

**IN THE ST. MARY'S COUNTY BOARD OF APPEALS**

**CUAP # 25-0035**

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**DRIFT INN COMMUNICATION TOWER**

**FIFTH ELECTION DISTRICT**

**DATE HEARD: June 26 & July 24, 2025**

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**ORDERED BY:**

**Mr. Hayden, Mr. Brown, Mr. LaRocco,  
Mr. Payne, and Ms. Weaver**

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: August 28, 2025**

The order signed by the Board of Appeals on August 28, 2025 referred to an incorrect election district. This clerical error was corrected and the order was reprinted on September 3, 2025, with no additional changes.

**IN THE ST. MARY'S COUNTY BOARD OF APPEALS**

**CUAP # 25-0035**

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**DRIFT INN COMMUNICATION TOWER**

**FIRST ELECTION DISTRICT**

**DATE HEARD: June 26 & July 24, 2025**

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**ORDERED BY:**

**Mr. Hayden, Mr. Brown, Mr. LaRocco,  
Mr. Payne, and Ms. Weaver**

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: August 28, 2025**

### **Pleadings**

Telecom Capital Group (“Applicant” or “TCG”) seeks conditional use approval for Use Type 91 – Communications Tower.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on June 6 and June 13, 2025. The file contains the certification of mailing to all adjoining landowners, including those located across a street, all properties within 200’ of the subject property, and contains proof physical postings were made on the property as required. The agenda was also posted on the County’s website on June 18, 2025. The continuation to July 24 was announced, with a date and time certain, on the record at the close of the proceedings on June 26. Therefore, the St. Mary’s County Board of Appeals (“Board”) finds and concludes this matter has complied with all applicable notice requirements.

### **Public Hearings**

Public hearings were conducted at 6:30 p.m. on June 26 and July 24, 2025 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.

### **The Property**

The property is situate 40951 New Market Turner Road, Mechanicsville, MD 20659 (hereinafter “the Property”). The Property consists of 4.403 acres, more or less, is zoned Rural Preservation District (“RPD”) and may be found at Tax Map 10, Grid 13, Parcel 44.

### **The Conditional Use & Variance Requested**

The Applicant requests conditional use approval pursuant to Chapter 25 of the St. Mary’s

County Comprehensive Zoning Ordinance for Use type 91, Communications Tower, Commercial.

**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:

*Communication tower that supports commercial uses or non-commercial uses when the structure exceeds 100 feet in height.*

According to Schedule 50.4, Use Type 91 is permitted as a conditional use in the Rural Preservation District. In addition to general standards applicable to all developments, CZO § 51.3.91.b contains conditional standards specifically applicable to Use Type 91.

**Staff Report & Testimony**

Stacy Clements, an Environmental Planner from the St. Mary's County Department of Land Use and Growth Management ("LUGM"), presented the staff presentation, which included the following:

- The Property's area is 4.403 acres in size, according to the Maryland Department of Assessments and Taxation. The Property is a residential parcel with a single-family house built in 1999.
- The Applicant is requesting Conditional Use approval for a 195' tall (with 4' lightening rod) Commercial Communications Tower (hereinafter the "Tower"), within the Rural Preservation District. The Tower will be located on a 42.5' X 60' equipment compound with access by way of a gravel drive from New Market Turner Road. The Applicant, TCG, is leasing the space from the Property Owner. The entire equipment compound will be surrounded by an 8' chain-link fence with 1' of barbed wire. (Attachment 5).
- The St. Mary's County Health Department, Soil Conservation District, Maryland State Highway Administration, NAS Pax River, the Fire Board, Department of Economic

Development, Department of Natural Resources Wildlife and Heritage Service, and Recreation & Parks has no objection to the site plan. The Department of Public Works & Transportation, the St. Mary's County Metropolitan Commission, and SMECO reviews are pending. The Department of Land Use and Growth Management approval is pending the outcome of this hearing.

- 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.”

In response to questions posed by the Board about a particular property adjacent to the tower site on its northeastern boundary line, John Houser, Deputy County Attorney, proffered that he had some personal knowledge of the property in question. Mr. Houser was sworn and subsequently identified the property as an outlying portion of Cremona Farm, a historic “900 acre” property. He said he was familiar with Cremona because it was a well-known historic landmark in the County, that he had “briefly overlapped” with the current owner during mutual terms of service on the Historical Society’s board, and that his father, John C. Houser, a forester, had performed work on the property in the past. Mr. Houser stated the historic sites associated with Cremona, including the main house, are not on the part of property in question and can be found to the northeast, closer to the river. He believed the farm was under a conservation easement, although he did not know specifics. Ms. Clements was able to locate a layer on the County’s GIS map that showed the property under a “Rural Legacy Easement.”

