

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Telecom Capital Group,
14 Acres, Hermanville Road,
Lexington Park, Maryland

Case No. CUAP #14-135-004

DECISION AND ORDER

Introduction

Telecom Capital Group (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 14 Acres, Hermanville 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 April 9, 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;

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 an unimproved parcel of land, which is densely wooded and constrained by steep slopes and the Riverine Floodplain along the west side of the Property. The floodplain is associated with nearby Pembroke Run. The Applicant proposes to construct a monopole style, commercial, communication tower (the "Tower") at an elevation of 195 feet above ground level (AGL). The Tower will be constructed outside and east of the floodplain, within a gravel area measuring 90 feet by 160 feet or 14,400 square feet. The site will be enclosed by a 10-foot high, chain link fence and will be surrounded by the existing, mature woods, providing a natural buffer. The Tower's design and structural capacity will support five (5) service providers.

The Applicant plans to build a 20-foot wide gravel drive to provide access between Hermanville Road and the Tower site. The entrance to the Property will be constructed to County road standards. Traffic to the Tower site will be minimal once construction has been completed. Any equipment problem can typically be handled remotely. On average one visit to the site every month or two may occur following construction.

The Tower will be located approximately 200 feet from the property lines on the east and south sides of the Property and approximately 225 feet from the paved surface of Hermanville Road. The closest structure to the Tower is a house which is approximately 400 feet away. The Tower's setbacks from all property lines exceed the 195-foot height of the Tower.

Drainage will be addressed through the site plan process and in accordance with stormwater management and erosion and sediment control regulations.

Additional specific findings 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 Section 53.3.91.b.(1) (a) through 53.3.91.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 was 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. 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.

11. Evidence that at least one telecommunications carrier has agreed to locate antennae on the tower was provided.

12. Co-location on existing commercial towers, public safety towers, or other appropriate structures is not feasible.

13. The proposed site results in fewer or less severe impacts than any feasible alternative site.

14. The tower is being constructed at the minimum height to obtain reasonable signal coverage.

15. The site is large enough to accommodate the tower and all related structures, equipment and appurtenances.

16. 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.
17. The required setbacks have been met.
18. No construction is being done within the Critical Area.

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.

Section 10.2 of the Comprehensive Plan, “The Plan for Public Utilities,” establishes policies for providing public facilities, infrastructure and services in growth areas and outside growth areas. One such policy stipulates the following: “Accommodate the efficient and equitable distribution of energy and communication utility services to meet the needs of the population and support the land use, design, and environmental concepts of this plan.” A second policy calls for providing a full range of utility services to all areas of the County and for establishing requirements to insure fair access to these services.

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 §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 a 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*:

1. The tower shall be constructed so as to provide adequate capacity for future co-location of other commercial or government 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 on the tower unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.
3. No commercial advertising or other signage 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 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.
5. Contact information shall be prominently displayed on the fence enclosing the 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: June 11, 2015

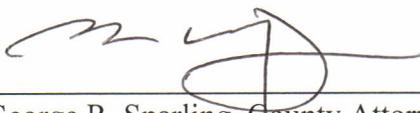

George A. Hayden, Chairman

Those voting to approve the conditional use:

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

Those voting to deny the conditional use:

Approved as to form and legal sufficiency:


George R. Sparling, County Attorney