, and other potential nuisance producing facilities, appurtenances and/or outbuildings, or the like, that are associated with the proposed use were identified.
8. The maximum number of antennae and co-location spaces that can safely be placed on the tower were identified. An engineering statement was submitted that the proposed tower can accommodate a minimum of three (3) users.
9. An elevation drawing depicting the tower at its proposed height with all the planned antennae shown was submitted.
10. A visual impact study, which included photo-simulations, and the results of a balloon test were submitted.
11. An engineering statement prepared by a licensed professional engineer certifying the proposed facility will meet or exceed all regulatory emission standards established by the FCC and which identified the predicted exposure for the specific equipment proposed along with the allowable federal limit of exposure was provided.
12. An engineering statement prepared by a licensed professional engineer describing the contained fall design of the tower in the event of a structural failure was provided.
13. Evidence that at least one telecommunications carrier has agreed to locate antennae on the tower was provided.
14. Co-location on existing commercial towers, public safety towers, or other appropriate structures is not feasible.
15. No existing or proposed tower can be structurally modified to meet the applicant's needs.
16. The proposed site results in fewer or less severe impacts than any feasible alternative site.

17. The tower is being constructed at the minimum height to obtain reasonable signal coverage.
18. The site is large enough to accommodate the tower and all related structures, equipment and appurtenances.
19. The concept site plan depicts the tower site, the location of all structures, equipment and appurtenances to be installed with the tower, all existing tree buffers on the subject property, all adjoining properties, means of ingress/egress and all required setback lines.
20. The required setbacks have been met.
21. No construction is being done within the Critical Areas.

Conclusions of Law

The gap in coverage necessitates additional facilities. The proposed Tower does not present issues of adequate public facilities, traffic, or public safety. There was no evidence that the proposed tower would substantially diminish or impair property values within the neighborhood. There is no practical alternative site on which to locate facilities to remediate the gap in coverage. The proposed use at the proposed location will not have adverse effects above and beyond those inherently associated with the proposed use irrespective of its location.

Based on the evidence set forth in the Findings of Fact, the proposed Tower meets the general standards for a conditional use and the specific standards set forth in Section 51.3.91 of the Ordinance, subject to the conditions set forth below.

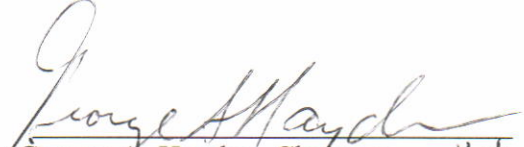
ORDER

NOW, THEREFORE, BE IT ORDERED, that having made a finding that the standards for conditional use and the objectives of Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have been met, a conditional use to construct the proposed commercial communications tower on the Property is **approved subject to the following conditions** and that the Chair be authorized to sign an order approved for form and legal sufficiency by counsel and reflecting the Board's decision in the absence of objection by any Board member after distribution and review of the proposed order:

1. 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.
2. No signals, lights, or illumination shall be permitted unless required by the Federal Communications Commission, The Federal Aviation Administration, or the County.
3. No commercial advertising or other language shall be permitted on the tower.

4. All obsolete or unused facilities, including buildings, towers, and all other improvements associated with the tower, shall automatically be deemed abandoned upon twenty-four (24) months of continuous cessation of operations and shall be removed t 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.
5. 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.
6. Final site plan approval is required.

Date:


George A. Hayden, Chairman 11/14/16

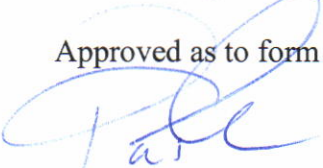
Those voting to approve the conditional use:

Messrs. Hayden, Miedinzki, Greene,
Payne, and Brown

Those voting to deny the conditional use:

None

Approved as to form and legal sufficiency:

 11/7/16

Patrick W. Thomas, Esq.,
Special Counsel to the Board