

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP # 25-0035

DRIFT INN COMMUNICATION TOWER

FIFTH ELECTION DISTRICT

DATE HEARD: AUGUST 28, 2025

ORDERED BY:

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

PLANNER: SIANLI BLASCO

DATE SIGNED: October 9, 2025

Pleadings

Telecom Capital Group (“Applicant” or “TCG”) seeks a variance from Comprehensive Zoning Ordinance § 51.3.91.b(10), requiring a proposed communications tower have a setback distance of one-hundred percent (100%) of the height of a tower from any residence, historic site, building or other structure not associated with the tower site.¹

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on August 8 and August 15, 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 that physical postings were made on the property as required. The agenda was also posted on the County’s website on or before August 20, 2024. Therefore, the St. Mary’s County Board of Appeals (“Board”) finds and concludes this matter has complied with all applicable notice requirements.

Public Hearings

A public hearing was conducted at 6:30 p.m. on August 28, 2025 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were duly sworn and 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.

¹ This proposed use was subject of a prior conditional use hearing before the Board. CUAP 25-0035 was heard before this Board on June 26 and July 24, 2025, with a vote to approve the conditional use held at the conclusion of the hearing on July 24. A final written order for the same was approved and signed by the Board on August 28, shortly following the close of the hearing in this matter.

The Variance Requested

The Applicant seeks a variance from Comprehensive Zoning Ordinance § 51.3.91.b(10), requiring a proposed communications tower have a setback distance of one-hundred percent (100%) of the height of a tower from any residence, historic site, building or other structure not associated with the tower site.

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.

The Comprehensive Zoning Ordinance contains a multitude of specific standards applicable to use type. The sole standard this variance concerns may be found at § 51.3.91.b(10) and reads in full as:

In addition to any setbacks otherwise required by the Zoning Ordinance, towers shall require 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. If the communications tower is proposed along a state or County scenic roadway, then a setback from the road of 300 percent of the height of the tower and additional landscaping, or additional screening may be required by the Board of Appeals.

Staff Report & Testimony

Sianli Blasco, a Planner from the St. Mary's County Department of Land Use and Growth Management ("LUGM"), presented a staff report and presentation, which included the following testimony and evidence:

- The subject property (hereinafter the "Property") 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 dwelling and four sheds (one shed is to be removed) on New Market Turner Road.

- Section 51.3.91.b(10) Communication Tower, Commercial, Conditional Standards: specifies that towers shall require a setback distance of 100 percent of the height of the tower. 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.
- The proposal is for a 195' monopole with 4' lightning rod (Communication Tower). The tower will be located on the northern area of the property. The tower will be inside a fenced compound 60 feet by 42.50 feet area. The distances from the center of monopole to the eastern property line is 57.7 feet and 58.2 feet to the western property line.
- The applicant is requesting a variance to allow the construction of a 199-foot tall Commercial Communications Tower (including a 4-foot lightning rod), without meeting the required 199-foot fall zone setback. The eastern property line is 57.7 feet from the center of tower and 58.2 feet from the center of tower to the western property line. Additionally, the applicant is requesting the application not be subject to the requirements of a notarized statement of agreement or easement.
- The Maryland State Highway Administration and the Department of Natural Resources Wildlife and Heritage Service, The St. Mary's County Health Department, The Department of Public Works & Transportation, the St. Mary's County Metropolitan Commission, Soil Conservation District and Maryland Department of Environment have no objection to the site plan. The Department of Land Use and Growth Management approval is pending the outcome of this hearing.

