

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

Present: Howard Thompson, Chairperson
George Allan Hayden, Member
Sandy Mriscin, Member
Marie Underwood, Member
Ronnie Delahay, First Alternate
Linda Springrose, Assistant County Attorney
Yvonne Chaillet, Planner III, DPZ
Theresa Dent, DPZ Environmental Planner
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 at the beginning of each hearing.

PUBLIC HEARINGS

CUAP #02-135-024 – AT&T Cell Tower at Oakville Landfill

Continued to the meeting of April 10, 2003, at applicant's request. Staff will provide a revised Staff Report for the April 10th meeting.

VAAP #02-2586 – JAMES & MICHELLE TERRY

Requesting a Variance from Section 38.2.13.e (Habitat Protection Area, Critical

Area Buffer) of Zoning Ordinance #90-11 to construct a 14' X 25' garage, an 8' X 12'

deck, and a 109 square foot addition to an existing house. The property contains

0.758 acres, is zoned RPD (LDA Overlay), and is located at 16455 Sayre Point Lane,

St. George's Island; Tax Map 69, Block 9, Parcel 133.

Owners: James & Michelle Terry
Present: Michael Adams, of A&A Construction, Inc.

Legal Ad published in The Enterprise on 2/26/03 & 3/5/03

Photo of proof of posting

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

The applicants are proposing the construction of a room, a deck, and a garage onto their existing single-family dwelling. The lot was recorded and the structure was constructed prior to the County's adoption of the Critical Area Ordinance. The proposed development will result in a net increase of 470.4 square feet of impervious surface within the buffer, and 2,507 square feet of soil disturbance. No clearing is proposed for the construction. At its closest point, the proposed improvements will be located approximately 117 feet from mean high water of St. George's Creek and 22 feet from a tidal marsh. The total amount of impervious surface, both existing and proposed, is below the limit allowed for the lot. The Staff Report makes findings in favor of Variance Standards 38.2(7) of #90-11 and staff recommends approval, subject to the Planting Agreement. The Critical Area Commission states "no opposition" to the variance, but notes that the square footage for eight trees is 3,200 square foot, not 3,600 square feet as shown on the afforestation plan. Ms. Dent said the applicant is planting more than is required.

Ms. Mriscin moved to adopt the 3/13/03 Staff Report. Seconded by Ms. Underwood and passed by 5-0.

Mr. Adams said one-half of this property is tidal wetlands and the remainder is entirely within the Critical Area Buffer, however, the proposed construction will come no closer to the water than the existing structure, so there will be no further encroachment into the Buffer than already exists.

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

Mr. Delahay moved that, having made a finding that the Standards for Variance of Section 38.2(7) of ZO #90-11 have been met, the variance be approved subject to the applicants' adherence to the Critical Area Buffer Planting Agreement. The motion was seconded by Ms. Underwood and passed by 5-0.

VAAP #02-2663 – WELLER DAVIS, INC.

Requesting a Variance from Section 38.2.13.e (Habitat Protection Area, Critical Area Buffer) of Zoning Ordinance #90-11, to construct a single-family dwelling and porch/deck, a portion of which is within the Critical Area Buffer. The property contains 14,479 square feet, is zoned RPD (RCA Overlay), and is located in Tall Timbers; Tax Map 65, Block 3, Parcel 312, Lot 5 of the Landings at Piney Point.

Owner: Weller Davis, Inc.
Present: Aaron & Debbie Bowman, Contract Purchaser
Chuck Kimball, of Potomac Land, Ltd.

Legal Ad published in The Enterprise on 2/26/03 & 3/5/03

Picture of posting of property

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

The applicants are proposing the construction of a single-family home and appurtenances on a recorded, grandfathered lot partially located in the Critical Area Buffer. The improvements will result in 1,887 square feet of new impervious surface within the Buffer to accommodate part of the house, the attached deck, and the porch. No clearing is proposed for the construction. At its closest point, the improvements will be located approximately 110 feet from mean high water of the Potomac River. The total amount of impervious surface proposed is 4,444 square feet, slightly below the limit allowed on this lot. The Staff Report makes findings in favor of the Variance Standards of Section 38.2(7) of ZO #90-11, and staff recommends approval subject to the applicants' adherence to the Critical Area Buffer Planting Agreement which requires planted mitigation at 3:1 for the impervious surface within the Buffer.

