

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

CUAP NUMBER 19-135-002

**HERITAGE OAK FARM PARTNERSHIP (Owners);
TELECOM CAPITAL GROUP, LLC (Agent)**

SIXTH ELECTION DISTRICT

DATE HEARD: May 7, 2020

ORDERED BY:

**Mr. Hayden, Mr. Brown, Ms. Delahay,
Mr. Miedzinski, and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: June 11, 2020

Pleadings

Heritage Oak Farm Partnership (the “Owners”) through Telecom Capital Group, LLC (the “Applicant”) seek conditional use approval (CUAP NUMBER 19-135-002) for a 199-foot monopole¹ Commercial Communication Tower (the “Tower”) within the Rural Preservation District.

Public Notification

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County, on April 22, 2020 and April 29, 2020. The hearing notice was also posted on the Property. The file contains the certification of mailing to all adjoining landowners, including those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the subject property was notified by mail, sent to the address furnished by the Department of Land Use and Growth Management. The agenda was also posted on the County’s website on May 1, 2020. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on May 7, 2020 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed conditional use requested by the Applicant.

The Property and the Tower Site

The Applicant leased from the Owners a portion of the Owners’ 16.45-acre property (the

¹ Standing alone, the monopole is 195 feet tall, but the Applicants will install a 4-foot lightning rod at the top of the monopole, thus totaling 199 feet.

“Property”) at 41220 Oakville Road, Mechanicsville, MD. The Property is located in the Rural Preservation District (“RPD”) and is identified on Tax Map 14, Grid 22, Parcel 79.

The proposed conditional use would encompass an 80’ x 80’ area (the “Tower Site”) of the Owners’ 16.45 acres. Located 635 feet north of the paved surface of Oakville Road, the Tower Site is 450 feet west of the Oakville Road intersection with Maryland Route 235. The nearest structure is a home located approximately 330 feet from the proposed Tower, and the Tower Site is approximately 200 feet from the nearest western boundary line of the Property. *See* Exhibit 2, Attachment 1a.

The Conditional Use Requested

The Applicant seeks a conditional use pursuant to Chapter 25 of the St. Mary’s Comprehensive Zoning Ordinance (“CZO”) for the purpose of constructing, operating, and maintaining a 199-foot monopole Commercial Communication Tower, Use Type 91, for lease to third-party wireless service providers.

The St. Mary’s County Comprehensive Zoning Ordinance

Pursuant to Schedule 50.4 of the CZO, Use Type 91, “Communication Tower, Commercial” is defined as a “[c]ommunication tower that supports commercial uses or non-commercial uses when the structure exceeds 100 feet in height.”

The Evidence Submitted at the Hearing by LUGM

Harry Knight, Deputy Director of the St. Mary’s County Department of Land Use and Growth Management (“LUGM”), presented the following evidence:

- The Property is 16.45 acres in size, according to the Maryland Department of Assessments and Taxation. The Property is principally used as a commercial nursery and garden center with two buildings, seasonal high tunnels, nursery plants, hardscape/landscape material

stockpiles, parking, and a stormwater management pond, all occupying approximately half of the 16.45 acres. The remainder is forest.

- The Applicant is requesting Conditional Use approval for a 199' tall Commercial Communication Tower within the RPD. The Tower will be located on a 60' x 60' pad site with a 10-foot gravel access road and associated stormwater management practices. The landowner will lease the Applicant an 80' x 80' area for tower use. The pad site will consist of a generator pad and five shelters, all surrounded by a 10-foot chain-link fence.
- The minor site plan is currently under review at the St. Mary's County Health Department, Soil Conservation District, LUGM, Department of Public Works & Transportation and Maryland State Highway Administration.
- Pursuant to Section 25.9 of the Ordinance, "Limitations on Conditional Use Approval," "Subject to an extension of time granted by the Board of Appeals for cause, no conditional use permit shall be valid for a period longer than one year unless a site plan is approved, a building permit is issued, construction is actually begun within that period and is thereafter diligently pursued to completion, or a certificate of occupancy is issued and use commenced within that period."
- The following Attachments to the Staff Report were introduced:
 - #1: Standards Letter
 - #2: Location Map
 - #3: Zoning Map
 - #4: Site Plan

Applicants Testimony and Exhibits

The Applicant appeared over WebEx before the St. Mary's County Board of Appeals (the