- The following Attachments to the Staff Report were introduced:

Attachment 1: Location Map

Attachment 2: Land Use Map

Attachment 3: Zoning Map

Attachment 4: Standards Letter

Attachment 5: Site Plan

Applicants' Testimony and Exhibits

Applicant appeared before the Board represented by Ryan Showalter, Esq., of McAllister, Detar, Showalter & Walker LLC and Mark Fisher, an authorized agent for Applicant. Together, Mr. Showalter and Mr. Fisher presented testimony and evidence, shared site plans, summarized and, in some cases, elaborated upon the points made in the standards letter, and answered questions posed by the Board. Evidence adduced by the Applicant included, but was not limited to, the following, presented in summary:

- Mr. Showalter began by emphasizing that the setback is a setback from existing structures, and stated the project complies with that requirement. He said the closest structure, on the Mennas' property, is 338 feet from the proposed tower, which has a proposed height of 199 feet. Mr. Showalter characterized the issue presented in this matter as "a portion of that setback falls on adjacent properties, and we don't have the notarized statement from those landowners."
- Mr. Showalter offered a correction to the staff report and stated the variances required are a reduction of the setback to 57.7 feet on the eastern property line and 58.2 feet on the western property line, as measured from the center of the monopole to the property lines.

- Mr. Fisher shared some of the history of the project, including past attempts to locate a tower on Rustin Way. He stated one of the reasons the Property was selected was that it appeared to be better conform to direction given by the Board in that prior matter, insofar as the Property is located further from New Market Turner Road.
- Mr. Fisher said Nancy Royal's [*sic*] property would be attractive, but that an existing easement precludes development on it. He elaborated upon topographical issues present on other prospective properties and stated each property Applicant analyzed in the area appeared to require some nature of variance to develop.
- Mr. Showalter said the proposed communications tower will fill "a communications gap," and that providing greater connectivity would enhance public safety and, potentially, enhance property values.
- The Property is located on "a narrow, triangular parcel" that has "significant topography challenges" on its northern end. Mr. Showalter also elaborated that, unless a tower is located on a site with an appropriate elevation and built to an appropriate height, signals will not reach the full proposed coverage area. He said that the geographic area the Property is located in with its many "undulations," is particularly challenging.
- Mr. Showalter said the tower would be "virtually hidden" by the tree cover surrounding it.
- Speaking of impacts to the adjoining properties the setback distance falls upon, Mr. Showalter stated there were only two properties impacted by the variance. He stated the eastern property is subject to a conservation easement that prevents development of structures on the property. The western property, owned by Anthony and Sue Menna,

was characterized as a residential parcel improved with a single-family home that is 338.9 feet from the tower, beyond the required setback distance. Mr. Showalter stated, “When you overlay the subdivision plat [that created the Menna property] and its resource protection areas on this parcel, you’ll see virtually all of what I’ll call the fall radius ... is located within the area that can’t be disturbed.”

- Applicant character the likelihood a tower would ever collapse as “highly improbable.” That assessment was expanded upon by statements that the towers are highly engineered, and that a component of their design is ensuring that, in the event of failure, the tower is meant to “fold on itself and fall[] within the tower compound. They don’t fall horizontally.” Applicant stated this claim was supported by a letter Applicant possessed from “ROHN,” whom applicant characterized as “the oldest cell tower manufacturer in the county.” Mr. Fisher also stated that in his 30 years of operating in the industry he has never had a tower collapse.
- In response to a question posed by a Board member about whether neighbors had been approached for notarized statements, Applicant said Mr. Menna had been asked but that Mr. Menna was not willing to sign any such statement.

Public Testimony

The record was opened to public comment and all members of the public desiring to offer testimony were sworn. The following testimony was provided in-person before the Board:

- *Dale Lord, 47955 New Market Turner Road*
 - Mr. Lord stated he resides at a property directly adjacent, on the southeast edge, to the proposed cell tower site. He is the contract-purchaser of his residence and said he “intends to live on this property for the rest of my life.” He asked the Board to

approve the proposed variance. He said the tower would have “a direct, positive impact on my quality of life.” He stated he is a disabled veteran and unable to work outside the home and is currently taking classes online for his bachelor’s degree. He characterized good connectivity as a thing “upon which the quality of my life hinges,” and that his property’s distance from existing cell towers results in “substandard” cell service. He said calls are frequently dropped at his house. He said construction of the cell tower would improve his, and the overall community’s, quality of life.

