



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
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September 28, 2007

Jeffrey Peek, Esquire
19 Dalebrook Drive
Phoenix, MD 21131

RE: *In the Matter of*: BENJAMIN A. AND KAYREN P. GOVERNALE
Legal Owners /Petitioners Case No. 06-180-SPHA

Dear Mr. Peek:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all subsequent Petitions for Judicial Review filed from this decision should be noted under the same civil action number as the first Petition.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Kathleen C. Bianco".

Kathleen C. Bianco

Administrator

Enclosure

c: Howard L. Alderman, Jr., Esquire
Mr. and Mrs. Benjamin Governale
Bruce E. Doak /Gerhold, Cross & Etzel
Fred Calleri
Anne-Marie Hudak
Jason Hardebeck
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM



IN THE MATTER OF
THE APPLICATION OF
BENJAMIN A. AND KAYREN P.
GOVERNALE – LEGAL OWNERS /
PETITIONERS FOR SPECIAL HEARING AND
VARIANCE ON PROPERTY LOCATED ON
THE E/S OF GLENBROOK DRIVE, 569' N OF
BLENHEIM ROAD
(39 GLENBROOK ROAD)
10TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 06-108-SPHA
*

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OPINION

This matter comes before the Board of Appeals on an appeal from a decision by the Zoning Commissioner for Baltimore County to grant Petitioner's special hearing request to approve the configuration, height and location of an existing radio operator antenna. An alternative request for a variance was dismissed below as moot. A de novo hearing was held as to both requests by the Board at which Petitioner was presented by Howard Alderman, Jr., Esquire, and Protestants by Jeffrey L. Peek, Esquire, who also appeared as a Protestant. Petitioner presented Bruce E. Doak, a registered surveyor employed by Gerhold, Cross & Etzel, who, without objection, was accepted as an expert in surveying and zoning in Baltimore County.

The witness related that his firm had prepared the plat and related documents accompanying the Petition for Special Hearing and Variance in this matter. He described the subject property as an irregularly shaped panhandle lot, sloping to the rear of approximately 2.2 acres and zoned R.C. 6. It is improved by a two-story brick residential structure and a three-legged freestanding 99-foot amateur radio antenna tower, which the witness testified was, in his expert opinion, an accessory use to the residence. He further stated that the tower is 147 feet from the structure of the Petitioner, 102 feet from each side property line, while also 100 feet from the rear property line. He went on to describe the three antennas actually placed on the

tower horizontally, one each at 90 feet, 95 feet and 99 feet respectively. After stating the definition of “radio operator antenna” as it appears in § 101 of the *Baltimore County Zoning Regulations* (BCZR), and concluding that it applied to the Petitioner, the witness concluded that § 426A of the BCZR applied to this matter. He further testified that in compliance with subsection (c) of § 426A, the tower and the supporting generator were both located further than 20 feet from any property line; that it did not extent closer than the front building line of the subject site as required under 426A.D; and lastly, that it complied with 426A.E as the highest antenna placed upon the tower was not higher than the lesser of 100 feet or the horizontal distance to the nearest property line. Based upon these determinations on his part, the witness testified that the antenna was in fact an accessory use permitted by right on the Petitioner’s property and was compliant with § 426A.

Under further examination, the witness presented his opinion that this matter is not controlled by the language and determination of permitted height of towers that appears in § 426.5 of the BCZR, as suggested by Protestants. He explained that, although the section provided for a maximum height definition, it was applicable to “wireless telecommunication facilities,” and not to the amateur radio operator antennas which are the subject of the instant matter.

It is Mr. Doak’s belief and position that the true concern under the BCZR regarding amateur radio antennas was the avoidance of harm to an innocent neighbor in the event the tower was to fall. He testified that the Petitioner’s antennas were set back as far from adjoining property lines as they were tall. As such, he believed the antennas to be in compliance with 426A.E and would pose no risk to the adjoining property owners.

Mr. Doak concluded his testimony in chief by presenting his opinion that the Petitioner’s

special hearing request would have no impact on the health, safety and general welfare of the community as any collapse of the subject tower would occur on Petitioner's property only. He saw no danger, based on the size, footprint and nature of the Petitioner's request, of causing fire, panic, or of interference with schools, light or air. Based upon the tower's size, it would not, he testified, negatively affect open spaces, overcrowd population, negatively impact impermeable surface, or vegetative retention requirements, or violate the spirit or intent of the zoning regulations.

