

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/S & S/S of White Marsh Boulevard,	*	ZONING COMMISSIONER
(MD Rt. 43), E of Bird River Road	*	OF
(2R 10223 Bird River Road)	*	BALTIMORE COUNTY
15 th Election District	*	
6 th Council District	*	
Baltimore Gas & Electric Co.,	*	
Legal Owner	*	Case No. 2009-0008-A
Verizon Wireless, Lessee	*	
<i>Petitioners</i>		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by Petitioners Baltimore Gas & Electric Co. (BGE), legal owner, and Verizon Wireless, lessee, by and through their attorney, Robert A. Hoffman, Esquire with Venable LLP. The Petitioners request variances from Section 1B01.2.C.1.a of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front yard setback of 4.4 feet in lieu of the required 60 feet, a side yard setback of 4.4 feet in lieu of the required 30 feet, and a rear yard setback of 14.5 feet in lieu of the required 40 feet. The subject property and requested relief are more particularly described on the two-page redlined site plan, which was submitted into evidence and marked as Petitioners' Exhibits 1A and 1B.

At the requisite public hearing, Christopher Mudd and David Karceski appeared as attorneys for Petitioners. Appearing in support of the requests were Sherri Linton, an RF engineer with Verizon, Harold Bernadzikowski, a consultant with Network Building & Consulting, and Mike McGarity, with Daft McCune and Walker, the engineering firm that prepared the site plan. There were no Protestants or other interested persons present.

Testimony and evidence offered disclosed that the 13.43± acre subject property is located adjacent to Maryland Rt. 43, just east of where Rt. 43 crosses over Bird River Road, in White Marsh. The subject property is owned entirely by BGE and is presently improved with existing power lines and supporting towers, which have been located there since approximately the 1960's. The irregularly-shaped property is split-zoned D.R.2, D.R.3.5 and B.L. and is bifurcated by Rt. 43, such that 5.89± acres of the property are located north of Rt. 43, and 7.54± acres are located south of Rt. 43. Petitioners have identified on the redlined site plan a 0.13± acre triangular-shaped "zoning area" north of Rt. 43, which is entirely zoned D.R.2. There is an existing BGE tower within this zoning area, on which Verizon intends to co-locate and install a wireless telecommunications antenna. Verizon also intends to install a shed adjacent to the existing tower, which will house equipment to support the antenna. The antenna and shed are permitted by right in the D.R.2 zone.

As outlined above, the requested variances pertain to certain yard area setbacks, which are necessary for the location of the equipment shed adjacent to the existing tower. Specifically, while the D.R.2 zone requires a 60 foot setback for front yards, a 30 foot setback for side yards, and a 40 foot setback for rear yards, the location of the proposed equipment shed requires variances for a front, side, and rear yard of 4.4 feet, 4.4 feet, and 14.5 feet, respectively. The requested variances are shown and identified on Petitioners' Exhibit 1B.

The testimony and evidence confirmed that the specific need for the variances is generated by the uniqueness of the property. This history of how the subject parcel obtained its present irregular shape establishes its uniqueness. BGE obtained the property in approximately 1957, and thereafter installed power lines and supporting towers on the property in the 1960's. Subsequently, in 2003, the State of Maryland obtained 6.5± acres of the subject property from

BGE in order to construct Rt. 43, right through the middle of the property. In short, an already irregularly shaped parcel became even more irregular and unique by virtue of its bifurcation following the construction of White Marsh Boulevard. Additionally, certain site constraints, including the existence of an underground gas line to the west of the tower on which Verizon intends to install its antenna, further limits the area in which the equipment shed may be located and, therefore, contributes to the uniqueness of the site.

A strict interpretation of the zoning regulations would create a practical difficulty for Verizon. Without the variances, Verizon could not install an equipment shed at this site and without an equipment shed, its antenna cannot function.

Having considered all of the evidence and proffered testimony on this issue, I am persuaded to grant the Petition for Variance. Based on my review of the redlined site plan, the aerial photograph, and the other photographic evidence, I find the requirements of B.C.Z.R. Section 307.1 to be satisfied. The requested variances are appropriate, given the uniqueness of the site. The irregular shape of the property, the existing site constraints, and, in particular, the fact that Rt. 43 bifurcates the property, together limit the location of Verizon's equipment shed to the location proposed. If not for the State having taken 6.5± acres of BGE's property in 2003 for the construction of Rt. 43, the shed could be located in an area where no variances would be necessary. Instead, variances are necessary, and that zoning relief will enable Verizon to locate its shed in the proposed location and maintain a functioning antenna, which will be done without having any impact on the surrounding properties. The photographs introduced as Petitioners' Exhibits 4A - 4B and 5A - 5C provide examples of what Verizon's proposed antenna and equipment shed will look like at this site, and I find that the installation of the small shed adjacent to the existing large tower will look virtually no different than the existing site

conditions. It is also noted that vegetation to the north of the tower will limit any visibility of the shed from the properties to the north. By granting this variance, Verizon will be able to co-locate its antenna on an existing structure, as encouraged under the B.C.Z.R., rather than finding another location and constructing a new tower. As noted above, there were no Protestants present and there were no adverse Zoning Advisory Committee (ZAC) comments submitted by any County agency.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 3rd day of September 2008, that the Petition for Variance, seeking relief from Section 1B01.2.C.1.a of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front yard setback of 4.4 feet in lieu of the required 60 feet, a side yard setback (east side) of 4.4 feet in lieu of the required 30 feet, and a rear yard setback of 14.5 feet in lieu of the required 40 feet, in accordance with Petitioners' Exhibits 1A and 1B, be and is hereby GRANTED, subject to the following restriction:

1. Petitioners may apply for building permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County