- *Anthony Menna, 28131 Rustin Family Way*

- Mr. Menna owns the western adjoining property, one of the properties upon which the setback distance falls. He referenced the written letter he submitted and said it is “the outline of my stance on the proposed project.” Summarizing it, he said he had concerns about safety liability. He said the setback falls upon portions of his land he may develop in the future. He stated he has a storage trailer within the setback that he is using as a “temporary” structure, which has been in place since January and “should constitute a structure.” Mr. Menna did not state whether this trailer was permitted or not. Through staff’s assistance, the County’s GIS Map interface was able to be shown on the display screens in the room to better allow Mr. Menna to better explain where the trailer is located and show the topography of his property. Based upon the GIS maps, the location of the trailer appeared to be slightly over 200 feet from the proposed tower site. Mr. Menna also provided a letter from a realtor stating the property values would be diminished by an adjacent cell tower. The realtor did not provide a specific estimate of the effect upon Mr.

Menna's own property value, and she was not available for cross-examination. Mr. Menna offered his own lay opinion of a potential \$80,000 - \$170,000 loss in property value.

- *Keith and Jessica Gagnon, 28121 Rustin Family Way*
 - Mr. and Mrs. Gagnon live slightly south of the proposed tower site. Their property is not directly impacted by the setback at issue in this matter. Mrs. Gagnon testified that she teleworks regularly and has only rarely had internet connectivity issues, but also stated her connectivity is provided through her internet provider. She said she has both Verizon and AT&T for cell phones and that she has never had any issues with her cell phone coverage. She said the property would be seen from her property, as well as from a neighboring property. She is concerned about the potential impact on her property values. She stated she and her husband bought their property thinking it was in a conservation area and that they would not have to worry about development like the proposed cell tower in their neighborhood.

- *Amanda Wood, 39420 Pinewood Lane*
 - Mrs. Wood lives in the immediate neighborhood of the proposed cell tower site. She asked at what point one property owner can impose their wants and needs on the neighborhood. She also said her coverage was fine, but also said, "Yeah, there's probably a need.... I'm not saying that there might not be a need." Mrs. Wood questioned how sound the engineering of the tower's design to collapse, and said that she is a builder and that "we" have been in business 47 years. She stated that, in her line of work, designs fail despite engineers' claims.

In addition to the in-person testimony, two written comments were received prior to the hearing:

- *Anthony Menna, 28131 Rustin Family Way*
 - Mr. Menna submitted a letter, which he referenced in his verbal remarks. In his letter he states he has a storage container located within 200 feet of the tower site. He notes that while the tower “is designed to collapse inward, there is no guarantee they will.” He generally claimed towers can attract lightning and increase fire risk. Lastly, he expressed concern over the possibility of lowered property values and whether this action sets precedent for where future towers may be located.
- *Keith and Jessica Gagnon, 28121 Rustin Family Way*
 - Mr. and Mrs. Gagnon submitted a letter, in addition to their verbal testimony. In their letter they stated the setback rule “is there for safety.” They provided two out-of-state examples of cell phone tower collapses in recent months, and stated these examples were “modern, engineered structures.” Detailed comparisons between the design of the proposed tower and those in these examples were not made. They also questioned whether there was a truly unique feature of the property such that a variance request could be justified.

Decision

County Requirements for Granting Variances

St. Mary’s County Comprehensive Zoning Ordinance § 24.3 sets forth seven separate requirements that must be met for a variance to be issued:

- (1) Because of the particular physical surroundings such as exceptional narrowness, shallowness, size, shape, or topographical conditions of the property involved, strict enforcement of this Ordinance will result in practical difficulty;
- (2) The conditions creating the difficulty are not applicable, generally, to other properties

within the same zoning classification;

- (3) The purpose of the variance is not based exclusively upon reasons of convenience, profit, or caprice. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding;
- (4) The alleged difficulty has not been created by the property owner or the owner's predecessors in title;
- (5) The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and the character of the district will not be changed by the variance;
- (6) The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood; and
- (7) The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

Id.

Findings – Standard Variance Requirements

Upon review of the facts and circumstances, the Board finds and concludes that the Applicant is entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance.

