

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND SPECIAL EXCEPTION		
S side of Dogwood Road, 1830 feet W	*	DEPUTY ZONING
of Rolling Run Drive		
1 st Election District	*	COMMISSIONER
1 st Councilmanic District		
(7301 Dogwood Road)	*	FOR BALTIMORE COUNTY
George Helfrich	*	
<i>Legal Owner</i>		
	*	
T-Mobile		
<i>Proposed Lessee</i>	*	Case No. 2009-0182-SPHX

* * * * *

ORDER ON MOTION FOR RECONSIDERATION

This matter comes before this Deputy Zoning Commissioner for consideration of a Motion for Reconsideration filed by Peter Max Zimmerman, Esquire, People’s Counsel for Baltimore County. The Motion for Reconsideration was filed pursuant to Rule 4(k) of Appendix G of the Baltimore County Zoning Regulations (B.C.Z.R.) wherein the Rules of Practice and Procedure before the Zoning Commissioner/Hearing Officer for Baltimore County are provided. Rule 4(k) permits a party to file a Motion for Reconsideration of an Order issued by the Zoning Commissioner. This Motion must be filed within 30 days of the date the Order was issued, and must state with specificity the grounds and reasons for their request.

In the instant matter, Petitioners T-Mobile, the proposed lessee, and George Helfrich, the legal property owner, requested Special Hearing and Special Exception relief. The Special Hearing relief was requested in accordance with Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve the following:

- Two uses (adult daycare and wireless telecommunications tower) co-existing on the same property in close proximity to each other; and

- Two uses as not conflicting with Section 102.2 of the B.C.Z.R.; and
- To confirm the legality of the adult daycare use existing on property.

The Special Exception was requested to permit a telecommunications facility tower on property zoned D.R.5.5 pursuant to section 426.5 of the B.C.Z.R. The undersigned convened a public hearing on March 9, 2009 in Room 104 of the Jefferson Building located at 105 West Chesapeake Avenue in Towson, MD. The hearing was attended by representatives of Petitioner T-Mobile, as well as their attorney, Sean Hughes, Esquire. Also in attendance was Diane Vance with Easter Seals Greater Washington-Baltimore Region, Inc., the current lessee of the property. There were no Protestants or other interested persons in attendance at the hearing. After considering the testimony and evidence offered by Petitioners in support of the relief, as well as the testimony received from Ms. Vance at the hearing and an email dated March 17, 2009 submitted after the hearing by Lisa Reeves, President and CEO of Easter Seals Greater Washington-Baltimore Region outlining her organization's requirements vis-à-vis the requested telecommunications tower, the undersigned issued an Order dated April 22, 2009, granting the Special Hearing requests and the Special Exception use.

Thereafter, Mr. Zimmerman submitted a letter dated May 20, 2009, to be treated as a Motion for Reconsideration. In his Motion, Mr. Zimmerman requests that further consideration be given to two main issues: (1) Petitioner's decision to place the 120 foot tall monopole on the subject property in a location that would be 92 feet from the corner of a building that houses an existing adult daycare facility, and (2) Petitioner's decision to erect the monopole and telecommunications facility in a residential area and zone. In Mr. Zimmerman's view, the issues associated with these decisions were not addressed in sufficient depth to warrant granting the Petitions. He also welcomes any additional response or input from Petitioners as well as Easter

Seals, who it appears is potentially most affected by the presence and location of the telecommunications facility on the subject property.

Subsequently, Petitioner's attorney, Mr. Hughes, submitted a letter dated June 3, 2009 responding to the issues raised in Mr. Zimmerman's Motion. The letter included a Motion to Dismiss and an Opposition to the Motion. Initially, the Motion to Dismiss requests that the Motion for Reconsideration be dismissed because People's Counsel is not a "party" to the case. Mr. Hughes indicates he was not aware of an entry of appearance having been filed by People's Counsel and points out that People's Counsel did not participate in the case up to and at the public hearing.¹ In the alternative, Mr. Hughes raises a number of arguments in Opposition to the Motion for Reconsideration. Primarily, as to the issue of the placement of the monopole tower, Mr. Hughes indicates that Petitioner demonstrated at the hearing through testimony and evidence that the tower location would be in compliance with the requirements of Section 426 of the B.C.Z.R. -- in particular that the tower would meet all area and setback requirements, including the requirement that the tower be at least 200 feet away from any other owner's residential property line. He also indicates that the 502.1 special exception criteria had been addressed through the uncontroverted testimony of Petitioner's experts.

