

ST. MARY'S COUNTY BOARD OF APPEALS

In the Matter of Washington Gas
22348 Three Notch Road
Lexington Park, Maryland

Case No. CUAP #13-135-002

DECISION AND ORDER**Introduction**

Washington Gas (hereinafter "Applicant") filed an application for a conditional use permit pursuant to Chapter 25 of the St. Mary's County Comprehensive Zoning Ordinance (hereinafter the "Ordinance") regarding property described as 22348 Three Notch Road, Lexington Park, Maryland (hereinafter the "Property"). The application seeks a permit to construct a commercial communications tower.

After due notice, a public hearing was held at 6:30 p.m. on October 13, 2016, at the St. Mary's County Governmental Center at 41770 Baldrige Street in Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn and documentary evidence was received. The proceedings were recorded electronically.

Legal Standard

The Board shall not approve a conditional use unless it finds, based on the evidence, that:

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 Comprehensive Plan; and
8. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located or to the special requirements established for the specific conditional use in Chapter 51.

Findings of Fact

The Property is the site of an existing commercial communications facility which contains a guy wire tower and a lattice-style tower. This facility was constructed prior to the County's adoption of regulations applicable to commercial communication towers.

The Property also contains two buildings and a couple of sheds. A chain link fence surrounds the facility, which is also screened, in part, by dense, mature woodland. Access to the Property is directly off MD Route 235 or Three Notch Road. No improvements or changes are needed.

The Applicant plans to remove the existing guy wire tower and replace it with a monopole style tower (the "Tower") with a height of 175 feet above ground level (AGL). The existing tower is unable to carry the load of its antenna requirements due to overloading. All existing equipment has been moved to the lattice-style tower in preparation for replacing the guy wire tower.

The new monopole is designed to support two (2) microwave dish antennae, two (2) LMR Omni antennae, and a wide area network Omni antenna to be used by Washington Gas for dispatching personnel, monitoring, and controlling a future network of remote control valves on the pipeline. These valves will enable the Applicant to isolate sections of the pipeline in an emergency situation. The new monopole will also support two commercial wireless carriers for future co-location. An eight-foot by four-foot by eight-foot (8' x 4' x 8') equipment cabinet will be installed at the base of the monopole.

The existing lattice-style tower, which currently serves commercial carriers, will remain on the Property following installation of the new monopole.

The existing fenced compound will be expanded to accommodate the monopole and equipment cabinet, and a new eight-foot (8') tall chain-link fence will surround this area.

Conclusions of Law

The proposed tower does not meet the current requirements of the Ordinance regarding setback from structures. Buildings used by the public are located within the fall-zone. The proposed use at the proposed location will have adverse effects above and beyond those inherently associated with the proposed use irrespective of its location. Moreover, the Applicant

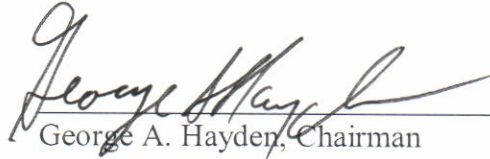
has not received approval from the Federal Aviation Administration, and no comments from the United States Navy at Patuxent River Naval Air Station have been received.

Based on the evidence set forth in the Findings of Fact, the proposed tower does not meet the general standards for a conditional use and the specific standards set forth in §51.3.91 of the Ordinance.

ORDER

NOW, THEREFORE, BE IT ORDERED, that, having made a finding that the standards for a conditional use and the objectives of Section 25.6 of the St. Mary's County Comprehensive Zoning Ordinance have not been met, a conditional use to construct the proposed commercial communications tower on the Property is *denied*.

Date: November 10, 2016



George A. Hayden, Chairman

Those voting to approve the conditional use:

Mr. Payne

Those voting to deny the conditional use:

Mr. Hayden, Mr. Brown, Mr. Greene, and
Mr. Miedzinski

Approved as to form and legal sufficiency:



George R. Sparling, County Attorney