First, the Board finds that strictly interpreting the CZO would result in practical difficulty due to the particular physical surroundings of the Property. In *McLean v. Soley*, 270 Md. 208 (1973), the Maryland Court of Appeals established the standard by which a zoning board is to review "practical difficulty" when determining whether to grant a variance:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks,

frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome;

2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners; and,
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Id. at 214–15.

Denial of this variance would impose a practical difficulty upon Applicant. Strict application of this standard would prohibit the Applicant from pursuing this use on the Property; The challenge of topography at this site – and other potential sites in the immediate vicinity – was a recurring theme of Applicant’s presentation, and the site plans and maps within the record lay bare the reason why. Sharp topography precludes the use from being developed further north, and shifting the proposed tower in another direction would not resolve the setback issue. Attempting to push the site further north would not only be, apparently, prohibitively expensive, but would thwart the overall effectiveness of the use; Applicant stated that losing the elevation it can gain at its proposed site would compromise its ability to fill “the gap” in the immediate neighborhood.

Demonstrating the need for a variance is only one component of the test for practical difficulty. The remaining two prongs articulated in *Soley* deal, more or less, with whether granting the variance does justice to the neighborhood and whether a grant fulfills the purpose and spirit of the zoning ordinance. The underlying policy justification for the standard at issue appears to be

safety, something recognized by both neighbors and the Applicant. As Applicant's counsel phrased it, "... the public interest is in protecting structures from towers within what's referred to as the fall radius." We agree, based upon the language of the regulation and the multitude of standards that appeal to aesthetic considerations, this appears to be the intent and purpose of this particular part of the relevant standard. The salience of public safety and risk of collapse as the regulation's appears weak in this particular case. The Applicant testified, at length, about how the monopole design of the proposed tower is engineered to be inwardly collapsing, mitigating the risk of damage within the full "fall radius" imposed by the zoning ordinance. Applicant testified that, between constraints imposed by topography, environmental features, and conservation easements, there is limited development potential on the portions of the adjoining properties that fall within the "fall radius." And the record indicates that there are no structures on adjoining properties within the "fall radius" – with the potential exception of a storage container, whose owner described it as "temporary."

There is conflicting evidence in the record about the overall safety of the cell tower. Opponents testified that there is always a chance a high impact storm, or unforeseen or unknowable site conditions, or flaws in the design and construction of the tower could result in a catastrophic loss. There was little evidence to cast actual, substantive doubt upon Applicant's safety claims. The closest in the record are the examples of tower collapses in recent states, but details provided on them were scant, based upon hearsay, and unsupported by expert testimony. They are not sufficient to disturb the impression left by Applicant that this is a well-designed, well-engineered proposal that poses little risk of collapse to its neighbors. The Board's interest in public safety is a justifiable and proper exercise of the traditional police power. *Board of County Commissioners for St. Mary's County v. Southern Resources Management, Inc., et al*, 154 Md. App 10, 38 (2003).

Absolute, metaphysical certainty of the future is not, however, a standard this Board may lawfully ask any applicant to meet. *Id.* at 33 (“... the Board applied an arbitrary standard requiring 100% certainty... [t]he 100% certainty standard was arbitrary because it is impossible to demonstrate, based on a 100% certainty requirement, that any parcel of land is completely safe.”). Here, the balance of evidence favors a conclusion that the proposed tower poses a minimal safety risk to adjoining properties and that it will bring benefits to the wider neighborhood. Accordingly, we may conclude that granting the variance brings substantial justice to the neighbors and does not obviate the designs and motivations of the zoning ordinance.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. As already mentioned above and laid out in great detail in the Applicant’s standards letter, extremely challenging topography dominates the northern end of the Property. Such conditions – nor the attractiveness of the Property as a potential cell tower site – are not generally applicable to similarly situated properties.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Applicant has demonstrated real and palpable practical difficulty which prevents it from hewing more closely to the strictures of the county’s development regulations. The variance request is not motivated by a desire to achieve a marginal gain in overall profitability or a minimal reduction in the development review cycle or development costs; it is core and essential to the overall proposal itself, and the use may not be accomplished without its grant.

