

**MEETING MINUTES
BOARD OF ZONING APPEALS
FOR CAROLINE COUNTY, MARYLAND**

DATE: August 20, 2019

PLACE: Health & Public Services Building
403 S. 7th Street, 1st Floor, Room 110
Denton, Maryland 21629-1335

**BOARD MEMBERS
(PRESENT):** René Swafford, Chairman
Mike Mann, Member

ALSO, PRESENT: Crystal Dadds, Assistant Director of Codes
Robert Merriken, Board Attorney
Melanie Smith, Administrative Assistant to the Board

Chairman Swafford called the Caroline County Board of Zoning Appeals to order at 6:00 p.m. The Board members and staff were introduced to the audience and the meeting procedures were explained. Chair Swafford announced that the June minutes that were on the agenda will be postponed until September when all the members are available to vote.

CHERRYWOOD SPECIAL USE EXCEPTION #201900017

Ms. Dadds read the exhibits into the record:

- Exhibit 1 Staff Report
 - Exhibit 2 Application
 - Exhibit 3 Gordon Feinblatt LLC Introduction Letter
 - Exhibit 4 Letter from Project Director Ms. Wilson
 - Exhibit 5 Attachment 1 - BZA Decision #201800006
 - Exhibit 6 Attachment 2 - Certificate of Public Convenience & Necessity
 - Exhibit 7 Attachment 3 - January 2019 Kaczynski Letter
 - Exhibit 8 Attachment 4 – Cherrywood’s Expected Project Schedule
 - Exhibit 9 List of Notified Adjoining Property Owners & Project Owners
 - Exhibit 10 Notice of Hearing to Applicant
 - Exhibit 11 Notice of Public Hearing in the Times Record on 8/7/19 & 8/14/19
- 1 Staff Report
 - 2 Application (4 pgs)
 - 3 Gordon Feinblatt LLC Introduction Letter (2 pgs)
 - 4 Letter from Project Director Ms. Wilson (3 pgs)
 - 5 Attachment 1 - BZA Decision #201800006 (16 pgs)
 - 6 Attachment 2 - Certificate of Public Convenience & Necessity (32 pgs)
 - 7 Attachment 3 - January 2019 Kaczynski Letter (2 pgs)

- 8 Attachment 4 - Cherrywood Expected Project Schedule (2 pgs)
- 9 List of Notified Adjoining Property Owners & Owners
- 10 Notice of Hearing to Applicant
- 11 Notice of Public Hearing in Time Record on 8/7/19 & 8/14/19

Chair Swafford read the Notice of Public Hearing into the record. Cherrywood Solar I, LLC applied for an extension of the one-year time period to obtain a building permit for the construction of a large scale commercial solar energy system that was granted a special use exception on August 16, 2018 under Application No. 201800006 located in the Goldsboro and Greensboro areas.

Mr. Schaunessy introduced himself as the Attorney for Cherrywood. With him was Shanelle Wilson, the Project Director. He explained that the project involves a 200-megawatt solar energy power substation which is planned on an approximately 1100 acres of land which is comprised of 16 parcels.

The decision of the Board to approve this project was dated August 16, 2018. Such a large-scale project requires many approvals among several different agencies. When they first applied with the County, they were working on acquiring a certificate of public convenience and necessity to construct the facility. They also needed an interconnection agreement with Delmarva Power and Light (DPL) to be connected to their grid. They are still in discussions with DPL about the design of the power substation. Until then, they cannot go before the Planning Commission for the final site design. There are also approvals required from the Army Corp. of Engineers, Maryland Department of the Environment (MDE), and Soil Conservation, to name a few.

Mr. Schaunessy stated that Cherrywood has been working diligently since being granted the Board's approval. Despite this the application had an expiration date of August 16, 2019, which was a few days ago. Although, they asked to explain this to the Board and to request an extension of the application prior to that date; County staff was logistically unable to post notices and advertise the hearing in time to be heard at the July 16, 2019 hearing.

The Board was accommodating to allow them to present at the July 16, 2019 hearing and request preliminary approval subject to further consideration at the advertised hearing of August 20, 2019. Mr. Schaunessy started his presentation.

Since the Board approved the application in 2018, they conducted negotiations and finalization of documents with the Town of Greensboro. One of the southernmost properties was located in the Town's growth area. The Town wanted that property to be annexed to them as a condition of their approval of the project. The negotiations and finalization were completed in November 2018 and the documents were recorded in June 2019.

They have been working on the list of requirements (Ex. 7) the Planning Commission will expect fulfilled before the final site plan is approved. They have also been working on the Certificate of Public Convenience and Necessity (CPCN) which was completed in April 2019.

Since June they have been working on the wetland mitigation with MDE. They are also leasing land for the new Caroline County Elementary School. Their largest impediment to wrapping this up quickly is their discussions with DPL. They require a facility study be completed and they are

in the third phase. DPL has promised Mr. Shaunessy that all will be finalized by the end of September 2019.

Their expected timeline (Exhibit 8) was explained and he requested that the Board permit them to extend the approval of SUE 201800006 from July 16, 2019 to June 30, 2020

Chairman Swafford retroactively swore in:

William Schaunessy, 233 E. Redwood St., Baltimore, MD 21020
Shanelle Wilson, 700 Universe Boulevard, Juno Beach, FL 33408
Robert Jarrell, 5 North First Street, Denton, MD 21629

Mr. Merriken asked Mr. Schaunessy if Cherrywood was compliant with Maryland Public Utility Companies Section 7-207. He directed him to Exhibit 6 and specifically to page 32 to a letter from the Public Service Commission stating that Case No. 9477 became final and was assigned Order No. 89096.