Several area residents testified. Michael Leonard and James Green testified that they were aware of the project and saw no objections to its continued use by the Petitioner.

John Burdette, vice president of United States Tower Services, Ltd., testified that he was familiar with the architecture and maintenance of radio antennas for 30 years. He explained to the Board that the height of these structures is measured from the center of the foundation to the highest point of the tower. He maintained that the height of a tower is not related to its turning radius and noted that in all of his years he had never come across a situation in which a tower fell a horizontal distance greater than its height above the ground. He observed that in such instances towers will buckle and fall, rather than falling in a straight horizontal line.

Petitioner Benjamin Governale was called to testify. A holder of a BS Degree in Electrical Engineering, he is a retired Coast Guard commander, a resident at the site for 30 years, and a licensed amateur radio operator since 1962. He stated that he is a designated U.S. Weather Service weather reporting station and is part of the Radio Emergency Service for Baltimore County Department of Homeland Security. He described the subject structure as a 99-foot high monopole with three horizontal antennas, at 91, 95, and 99 feet respectively. He testified that his choice of location of the monopole was primarily based upon topography, maintaining

appropriate distances to buildings and adjacent property lines, setbacks and easements applicable to the property, and the utilization of available wooded areas as sight buffers. He concluded by asserting that his request would, in his opinion, not only have no adverse effects on the health, safety or welfare of the surrounding community, but to the contrary, would be an assistance to the public needs in emergency situations.

Christopher Imlay, General Counsel to the American Radio Relay League, was, after voir dire, accepted by the Board as an expert in communications law and land use issues as they relate to amateur radio antenna towers. He described the role of Federal regulations and FCC decisions as they affect amateur radio operators, stating that local regulators should “reasonably accommodate” local radio operators. He observed that it was the first time in his more than 25 years of experience that an attempt had been made to apply setback distance restrictions to a radio antenna structure by measuring the horizontal length of the antenna rather than that from the base to the top of the antenna support structure. He opined that it made no sense to utilize the horizontal measurement of the antenna because those numbers can and do change from time to time and use to use.

The final Petitioner’s witness was James Nitzberg, who holds a Bachelor’s Degree in Electrical Engineering, specializing in digital signals and systems. After an on-site examination of the subject property and reference to several publications including, *Antenna Height and Communications Effectiveness: A Guide for City Planners and Amateur Radio Operators*, he prepared for the Petitioner (along with collaborator Dr. John V. Evans, former director of COMSAT Laboratories) an analysis of viable and radio activities of the Petitioner on the subject property. They concluded that the Petitioner’s signals are marginally acceptable at their present requested heights and that any reduction in that height would seriously degrade the effectiveness

and viability of Petitioner's radio activities and signals, including those abilities needed in emergency situations.

Protestants first presented Jason Hardebeck, a neighbor of Petitioner, who was concerned about the aesthetic effects of the Petitioner's request. He stated his intention to plant tall trees in an effort to block the visual effect of the monopole structure.

Anne-Marie Hudak testified that she lives in the second home constructed in the area some 6 years ago and described her home as the "lowest" of the group. She noted that she was not aware of the construction of Petitioner's monopole until it was completed, and was also concerned about the possible negative aesthetic impact of the structure on the area in general.

Jeffrey Peek, Esquire, was the last Protestant witness. He is also a resident of the immediate area and described his property as being also in a lower elevation than that of the Petitioner. Presenting a number of illustrative photographs, he voiced his opinion about the possible negative aesthetic effect of Petitioner's monopole on the neighborhood and observed that this negative effect is and will be most felt by the newer sections of the immediate neighborhood and area as the possible buffering vegetation is, as of now, less developed in those areas.

The Board has reviewed the entire record in this matter, including all exhibits presented.

We note the definition of radio operation antenna, described in BCZR § 101 as:

A wireless antenna used in conjunction with radio transmitting and receiving facilities used by a resident amateur radio operator possessing an amateur radio operator's license issued by the Federal Communications Commission.

Section 426A of the BCZR, concerning radio operator antennas, states:

A. A radio operator antenna and related equipment, including any supporting structure, is considered an accessory structure or use and is permitted by right in any zone if the radio antenna and the related equipment meets the requirements of this section.

B. A radio operator antenna shall be operated by an amateur radio operator who is licensed by the Federal Communications Commission and whose domicile is on the lot where the antenna and the related equipment is placed.