Fourth, the need for the variance does not arise from actions of the Applicants. As noted previously, Applicant’s need for a variance stems from the particular physical characteristics of the Property.

Fifth, the variance will neither detrimentally affect the public welfare, substantially injure other properties or improvements, nor change the character of the district. We do not find a singular cell tower will change the character of the entire neighborhood; ample testimony was provided that the proposed tower will be buffered from the general viewscape. As there was with public safety, testimony conflicted over both perceived impacts to neighboring property values and perceived community benefits the proposed tower would bring. Applicant, and one of the members of public who offered testimony, testified to a belief property values would rise, on a theory that increased connectivity would improve quality of life. Increased connectivity would stretch beyond the immediate environs of the proposed cell tower site into the wider surrounding community as well. Contrarily, the other members of the public who offered public testimony expressed concern over property values and doubted, to varying degrees, whether the need for increased connectivity was as great as claimed by Applicant. One neighbor attempted to bolster his concerns over diminished property values by providing a letter from a realtor that projected a decrease in property values. One board member pointedly questioned how readily translatable the underlying data in that letter was to St. Mary's County, and the realtor who penned the letter was not present for cross-examination, which drew an objection from Applicant's counsel. As in the previous conditional use approval, we do not find proposition that property values will be materially diminished by the grant of this variance to meet the standards established by property law. *Ray v. Mayor of Baltimore*, 430 Md. 74, 98 (2013).

Sixth, the proposed development will not increase the residential use of the property. The proposed use concerns a cell tower only, not a dwelling or development that will increase the allowable density or actual residential use of the Property.

Finally, the Board finds that granting the variance will be in harmony with the general

spirit, intent, and purpose of the Comprehensive Plan. In St. Mary's County, towers must meet a lengthy set of criteria to be approved; those criteria, the sole, singular exception of the pending variance, were granted. Towers must receive special approval as conditional uses; that conditional use approval was the subject of a separate proceeding and was granted. Applicant comes before an administrative body of the County one final time for a single required variance, compellingly demonstrated the presence of a practical difficulty in achieving the use on the Property without that variance, and has satisfied the standards one must, to receive a variance. The Comprehensive Plan, and the development regulations that fulfill, appear to favor this proposal. The Comprehensive Plan specifically advocates for the development of communications systems in rural parts of the County, in Vision 7(F) of Section 2.2. The pending development proposal promises to bring much needed connectivity to a rural part of the County that, from the evidence brought forward by Applicant and some of Applicant's soon-to-be neighbors, appears sorely needed. Applicant's sound engineering design and siting of the tower as far from adjoining property lines as possible is sufficient to convince a majority of this Board that this needed connectivity can be brought to the public at little risk to the properties adjacent to this site.

Accordingly, the Board finds the variance should be granted.

ORDER

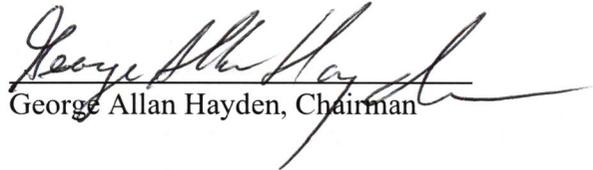
PURSUANT to the application of Telecom Capital Group, requesting a variance from Comprehensive Zoning Ordinance § 51.3.91.b(10) for a proposed communications tower to be located within the setback distance of one-hundred percent (100%) of the height of a tower from any residence, historic site, building or other structure not associated with the tower site; 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 the requested variance.

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: October 9, 2025


George Allan Hayden, Chairman

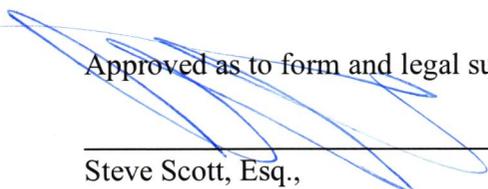
Those voting to grant the variance:

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

Those voting to deny the variance:

Mr. LaRocco

Approved as to form and legal sufficiency



Steve Scott, Esq.,
Attorney to the Board

NOTICE TO APPLICANT

Within thirty (30) 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.