“Board”). The following evidence was presented:

- The Applicant is a significant provider of commercial communication towers in St. Mary’s County, building or planning to build at least twelve sites.
- The architecture of the proposed Tower mirrors the Applicant’s existing commercial communications towers in St. Mary’s County such that it is designed to have a low aesthetic impact. The proposed Tower is a single standing monopole, 199 feet tall and 5.5 to 6 feet wide at the bottom that will taper to approximately twenty-four inches at the top. The monopole is constructed out of galvanized steel and emits no odor and little to no noise.
- The 60’ x 60’ pad site will be enclosed and will contain a generator and equipment for various wireless carriers. At times, propane or diesel generators activate during power outages. If a generator is installed, a sound box will be constructed to surround the generator to mitigate noise.
- There will be no commercial advertising on the tower.
- No lighting is required for the Tower under Federal Aviation Administration regulations because the proposed Tower will be under 200 feet tall.
- The capacity of the Tower will be 5G compatible, allowing up to five wireless carrier users—Verizon, AT&T, etc.—to install devices. If all five devices were installed, the highest antenna will be at 190 feet, the lowest will be at 145 feet, and there will be ten feet between each.
- While the proposed ten-foot wide gravel road to the Tower Site will carve into the tree line, only the entrance drive around the Tower Site will be unwooded such that 270 degrees around the Tower Site will remain forested. The untouched trees will remain

at their same height, and average height of these surrounding trees is fifty to sixty feet.

- The Tower is 335 feet from the nearest residence and 199 feet to the nearest residential property line.
- While the fall radius of the Tower is 199 feet, the fall design of the Tower is a “zero fail design” such that it fails—or snaps—at the middle point to fall inside of itself, not outwardly.
- The Tower Site was chosen because it was near Maryland Route 235, it is large enough to meet all the fall zone requirements, the Property already was being used commercially, and no property owner of any other eligible site was willing to place the Tower Site on his or her property.
- There has been increased stress on wireless cellular sites due to the COVID-19 pandemic.
- While current residents have expressed their satisfaction with existing cellular service, the proposed Tower will not only serve the neighboring residents but those commuting along the Maryland Route 235 corridor. Installing an additional commercial communication tower, such as the one proposed, would reduce the volume placed on the other towers in the area, thereby increasing signal strength and allowing cellular communication to be more reliable and robust.
- Verizon Wireless states that the proposed Tower is necessary, as the existing sites do not presently serve the need, which is evidenced by the Radio Frequency Engineering Report (“RF Report”).
- The industry standard for the past five to seven years is to place communication towers within one mile of one another. Presently, however, there are no communications

towers within one mile of the proposed Tower Site and only two within two miles.

- The Tower complies with Federal Communication Commission requirements.

Decision

County Requirements for Granting Conditional Uses

The St. Mary's County Comprehensive Zoning Ordinance § 25.6 sets forth eight separate requirements that must be met for a conditional use to be granted:

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 St. Mary's County, Maryland Comprehensive Plan ("Comprehensive Plan"); and

8. The conditional use, in all other respects, conforms to the applicable regulations of the district in which it is located or to the special requirements established for the specific conditional use in the Ordinance.

Id.

Conclusions

Upon review of the facts and circumstances, the Board concludes that the Applicant has met the standards for granting a conditional use and the objectives of St. Mary's County Comprehensive Zoning Ordinance § 51.3.91. Several factors support this decision.

First, the proposed conditional use, Communication Tower, Commercial, complies with the standards of the RPD because the proposed conditional use is permitted in this zoning district pursuant to CZO Schedule 50.4, Use Type 91.

Second, the Property has been used commercially for approximately 20 years, and the Tower Site is situated away from neighboring properties and residential uses. Moreover, the construction, maintenance, and operation of the Tower Site will be subject to numerous County, State, and Federal regulations intended to ensure the public's health, safety, and welfare.

Third, the present uses on neighboring properties are residential, commercial and industrial. The Tower Site, as proposed, will be surrounded by 270 degrees of the existing forest and will be more than 300 feet from the nearest structure on an adjacent property.

Fourth, the Tower Site is in a mature woodland area with access from the existing private driveway off Oakville Road, and its operation would not affect or impact neighboring properties. Furthermore, the proposed Tower is expected to be similarly situated to other telecommunication towers currently located and in operation throughout St. Mary's County.

