

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Washington Gas
22348 Three Notch Road
Lexington Park, Maryland

Case No. CUAP #13-135-002

DECISION AND ORDER**Introduction**

Washington Gas (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 described as 22348 Three Notch Road, Lexington Park, Maryland (hereinafter the "Property"). The application seeks a permit to construct a commercial communications tower.

After due notice, a public hearing was held at 6:30 p.m. on October 13, 2016, 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;

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 the site of an existing commercial communications facility which contains a guy wire tower and a lattice-style tower. This facility was constructed prior to the County's adoption of regulations applicable to commercial communication towers.

The Property also contains two buildings and a couple of sheds. A chain link fence surrounds the facility, which is also screened, in part, by dense, mature woodland. Access to the Property is directly off MD Route 235 or Three Notch Road. No improvements or changes are needed.

The Applicant plans to remove the existing guy wire tower and replace it with a monopole style tower (the "Tower") with a height of 175 feet above ground level (AGL). The existing tower is unable to carry the load of its antenna requirements due to overloading. All existing equipment has been moved to the lattice-style tower in preparation for replacing the guy wire tower.

The new monopole is designed to support two (2) microwave dish antennae, two (2) LMR Omni antennae, and a wide area network Omni antenna to be used by Washington Gas for dispatching personnel, monitoring, and controlling a future network of remote control valves on the pipeline. These valves will enable the Applicant to isolate sections of the pipeline in an emergency situation. The new monopole will also support two commercial wireless carriers for future co-location. An eight-foot by four-foot by eight-foot (8' x 4' x 8') equipment cabinet will be installed at the base of the monopole.

The existing lattice-style tower, which currently serves commercial carriers, will remain on the Property following installation of the new monopole.

The existing fenced compound will be expanded to accommodate the monopole and equipment cabinet, and a new eight-foot (8') tall chain-link fence will surround this area.

Conclusions of Law

The proposed tower does not meet the current requirements of the Ordinance regarding setback from structures. Buildings used by the public are located within the fall-zone. The proposed use at the proposed location will have adverse effects above and beyond those inherently associated with the proposed use irrespective of its location. Moreover, the Applicant

has not received approval from the Federal Aviation Administration, and no comments from the United States Navy at Patuxent River Naval Air Station have been received.

Based on the evidence set forth in the Findings of Fact, the proposed tower does not meet the general standards for a conditional use and the specific standards set forth in §51.3.91 of the Ordinance.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a conditional use and the objectives of Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have not been met, a conditional use to construct the proposed commercial communications tower on the Property is *denied*.

Date: November 10, 2016


George A. Hayden, Chairman

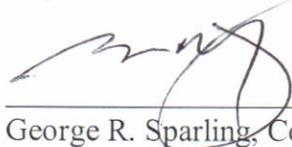
Those voting to approve the conditional use:

Mr. Payne

Those voting to deny the conditional use:

Mr. Hayden, Mr. Brown, Mr. Greene, and Mr. Miedzinski

Approved as to form and legal sufficiency:


George R. Sparling, County Attorney

ST. MARY'S COUNTY BOARD OF APPEALS

Kenneth S. and Kathleen A. Burch
43628 Abell Farm Way, Valley Lee, MD

Case No. VAAP #15-0790

DECISION AND ORDER**Introduction**

Kenneth S. and Kathleen A. Burch (hereinafter "Applicants"), filed an application for a variance from the regulations of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property located at 43628 Abell Farm Way, Valley Lee, Maryland (hereinafter the "Property"). The application seeks a variance from Section 71.8.3 of the Comprehensive Zoning Ordinance to disturb the Critical Area Buffer to construct a replacement single-family dwelling and appurtenances.

After due notice, a public hearing was conducted at 6:30 p.m. on September 8, 2016, at the St. Mary's County Governmental Center at 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, documentary evidence was received, and the proceedings were recorded electronically.

Legal Standard

The Board shall not vary the regulations of the Ordinance unless it finds, based on the evidence, that:

- a. Special conditions or circumstances exist that are peculiar to the land or structure involved and that strict enforcement of the Critical Area provisions of this Ordinance would result in unwarranted hardship.
- b. Strict interpretation of the Critical Area provisions of this Ordinance will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of St. Mary's County.
- c. The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Critical Area provisions of this Ordinance to other lands or structures within the Critical Area of St. Mary's County.
- d. The variance request is not based upon conditions or circumstances that are the result of actions by the applicant.
- e. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of a variance will be in harmony with the general spirit and intent of the Critical Area program.