- The following Attachments to the Staff Report were introduced:

Attachment 1: Conditional Use Standards Letter

Attachment 2: Location Map

Attachment 3: Land Use Map

Attachment 4: Zoning Map

Attachment 5: Site Plan

Attachment 6: Section 51.3.91.b Communication Tower, Commercial,  
Conditional Standards

Attachment 7: Review Comments

### **Applicants' Testimony and Exhibits**

On June 26 and July 24 the Applicant was represented before the Board by Mark Fisher, who identified himself as the Managing Member of Telecom Capital Group. On June 26, Mr. Fisher was joined by Tracy Themak, a designated agent of Telecom Capital Group, and on July 24 by Ryan Showalter, Esq., of McAllister, Detar, Showalter & Walker LLC. Narendra Mangra, an engineer for the project, also provided testimony. In remarks that spanned both evenings, Applicant presented slideshows and exhibits depicting the site, the planned tower, photo simulations of what the tower will look like when constructed, and responded to questions posed by the Board. The following, in particular, are highlighted from the testimony presented:

- The 195' tall tower will be designed to be self-collapsing, limiting the potential for injury or accident in the event the tower should fall.
- The Applicant shared coverage maps and a Radio Frequency Engineering Study, which indicate the Property is located in an existing "coverage gap."
- The proposed tower will be built to accommodate up to "4 or 5" different carriers.

Personnel from each carrier will service the site approximately once or twice a month.

Mr. Fisher noted that carriers are increasingly relying upon the same vendors to perform these routine activities, potentially decreasing the amount of monthly visits.

- The tower will normally emit no sound or vibrations. A backup generator will be installed at the site. When active, projected decibel levels from the backup generator are approximately 60 decibels immediately adjacent to the generator; 50-55 decibels when 50' away; 40-45 decibels when 160' away; and 35-40 decibels when 295' away.
- Photosimulations were shared showing the extent of vegetative screening.
- Increasing coverage will allow more immediate reporting of emergencies by phone and other communication devices that depend upon wireless signals.

#### **Public Testimony**

The record was opened to public comment at the July 24 meeting. The following testimony was submitted in-person:

- *Amanda Wood, 39420 Pinewood Lane*
  - Ms. Wood lives adjacent to the subject property, and access to the site runs through her property. She said she believes the owner of the Property acted “in bad faith” when he reached out to them several months ago about the continued use of the existing residential driveway, and said they did not learn of the proposed cell tower until notices for the public hearing were sent. She said the cell tower would decrease the property values of her property.

In addition to in-person testimony, the following written comments were received:

- *Tony Menna, 28131 Rustin Family Way*
  - Mr. Menna is a property owner who lives on a parcel immediately adjacent to the

site. He opposes the requested conditional use approval. He wrote the proposed structure would be “a major visual eyesore in an otherwise peaceful, residential area.” He further wrote it is “well known that homes located near cell towers lose value,” and raised concerns about the safety of the proposed structure. He further said the development of a cell tower could impact where he chooses to build future improvements on his own property.

- *Keith and Jessica Gagnon, 28121 Rustin Family Way*
  - Mr. and Mrs. Gagnon live slightly south of the proposed tower site. They oppose the requested conditional use approval. They said photosimulations were not shown from adjacent residences’ point of view and “fail to capture the tower’s true visual impact.” They also stated the photosimulations do not show what the tower will look like during months when trees lose their leaves. They raised the site’s proximity to “a designated Resource Protection Area” and said that “a powerful RF source” such as the proposed tower could put bees at risk that live at the apiary they have on their property. They also stated that “studies have consistently shown that homes located near visible cell towers often lose value.”
- *Drew Lord, 40955 New Market Turner Road*
  - Mr. Lord resides near the proposed tower site. He wrote that he is “100% in favor” of the project and said he currently suffers from “poor cell service and substandard internet service.” He believed the tower would improve these conditions.

### **Decision**

#### **County Requirements for Granting Conditional Uses**

The St. Mary’s County Comprehensive Zoning Ordinance § 25.6 sets forth eight separate



standards 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.* Moreover, CZO § 51.3.91 lists fourteen (14) separate standards that must be satisfied to grant a conditional use. Upon review of the facts and circumstances, the Board concludes that the

Applicants have met the general standards for granting a conditional use under CZO § 25.6 and the specific conditional standards under CZO § 51.3.91. Several factors support this decision.

General Standards under CZO § 25.6

To the first standard, the proposed use is allowed in the Rural Preservation District as a conditional use. Staff presented a report, and Applicants presented voluminous materials and testimony of their own, showing the proposed project comports with both the general and conditional standards prescribed by the Comprehensive Zoning Ordinance.<sup>1</sup>

To the second standard, the Board believes this project will, on the whole, advance the general public health, safety, and welfare. Promotion of the general welfare does not require a project pose absolutely no impacts to adjacent properties, nor does a finding that the general welfare is advanced necessarily ignore that neighboring property owners may wish for development of a different nature or character than that proposed – or no development at all. But conditional uses, like uses permitted-by-right, share a presumption of compatibility and of promotion of the general welfare when proposed in a permitted zoning district and conforming to the standards prescribed for that district. As distinguished from the presumption that attaches to uses permitted-by-right, conditional uses are those uses which “because of their particular characteristics, cannot be permitted without consideration, in each case, of their impact upon the neighboring land and of the public need for the particular use at the particular location.” CZO § 25.1 (emphasis added). The judicial gloss applied to conditional uses over the decades is that they