The Critical Area Commission states "no opposition" to the variance, but says the construction will utilize almost all of the impervious surface allowed for the lot, leaving very little room for a patio, shed or even a walkway to the shoreline, and recommends that a note be added to the plat to this effect. Ms. Dent advised that she always notes on the plat the maximum amount of square footage of impervious surface that is allowed.

Ms. Underwood moved to adopt the 2/28/03 Staff Report. Seconded by Ms. Mriscin and passed by 5-0.

Mr. Bowman stated that the 4,444 square foot footprint does include a 10' X 40' concrete patio in back of the house, so that has been taken into consideration. He said he has an agreement with the property owner of Lot 6 to share a driveway, to help reduce the impervious surface area for both lots.

The Chair opened the hearing to public comment.

Dennis DePriest, the owner of Lot 4, at 17761 Whitestone Drive, provided hand-outs entered as Opponent's #O-1, the first of which was a 1995 letter from Potomac Land, Ltd., the developers of The Landings, to the owners of Lots 4, 5, 6 & 7, stating that DPZ suggested a common driveway for these four lots. This would have given all four lots more building space. He said that suggestion was agreed to by 3 of the 4 lot owners, but was rejected by Weller Davis,

who would not participate. As a result of Weller Davis' refusal, one lot owner had to modify his foundation from a side-loading garage to a front-loading garage in order to accommodate his driveway, and Mr. DePriest had to rotate his house and align it with the Critical Area Buffer line to put in a driveway to his garage. Now, eight years later, Weller Davis is requesting a variance to resolve problems so they can sell Lot 5, but the problems would already have been resolved if they had not rejected the common driveway.

Mr. DePriest said he has an unobstructed view from his lot right now but, if the variance is approved and the house is constructed, it will block his south view of the Potomac and impact the resale value of his home. He asked the Board to deny the variance as requested and approve a modified variance to allow encroachment into the Critical Area on the south side, toward the Harbor, not toward the Potomac. He asked that Mr. Bowman align his house on Lot 5 with the DePriest house on Lot 4, so as not to block his view.

Chuck Kimball, of Potomac Land, Ltd., provided for the record an aerial photograph and a portion of the subdivision plat showing the four lots and the Critical Area Buffer line (Applicant's #A-2 and #A-3). The Chair took a 10-minute break for the parties to consult regarding the orientation of Mr. Bowman's house on his lot.

Following the break, Ms. Dent said she didn't see how a reconfiguration would work because the corner and front door of the house would be right at the driveway and over the sewer and water lines.

The Chair closed the hearing to public testimony and the Board deliberated.

The Chair stated the Board has approved variances for many of these lots because they are so close to the water and over the Critical Area Buffer line, and everybody's not going to have a panoramic view, to which the Assistant County Attorney responded that there is no legal right to a view. Ms. Dent suggested approving the variance with a condition that plantings be installed on the side of the Bowman house facing Lot 4, to help screen the house from view of that lot, but the suggested condition was not imposed by the Board. Ms. Mriscin pointed out that, when a house is constructed on Lot 6, that house will block Mr. Bowman's view from Lot 5.

Ms. Underwood moved that, having adopted the February 28, 2003 Staff Report and making a finding that the Critical Area Standards for Variance of Section 38.2(7) of ZO #90-11 have been met, the variance from Section 38.2.13 to allow a maximum of 1,887 square feet of impervious surface for construction of a single-family dwelling, a deck, and a porch partially within the Critical Area Buffer be approved, subject to the following condition:

- (1) **The applicant shall adhere to the requirements of the Critical Area Buffer Planting Agreement, providing planted mitigation at a ratio of 3:1, in accordance with the Critical Area regulations.**

The motion was seconded by Ms. Mriscin and passed by 5-0.