Moreover, Mr. Hughes points out that the issues concerning the design and function of the tower have undergone thorough scrutiny at a number of levels, including the County's Permits and Development Management review process, the Tower Review Committee and its consultants, the inspections and periodic monitoring that are required to ensure that the tower meets (now and in the future) all applicable building codes, and finally the public hearing

¹ In his Motion to Dismiss, Mr. Hughes questions whether People's Counsel could legally file the Motion for Reconsideration because he was not aware of People's Counsel entering his appearance in the case or participating in the public hearing. Thereafter in an email dated June 11, 2009, Mr. Hughes informed the undersigned that his office had indeed located People's Counsel's Entry of Appearance dated January 20, 2009.

conducted and findings made by the undersigned on this issue. As to the issue of placing the tower in a residential zone, Mr. Hughes acknowledges Petitioner's burden of proof as to the requirements of Section 426.9.C.a of the B.C.Z.R. and explains that Petitioner has indeed met its burden through the testimony and evidence adduced at the hearing. In short, Mr. Hughes argues that the issues raised in the Motion for Reconsideration (placement of the monopole and location in a residential area and zone) are the same issues that were addressed and discussed at the public hearing, and that the testimony and evidence at the hearing warranted the granting of the special hearing and special exception.

Finally, Mr. Zimmerman submitted a letter dated June 11, 2009 responding to the Motion to Dismiss and again raising the issues of the placement of the tower in proximity to the adult daycare facility and in a residential area and zone.

In considering the Motion for Reconsideration, the undersigned reviewed the file and the Findings of Fact and Conclusions of Law dated April 22, 2009, as well as the respective positions of the parties outlined in People's Counsel's Motion and Petitioners' response. Disposing of the Motion to Dismiss, I shall deny that Motion. Clearly, People's Counsel entered its appearance in the case. Notwithstanding the fact that People's Counsel did not participate in the hearing, they are a party to these proceedings and the Motion to Dismiss is denied.

As to the Motion for Reconsideration, after reviewing the aforementioned documents, I do not believe the case warrants reconsideration. I understand People's Counsel's intent in filing the instant Motion for Reconsideration was to determine if there might be a potential resolution at the Zoning Commissioner level in order to avoid further litigation. I also understand there are indeed situations where such an intent might be helpful to all parties in coming to an equitable resolution of a case. However, with all due respect to People's Counsel's position in this matter,

I disagree with his statement at the end of the third full paragraph on page 4 of his May 20, 2009 letter that “[o]n the record to date, the petition should be denied.” On the contrary, after reviewing the evidence at the hearing, which included documentary evidence, and listening to at least four witnesses, including experts, testify as to the requirements associated with the requested relief, I am persuaded that granting the relief was appropriate.

The issues raised in particular by People’s Counsel as to the placement of the monopole on the subject property and its location in a residential area and zoned were acknowledged and addressed by Petitioners. Moreover, the co-lessee, Easter Seals Greater Washington-Baltimore Region, Inc. by Ms. Vance, attended the hearing and was given an opportunity to present testimony at the hearing, which it did through Ms. Vance. In addition, after the hearing was concluded, the undersigned kept the record open in order to give Ms. Vance’s supervisor, Lisa Reeves, more time to evaluate Petitioner’s proposal and provide additional input to the undersigned. Ms. Reeves did so in an email dated March 17, 2009 and the undersigned included most of Ms. Reeves’ requirements as conditions of granting the requested relief, including the provisions to add Easter Seals as an additional insured on T-Mobile’s certificate of insurance and non-interference by T-Mobile of Easter Seals’ use of their building. It is also telling in my view that Easter Seals has not joined Mr. Zimmerman’s Motion for Reconsideration or presented any additional information in light of the Motion.

In conclusion, in my view, the issues raised in People’s Counsel’s Motion for Reconsideration were raised at the public hearing and were addressed by Petitioner and its experts through testimony and documentary evidence. Petitioner met its burden of proof without any evidence to the contrary and was entitled to the relief granted in my Order dated April 22, 2009. Hence the aforementioned Motion for Reconsideration shall be denied.

WHEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 20th day of July, 2009 that Petitioner's Motion to Dismiss be and is hereby DENIED; and

IT IS FURTHER ORDERED that People's Counsel's Motion for Reconsideration be and is hereby DENIED.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

____SIGNED_____
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz