

**MINUTES OF THE ST. MARY'S COUNTY BOARD OF APPEALS MEETING  
ROOM 14 \* GOVERNMENTAL CENTER \* LEONARDTOWN, MARYLAND  
Thursday, February 13, 2003**

Present: Howard Thompson, Chairperson  
George Allan Hayden, Member  
Sandy Mriscin, Member  
Marie Underwood, Member  
Ronald Delahay, First Alternate  
Linda Springrose, Assistant County Attorney  
Theresa Dent, DPZ Environmental Planner  
Dave Berry, DPZ Planning Specialist  
Peggy Childs, DPZ Recording Secretary

A list of attendees is on file in DPZ. The Chair called the meeting to order at 7:00 p.m. All participants in all applications were sworn in by the Chair.

**PUBLIC HEARINGS**

**VAAP #02-1127 – VALLARIO**

Rescheduled to the meeting of March 13, 2003 for applicant to provide proper notification to contiguous property owners.

**SCOTT AND RICHARD J. MALEY**

Requesting a variance from Section 38.2.13 of Zoning Ordinance #90-11 to allow construction of a single-family dwelling and appurtenances within the expanded Critical Area Buffer. The property contains 3.13 acres, is zoned RPD (RCA Overlay), and is located on Flat Iron Road; Tax Map 58, Block 15, Parcel 254; Lot 6 of Green's Rest Subdivision.

Legal Ad published in The Enterprise on 1/29/03 & 2/05/03

The Applicants proposes construction of a single-family dwelling and appurtenances, including a garage, driveway, deck, septic easement area and a future pool, on a lot with slopes greater than 15% and erodible soils. These environmental conditions cause the expansion of the Critical Area buffer across the entire lot. A variance is required for the 4,268 square feet of new impervious surface. At its closest point, the improvements will be approximately 385 feet from the St. Mary's River. The lot predates the County's adoption of the Critical Area Ordinance and is, therefore, grandfathered for density purposes, and the amount of impervious surface proposed is well below the allowable limit for this property. Staff has addressed the Standards for Variance of Section 38.2(7) of ZO #90-11 in the Staff Report, making findings that the standards have been met, and recommends approval of the requested variance. The Critical Area Commission (CAC) states "no opposition" to the variance but requests 3:1 mitigation to create a FIDS habitat (Forest Interior Dwelling Species) for birds off-site, and notes that the site plan must be revised to show the expanded buffer. The site plan has been revised to correctly show the expanded buffer.

**Ms. Mriscin moved to adopt the January 30, 2003 Staff Report. Seconded by Ms. Underwood and passed by 5-0.**

Scott Maley, one of the Applicants in this case, was present but stated he did not have the Certified Receipts. He said his surveyor, Jerry Soderberg of the D. H. Steffens Company, was to have brought the Certified Receipts but he had not yet arrived.

**The Chair continued the hearing until later in the meeting to await the arrival of Mr. Soderberg with the Certified Receipts.**

**CUAP #02-135-015 – Anderson Cellular Communication Tower**

Requesting conditional use approval to construct a 199-foot monopole communication tower and ancillary equipment within a 10,000 square-foot fenced compound.

The property contains 74.11 acres, is zoned RPD, and is located at 23960 Budds

Creek Road

in Clements; Tax Map 24, Block 19, Parcel 98.

Owner: Robert L. and Lucy M. Anderson

Present: Attorney Amy Cavero, of Saul Ewing, LLP, Baltimore representing AT&T Wireless Services, Inc.

Legal Ad published in The Enterprise on 1/29/03 & 2/05/03

Staff verified the posting of the property on 1/27/03

#A-1 Certified Receipts of notification to contiguous property owners

Ms. Cavero entered the following exhibits on behalf of the applicant:

#A-2 Binders submitted to Board members

#A-3 Revised site plan showing existing tree line

#A-4 Aerial photograph of property and surrounding area

#A-5 Impact Analysis on Residential Real Estate by Thorne Consultants, Inc.

Ms. Cavero offered a revised site plan showing the existing tree line, which provides natural screening to the site, and an existing gravel access drive that will be used for the tower. All setbacks have been met, including the required 600-foot setback from Budds Creek Road, a county-designated scenic road. The parcel is agricultural in nature and is surrounded by other rural-agricultural-residential properties, with some commercial uses located at the Budds Creek Road / MD 242 intersection.

In response to the Chair's question, Julian Pedini, of Wireless Facilities, Inc., a subcontractor for AT&T Wireless, said a balloon was floated several times on this site and various locations were evaluated. He said the county was notified, as well as adjoining property owners. In response to a request by Ruth Grover, formerly the Deputy Director of DPZ, Mr. Pedini said the site was moved farther back from Budds Creek Road. The Chair stated, in the future, the Board members would like to be notified of the balloon test, so the members may attend.

The monopole tower is not required by the FCC to be lighted because it is under 200 feet. The ground equipment will be located in a 100' X 100' compound at the foot of the monopole on a natural slope away from the road, and will be screened on all sides by a double row of trees. A type "A" buffer and berm will be provided around the site. The tower will generate no traffic other than a trip for routine maintenance performed approximately once a month. The monopole will allow a total of five carriers, four other than AT&T, to help eliminate tower proliferation in the county. The carriers will be located approximately 10-feet from one another.

Ms. Cavero said AT&T is not a tower speculator and looks first to locate on existing towers before constructing their own; however, there was nothing of sufficient height in

this vicinity to accommodate them. She said they looked at the Post Office parcel located on Colton Point Road but visibility would have been a lot greater than at this location, because that parcel did not have the natural screening or the larger size this parcel offered. She said the impact at this location will not be greater than those typically associated with such a facility, regardless of its location within this zoning district. Ms. Caverio addressed the Conditional Use Standards of Chapter 25.6, adding that the Maryland Historical Trust has written a letter stating that the tower will not have any impact on any of the surrounding historic properties. Radio frequency information and the need for the project were also presented. Board member George Allan Hayden questioned the fact that the tower will not be lighted, stressing the number of motor vehicle accidents in this area and noting his concern for Medivac helicopters, which are often needed. Mr. Berry replied that the FCC must approve the application, and it determines whether the tower must be lighted.

The Chair opened the hearing to public comment. There were no comments.

**Ms. Mriscin moved that, having adopted the February 3, 2003 Staff Report and making a finding that the Conditional Use Standards of Chapter 25.6 of the Ordinance have been met, conditional use approval to construct a 199-foot monopole communication tower and ancillary equipment within a 10,000 square foot fenced compound on the subject property be approved, subject to the following conditions:**

- (1) The Applicants shall provide a forest conservation easement for the existing hardwood buffer around the site. The easement shall prohibit the cutting or disturbance of trees for the lifetime of the permit and shall be shown on the final site plan. In addition, the Applicants shall provide a forest conservation easement document for recordation at the time the final site plan is submitted.**
- (2) Additional landscape screening shall be provided along the road to minimize the visual impact to eastbound 234 traffic.**
- (3) Development of the proposed tower shall proceed in accordance with the plans and descriptions contained in the application.**
- (4) AT&T shall submit to the County, for review and approval, an update of its two-year plan for the County every two years from the date of the subject approval. Such update shall include:
  - (a) Geographic area included by FCC license and required schedule for development of coverage.**
  - (b) A propagation map depicting all proposed sites, major roads, major development centers within the County, and existing tower sites.**
  - (c) A discussion of the phasing/scheduling of the coverage plan attempts to co-locate on existing facilities or facilities proposed by other carriers or tower companies.****

- (d) A discussion of whether any areas of the County will be excluded from coverage plans.
  - (e) A discussion of what level of signal coverage is expected by the carrier; e.g., 89 dBm, and discussion of the carrier's plans for areas when this level of signal intensity will not be achieved by the plan.
  - (f) An analysis of the impacts to scenic and historic resources and land use compatibility for proposed sites.
- (5) Buffering around the fenced enclosure shall consist of a double row of red cedars or Leland Cyprus. Such buffering shall be shown on the final site plan and shall be perpetually maintained.
- (6) The tower shall be designed and constructed to accommodate at least three (3) co-locators.
- (7) AT&T shall provide right-of-first refusal to the County for any co-location opportunities on the tower, for the County's purposes. Such County co-location on the tower shall be free of charge.
- (8) Should the tower become inactive, the Applicants shall dismantle the tower within six (6) months of notice by the County. The Applicants shall provide a bond, letter of credit, or similar surety to cover the cost of dismantling the facility and restoring the site, should the Applicant default in its responsibility to dismantle the facility.
- (9) The fence around the compound shall be perpetually maintained by the Applicants.
- (10) The tower shall be of monopole design and shall be unlit so as to minimize visual impacts.

The motion was seconded by Ms. Underwood and passed by a vote of 5-0.

**CONTINUATION OF PUBLIC HEARING**

**VAAP #02-1826 – SCOTT & RICHARD MALEY**

This hearing began earlier in this meeting but was suspended to await arrival of the Applicant's agent with the Certified Receipts of notification to contiguous property owners. Mr. Soderberg was now present and presented the Certified Receipts as proof of notification, entered as Applicant's Exhibit #A-1.

Applicant Scott Maley stated he concurred with the Staff Report, which makes findings in support of the Standards for Variance of Section 38.2(7) of Zoning Ordinance #90-11 and recommends approval of the variance, as requested.

The Chair opened the hearing to public comment. There were no comments.

**Ms. Mriscin moved that, having adopted the 1/30/03 Staff Report and making a finding that the Standards for Variance of Section 38.2(7) of ZO #90-11 have been met, the Board approve the variance to allow construction of a single-family dwelling and appurtenances resulting in a total of 4,268 square feet of impervious surface in the expanded Critical Area Buffer, subject to the following conditions:**

- (1) The Applicants shall adhere to the provisions of the Planting Agreement requiring mitigation for 22,309 square feet of clearing and 4,268 square feet of impervious surface, for a total of 26,477 square feet of mitigation at a ratio of 3:1, in accordance with the regulations of the Critical Area Ordinance.**
- (2) The Applicants shall adhere to the Best Management Practices recommended by the Soil Conservation Service for this property.**

The motion was seconded by Mr. Hayden and passed by a vote of 5-0.

**MINUTES AND ORDERS APPROVED**

Minutes of January 23, 2003  
**CUAP #02-133-022 – Frito Lay Order**

**ADJOURNMENT**

The meeting was adjourned at 9:50 p.m.

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Peggy Childs  
Recording Secretary

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Approved in open  
session: March 13, 2003

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J. Howard Thompson  
Chairperson