Fifth, utilities are located on the Property and will be extended at the Tower Site. A ten-foot wide gravel road will provide access to the Tower Site, and a stormwater management pond presently

exists on the Property. Furthermore, any additional, necessary access road, grading, and stormwater management are being provided as part of the commercial site plan development process. LUGM, as the administrator of this process, will ensure that adequate utilities, road access, and stormwater management will be provided.

Sixth, concerning ingress and egress, the Property has an existing commercial entrance onto Oakville Road, a secondary class road, which is owned and maintained by St. Mary's County. Accordingly, access to the proposed Tower Site will be through the existing commercial nursery and garden center, and the additional use of the Tower Site will not impact traffic.

Seventh, expanding adequate cellular and digital communications compatibility comports with the Comprehensive Plan, which seeks to “[p]rovide the infrastructure to ensure adequate capacity” by “[a]ccommodat[ing] efficient and equitable distribution of . . . communication utility services to meet the needs of the population and support the land use, design, and environmental concepts of this plan.” Comprehensive Plan, §§ 10.2.2.A, 10.2.2.A.ii.

Finally, the proposed conditional use is consistent with RPD development standards, as the Tower Site is not high-density development, and the Tower Site will not inhibit the activities are promoted within the RPD. Further, compliance with the standards specific to the Commercial Communication Tower is evidenced by the site plan, RF Report, Federal Aviation Administration Approval, Federal Communications Commission, National Environmental Policy Act approval, and the other engineering analyses submitted in support of the application. Moreover, the commercial site plan review process, administered by LUGM, will ensure that the Tower Site, as proposed, complies with the requirements of the CZO, as it pertains to Conditional Use number 91 in the RPD.

The Board, however, finds that the following conditions must be present to grant the Applicants' proposed conditional use:

1. Pursuant CZO § 51.91.b.(4), the tower shall be constructed so as to provide adequate

- capacity for future co-location of other commercial and/or government-operated antennae, unless the applicant demonstrates why such design is not physically feasible. 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. Pursuant CZO § 51.91.b.(5), 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. Pursuant CZO § 51.91.b.(6), no commercial advertising or other signage shall be permitted on the tower;
 4. Pursuant CZO § 51.91.b.(7), 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. Pursuant CZO § 51.91.b.(14), 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; and
 6. Pursuant CZO § 51.91.a.(1), final site plan approval shall be required.

ORDER

PURSUANT to the application of Heritage Oak Farm Partnership through Telecom Capital Group, LLC, requesting conditional use approval pursuant to Chapter 25 of the St. Mary's

County Comprehensive Zoning Ordinance for use type 91, Communication Tower, Commercial;
and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, that the Applicants are granted a conditional use to allow a Communication Tower, Commercial, Use 91, at the Tower Site subject to the following conditions:

1. Pursuant CZO § 51.91.b.(4), the tower shall be constructed so as to provide adequate capacity for future co-location of other commercial and/or government-operated antennae, unless the applicant demonstrates why such design is not physically feasible. 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. Pursuant CZO § 51.91.b.(5), 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. Pursuant CZO § 51.91.b.(6), no commercial advertising or other signage shall be permitted on the tower;
4. Pursuant CZO § 51.91.b.(7), 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. Pursuant CZO § 51.91.b.(14), 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; and
6. Pursuant CZO § 51.91.a.(1), final site plan approval shall be required.

Additionally, the foregoing conditional use is also subject to the following condition that the Applicants shall comply with any instructions and necessary approvals from the Department of Land Use and Growth Management.

This Order does not constitute a building permit. In order for the Applicants to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: June 11, 2020


George A. Hayden, Chairman

Those voting to grant the conditional use:

Mr. Hayden, Mr. Brown, Ms. Delahay, Mr. Miedzinski, and Mr. Richardson

Those voting to deny the conditional use:

Approved as to form and legal sufficiency


Neil A. Murphy, Deputy County Attorney

NOTICE TO APPLICANTS

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the County Board of Appeals. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

Further, St. Mary's County Comprehensive Zoning Ordinance § 25.9 provides, "Subject to an extension of time granted by the Board of Appeals for cause, no conditional use permit shall be valid for a period longer than one year unless a site plan is approved, a building permit is issued, construction is actually begun within that period and is thereafter diligently pursued to completion, or a certificate of occupancy is issued and use commenced within that period."

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.