Mr. Jarrell stood up to speak in support of the project.

This portion of the meeting was closed for deliberation.

DELIBERATION

The Board noted that there was no opposition to the request, and they have the authority to grant the request.

Motion: Mr. Mann made a motion to approve the request to extend the SUE # 201800006 from July 16, 2019 to June 30, 2021.

Second: Chairman Swafford seconded the motion.

In Favor: The motion was approved unanimously (2-0).

INVISIBLE TOWERS SUE #201800015

Chairman Swafford swore in:

Van Thompson, 512 Wilson Rd., Annapolis, MD 21401
Eric Paugh, 11864 Kibler Rd., Greensboro, MD 21639

Chair Swafford read the Notice of Public Hearing into the record. Invisible Towers has requested to erect a 195-foot communications tower on the south side of Shore Highway, southeast of Denton.

Ms. Dadds read the exhibits into the record:

Exhibit 1 Staff Report
Exhibit 2 SUE Application
Exhibit 3 Morris Riche Assoc. Response to Staff Comments

- Exhibit 4 DNR Environmental Review of Project
- Exhibit 5 Non-Interference Certification
- Exhibit 6 RF Compliance Report
- Exhibit 7 FAA Screening Report
- Exhibit 8 Millennium Engineering Report – Radiofrequency Design
- Exhibit 9 FCC Radio Stations Authorizations
- Exhibit 10 Site Plan by Morris & Richie Assoc.
- Exhibit 11 Water & Sewage Verification
- Exhibit 12 SDAT Tax Map & Real Property Data Sheet for M43-G12-P16
- Exhibit 13 Photo Simulation of Proposed Tower
- Exhibit 14 Aerial Photograph with Features Overlay
- Exhibit 15 List of Notified Adjoining Property Owners
- Exhibit 16 Notice of Hearing to Applicant
- Exhibit 17 Notice of Public Hearing in Times Record on 8/7/19 & 8/14/19

Mr. Thompson testified that he has built several towers similar to this one in Caroline County. He believes they have met all the standard requirements. They have completed wetland delineations and environmental studies. State Highway has approved putting a culvert over the nontidal wetlands that surround the property so they can access the site. It is 195-foot single pole tower with no lights.

Chair Swafford suggested they go through the regulations of §175-142 together.

She asked if the project will be detrimental to or endanger the public health, safety or general welfare. Mr. Thompson stated that they are regulated by the FCC (Ex. 9). Exhibit 8 is Millenniums Engineering report on the radiofrequency design and how they are under the jurisdiction of the State Registration Board and must protect the safety, health and welfare of the public.

Chair Swafford asked if the project would be injurious to the peaceful use and enjoyment of other property in the neighborhood or would it diminish or impair property values in the neighborhood. Mr. Thompson stated that it would most likely increase the neighboring property values by making cellular connections clearer in the more remote areas of the County.

Chair Swafford asked if the project would impede the normal and orderly development and improvement of the surrounding property for uses permitted in the Rural zoning district. Mr. Thompson answered that it would not.

Chair Swafford asked if the project would overburden existing public facilities, including schools, police and fire protection, water and sewerage, public roads, storm drainage and other public improvements. Mr. Thompson explained that AT&T will likely use this tower for “First Net” (The First Responder Network Authority of the United States, an independent authority within the National Telecommunications and Information Administration) because it is located close to the County Emergency Services Building. This connection will be used only by first responders. He added that there is no need for water or sewer on the site. (Ex. 11)

Chair Swafford asked if the project conforms in all other respects to the zoning chapter. The staff report (Ex. 1) confirmed that the application did meet all the conditions and fits within the purpose and intent of the Zoning Chapter.

The last requirement only pertained to parcels in the Critical Area and therefore, did not apply to this application.

Mr. Merriken asked about the wetlands. Ms. Dadds stated that the nontidal wetlands diminish the ability to build on the lot. Mr. Mann asked if the culvert will go over the tax ditches. Mr. Paugh stated that it is on the east side of the property and will allow them access over the Route 404 drainage swale.

Ms. Dadds asked Mr. Thompson if she heard him say that towers no longer need an equipment shed. Mr. Thompson said she was correct, that the equipment can now be stored either on the tower or on a small pad (such as the generator).

Mr. Paugh closed by stating that as a citizen he feels the tower is needed to provide areas, outside of towns, the ability to use internet and have good phone service. He explained that there are areas on his property where he hunts that you can't make a 911 call. He would also like to see all students in the County be able to access the Internet for their studies.

This portion of the meeting was closed for deliberation.

DELIBERATION

The Board noted that §175-13 showed the application was permissible with a special use exception. The application is also in accordance with §175-41. There was an application (Ex. 2) and the hearing was duly advertised on August 7 and August 15 (Ex. 17). Exhibits 7-9 support that the project is safe for the environment and community. The tower may increase neighboring property values because of the improved connection to cell phone and internet services. The staff report stated that the application conforms in all other respects to the Zoning Chapter. Mr. Mann noted that there was no opposition to the application and staff recommended approval of the application.

Motion: Mr. Mann made a motion to approve the application on the condition that a building permit and/or zoning certificate is obtained, and all other necessary documentation is submitted.

Second: Chairman Swafford seconded the motion.

In Favor: The motion was approved unanimously (2-0).

ADJOURNMENT

Motion: Chair Swafford made a motion to adjourn the meeting at 7:07 p.m.

Second: Mr. Mann seconded the motion.

In Favor: The motion was approved unanimously (2-0).

The meeting was adjourned at 7:07 p.m.

Melanie Smith
Minutes prepared by: Melanie Smith