C. A supporting structure for a radio operator antenna may not be located within 20 feet of any property line.

D. A radio operator antenna may not extend closer than the front building line to any street on which the lot fronts.

E. A radio operator antenna may not be higher than the lesser of 100 feet or the horizontal distance to the nearest property line above grade level.

Based upon the definition of “radio operator antenna” contained in § 101 of the BCZR, the Board believes that the tower in question is subject to the requirements of § 426A of the BCZR and not 426.5, which refers to “wireless telecommunication towers and antennas.”

It is clear from the testimony of Mr. Doak and the Petitioner that the requirements of § 426A have been met. We find that the tower is an accessory structure as permitted under the BCZR and that the Petitioner is an FCC licensed amateur radio operator whose antenna and equipment are located on his domicile lot. A review of the exhibits and testimony have clearly established that the tower is more than 20 feet from any property line and does not extend closer than Petitioner’s building line to the street upon which it fronts.

Subsection E of 426A, requiring that the subject tower “may not be higher than the lesser of 100 feet or the horizontal distance to the nearest property line above grade level,” raises the question of the determination of the term “height” as it relates to this requirement. The term does not appear among the definitions in § 101 of the BCZR. In such circumstances, we look to Webster’s Third New International Dictionary, which defines the term as it applies in this issue as, “the distance extending from the bottom to the top of something standing upright.” We agree that “height” as envisioned in § 426A is a vertical and not horizontal measurement. We find that the height of the subject tower

should be measured from its base at ground level to the antenna located furthest away in a vertical plane. As a number of witnesses have presented, and this Board agrees, to measure from a horizontal point of view to determine height simply makes no sense whatsoever. We therefore unanimously determine that the uncontroverted testimony has established that the subject tower meets the requirements, not only of subsection E but also of all the other requirements of § 426A.

The Board also notes the testimony of Mr. Doak (and to a lesser extent by Mr. Governale) uncontradicted by the Protestants, that, based upon Mr. Doak's review of the site, its surrounding area and the structure in question, he has concluded that the tower does not and would not negatively impact the health, safety and general welfare of the surrounding community; further, based on the size and footprint of the tower, that it would not result in fire, panic or interference with schools, light or air, negatively affect open spaces, not burden population, or violate the spirit or intent of the *Baltimore County Zoning Regulations*.

Protestants raised what are essentially aesthetic issues and concerns. They presented no substantive testimony, expert or otherwise, to contradict or negate any of the expert or lay testimony provided by the Petitioner.

Based upon the totality of the testimony, exhibits, and review of the applicable law, this Board unanimously finds that the Petitioner has met all of his burdens of proof and that we find that, therefore, the configuration, height, and location of the radio operating antenna in this matter is subject to the requirements of § 426A of the *Baltimore County Zoning Regulations*; and that the subject tower does in fact meet all of those requirements; as well as those relating to the project's effect upon the community as a

whole. As such, the Petition for Special Hearing is granted. Under the circumstances, Petitioner's request for variance, in the alternative, is dismissed as moot.

ORDER

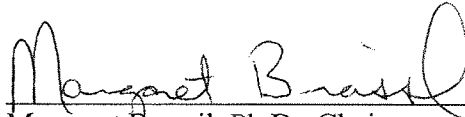
THEREFORE, IT IS THIS 28th day of September, 2007 by the
County Board of Appeals of Baltimore County

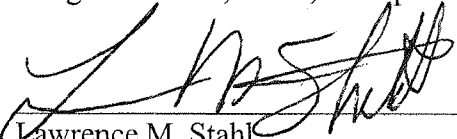
ORDERED that, for the reasons stated in the foregoing Opinion, Petitioner's special hearing request to approve the configuration, height and location of an existing radio operator antenna be and is hereby **GRANTED**; and it is further

ORDERED that Petitioner's request for variance, in the alternative, is hereby **DISMISSED AS MOOT**.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY¹**


Margaret Brassil, Ph.D., Chairperson


Lawrence M. Stahl

¹ This case was originally heard and publicly deliberated by a panel comprised of three members of the Board of Appeals of Baltimore County; viz., Margaret Brassil, Ph.D., Chairperson; Mike Mohler; and Lawrence M. Stahl, all of whom reached the unanimous decision in this matter. However, prior to issuance of the Board's final Order, Mr. Mohler resigned from the Board of Appeals.