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<sup>1</sup> There was lengthy discussion between the Board, Board’s counsel, Applicant, Applicant’s counsel, and the County Attorney’s Office on the proper interpretation CZO § 51.3.91.b.(3)(10). That standard prescribes a setback distance of “100 percent of the height of the tower from any residence, historic site, building or other structure not associated with the tower site. If the setback is to be on an adjoining property, a notarized statement of agreement or an easement must be obtained from the adjoining property owner.” There is unimproved neighboring land within that setback distance, and no notarized statement of agreement or easement from affected property owners. The Board errs on the side of caution and public notice and believes these authorizations or a variance to this setback requirement ought to be required before this project may proceed. Otherwise, the project appears to fully comply with all enumerated conditional use standards.

are “a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislation has determined to be permissible absent any fact or circumstance negating the presumption.” *People’s Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 88 (2008) (quoting *Schultz v. Pritts*, 291 Md. 1, 11 (1981)) (emphasis added). The record in this proclaims the salutary effects of this project that will advance the public welfare: Applicant showed a “coverage gap” in telecommunications coverage in the general neighborhood and the strides this project will make towards closing it. Closing the coverage gap will provide nearby residents and travelers with better communications services. Applicant also opined that emergency services and other public services would be easier to reach and faster to respond to the neighborhood as a result of increasing the areas of reliable communications services.

The third standard requires the Board find that 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 that it will not substantially diminish or impair property values within the neighborhood. The Board does not find other properties will be materially or substantially affected such that denial is warranted. The project will be screened from general public view by existing vegetation, and the monopole construction greatly mitigates any risk of collapse onto adjacent properties. Concerns about effects to neighboring property values do not possess the particularity or backing of expert testimony required by Maryland law. *Ray v. Mayor of Baltimore*, 430 Md. 74, 98 (2013) (“We agree with Respondents that testimony about whether the value of a property will increase or decrease because of a future development 0.4 miles away requires expert testimony.”) The Board is forbidden by federal law into considering potential environmental impacts of the proposed cell tower. On the whole, the Board does not find sufficient evidence

before it to conclude any material injury or harm will result if the proposed tower is constructed.

To the fourth standard, this project does not appear to pose greater adverse impacts to adjacent properties or the general neighborhood as one would expect from any similar cell tower proposed in the Rural Preservation District. As explained in our discussion of the second standard, conditional uses are projects that, generally speaking, the local governing body has legislatively predetermined to be compatible with adjoining properties. It allows for case-by-case denials when a conditional use is proposed on a particularly challenging site or in neighborhoods with a heightened sensitivity to the proposed use. We do not find any such unique conditions about place or neighborhood before us in this matter. It is located on an adequately sized lot with few neighboring properties in vicinity. The conditions and potential impacts of this project appear to be of a variety that would be encountered throughout the Rural Preservation District and are not localized or unique to the site or its neighborhood.

To the fifth standard, the site plan addresses and ensures that adequate facilities will be provided. As stated at the hearing on July 24, any dispute over the existing easement must be addressed through a court of competent jurisdiction, and not this Board. Furthermore, the permit site plan review process, administered by LUGM, will ensure that adequate utilities, road access, and stormwater management will be provided.

Sixth, the existing point of ingress and egress shall be maintained. It is also noted by the Board that a communications tower will not generate additional traffic or road congestion beyond the minimal traffic necessary to periodically maintain the structure, which the Applicant elaborated upon as being, at most, only several visits a month.

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. A wireless tower such as that proposed will improve communications, connectivity, and the overall quality of life and safety of residents and travelers.

### **ORDER**

**PURSUANT** to the application of Telecom Capital Group, requesting conditional use approval pursuant to Chapter 25 of the St. Mary’s County Comprehensive Zoning Ordinance for Use Type 91, Communications Tower; and

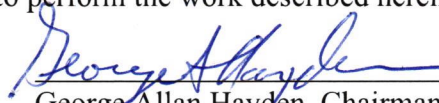
**PURSUANT** to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

**ORDERED**, by the St. Mary’s County Board of Appeals, that the Applicants are granted a conditional use to allow Use Type 91 at the Property;

**UPON CONDITION THAT**, the Applicant shall gain a notarized statement of agreement or easement from owners within the one-hundred percent height setback distance, or, in the alternative, apply for and receive a variance from CZO § 51.3.91.b.(3)(10).

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.

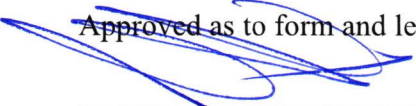
Date: August 28, 2025

  
George Allan Hayden, Chairman

Those voting to grant the conditional use:

Mr. Hayden, Mr. Brown, Mr. LaRocco,  
Mr. Payne, and Ms. Weaver

Those voting to deny the conditional use:

  
Approved as to form and legal sufficiency

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Steve Scott, Esq.,  
Attorney to the Board

### **NOTICE TO APPLICANT**

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 Petition for Judicial Review with the Circuit Court of St. Mary's County.

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.