CUAP #02-135-018 – AT&T Wireless at Somar Communication Tower

Requesting conditional use approval pursuant to Chapter 25 of ZO #02-01 to collocate cellular communications equipment on an existing radio transmission tower. The property

contains 28.06 acres, is zoned RCL (AE Overlay), and is located at 22485 Indian Bridge Road in California, MD; Tax Map 42, Block 7, Parcel 80.

Owner: Somar Communications

Present: Attorney Amy Cavero, of Saul Ewing LLP, representing AT&T

Legal Ad published in The Enterprise on 2/26/03 & 3/5/03

Proof of posting the property received in DPZ on 2/25/03

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

Ms. Chaillet advised that, since EEE's comments of January 26, 2003, additional information was received from the applicant and forwarded to EEE, the County's tower consultant, and all outstanding issues have now been addressed. Staff has made findings in support of the application as noted in the Staff Report and recommends approval of the conditional use subject to the three conditions listed plus one additional condition; i.e., that a red beacon light be installed on top of the guyed tower, at 270 feet AGL, and the entire structure painted aviation orange and white, in accordance with Federal Aeronautics Administration (FAA) requirements.

Ms. Chaillet said EEE Consulting concurs now that all the issues have been addressed. Ms. Underwood requested that, in the future, the Board be provided with a written recommendation from EEE, even if it is only a fax.

Ms. Mriscin moved to adopt the February 28, 2003 Staff Report, as revised with the additional information referenced by Ms. Chaillet. Seconded by Ms. Underwood and passed by 5-0.

Ms. Cavero said this is a different circumstance from the last AT&T application in that they are seeking conditional use approval to allow the collocation of six antennae on an existing tower. Provided for the record was a binder containing background information and addressing the Conditional Use Standards of Section 25.6 (#A-2). Also provided was the supplemental information referenced by Ms. Chaillet (#A-3), and a copy of the Lease Agreement between Somar and Bay Media Network (#A-4).

Ms. Cavero said a building permit has already been issued for the tower, which is a replacement tower structurally enhanced to accommodate the antennae. The AT&T antenna will be hung at a height of 200 feet. She exhibited the propagation map demonstrating the need for cellular coverage at this location, which the AT&T antenna will almost completely fill, significantly improving cell coverage along MD 4, and said, because the host tower is already existing, there should be no impact to property rights.

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

Ms. Mriscin moved that, having adopted the 2/28/03 Staff Report, as revised, and making a finding that the Conditional Use Standards of Chapter 25.6 have been addressed, Conditional Use approval to allow the collocation of cellular communications equipment on the existing radio tower be granted, subject to the following conditions:

- (1) **The applicant shall provide an easement for the existing hardwood buffer around the site, equivalent in depth to the two rows of evergreens required to buffer the tower enclosure. 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.**
- (2) **The owner shall perpetually maintain the fence around the compound.**
- (3) **The applicant shall indicate on the final site plan the recordation information for the 99-year lease with the adjoining property owner.**
- (4) **The owner shall provide a red beacon on top of the guyed tower at 270 feet AGL, and the entire structure shall be painted aviation orange and white, as required by the FAA.**

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

ANNUAL REPORT

The Board complimented staff on the Annual Report and said, if it could be updated every quarter, it would be very helpful to them.

MINUTES AND ORDERS APPROVED

Minutes of February 13, 2003
VAAP #02-182 `6 – Scott & Richard Maley Order
CUAP #02-135-015 – Anderson Cell Tower Order

ELECTION OF OFFICERS

The Chair advised that the Board's Election of Officers would take place at the next meeting.

ADJOURNMENT

The meeting was adjourned at 8:23 p.m.

Peggy Childs
Recording Secretary

Approved in open
session: April 10, 2003

J. Howard Thompson
Chairperson