- f. The variance is the minimum necessary to achieve a reasonable use of the land or structures.

Findings of Fact

The Property is located on Blake Creek which drains into the Potomac River. The Property is a grandfathered lot in the Critical Area of St. Mary's County because it was recorded in the Land Records of St. Mary's County prior to the adoption of the Maryland Critical Area law on December 1, 1985. The Property is partially constrained by the Critical Area Buffer (the "Buffer") measured from the mean high water line of Blake Creek. The proposed house and deck will be constructed within 100 feet of the mean high water line of Blake Creek.

The Property contains a single-family dwelling, an attached deck, a driveway, a shed, and a boathouse totaling 5,749 square feet of lot coverage. The existing single-family dwelling was constructed in 1980 and a private well and septic system serve the Property.

The Applicants plan to remove the footprint of the existing dwelling, which is 498 square feet, and 1,008 square feet of driveway for a total of 1,506 square feet of lot coverage. The Applicants propose to build a new single family dwelling with a footprint of 1,209 square feet. A deck measuring 771 square feet in total will be constructed around the perimeter of the house with the largest area on the rear of the house. The proposed deck is not deemed lot coverage as long as spacing between the boards is provided to allow water to flow through freely. The amount of existing lot coverage to remain on the Property added to the proposed amount of lot coverage totals 5,449 square feet of lot coverage, which is about 11.6 percent of the Property. The allowed amount of lot coverage is 15 percent of the Property or 7,057 square feet. The Applicants will be reducing the overall lot coverage by 300 square feet.

The existing soil type on the Property is Keyport Silt Loam (KrB2) according to the Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, Web Soil Survey. The KrB2 soils are found on slopes of 2-5 percent and are considered to be moderately erosive.

The Property is located within the AE floodplain with a base flood elevation of 6 feet NAVD according to Flood Insurance Rate Map 304F. The proposed development is outside of the regulated floodplain.

The Property is covered in approximately 39,988 square feet of existing woodland, which is 85 percent of the Property. The Applicants plan to clear approximately 835 square feet, or two percent of the existing vegetation in preparation for construction.

The St. Mary's Health Department approved the proposed development on May 24, 2016 and the St. Mary's Soil Conservation District approved the plan on May 25, 2016.

The Commission does not oppose the variance request.

Conclusions of Law

The Property is constrained by the Critical Area Buffer (the "Buffer"). A strict interpretation of the Ordinance would prohibit any development in the Critical Area Buffer.

The basis for the variance is the subsequent adoption of the St. Mary's County Critical Area Program on March 27, 1990.

The Maryland Critical Area Commission has determined that potential adverse impacts resulting from development on these properties can be mitigated by planting trees and shrubs. Mitigation is required at a ratio of three to one per square foot of the variance granted. Mitigation is also required for the removal of any trees with a diameter greater than two inches. The required vegetation will improve plant diversity and habitat value for the site and will improve the runoff characteristics for the Property, which will contribute to improved infiltration and reduction of non-point source pollution leaving the site in the future.

Since the Critical Area Commission, an agency deemed to have expertise and vested with the legal mandate to protect the critical areas of the State, does not oppose the variance, there is a strong inference that the Applicants meet the standards for a variance.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a variance and the objectives of Sections 24.4 and 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance have been met, and further finding, for all reasons stated herein, that the Applicants have rebutted the presumption that the specific development activity proposed by the Applicants does not conform with the general purpose and intent of Subtitle 18 of Title 8 of the *Natural Resources Article* of the *Annotated Code of Maryland* and regulations adopted pursuant thereto and the requirements of St. Mary's County Comprehensive Zoning Ordinance enacted pursuant thereto, a variance to disturb the Critical Area Buffer to construct a replacement single-family dwelling and appurtenances is **granted**, subject to the following condition: that the spacing between boards on the proposed deck equal or exceeds ¼ inch.

Date: October 13, 2016


George A. Hayden, Chairman

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Greene, Mr. Payne and Mr. Miedzinski

Those voting to deny the variance:

Approved as to form and legal sufficiency:


George R. Sparling, County Attorney