

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

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by George Helfrich, the legal property owner, and Amy Bird, agent and representative for T-Mobile, the proposed lessee. Special Hearing relief is requested pursuant to 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 requested Special Exception is to allow a telecommunications facility tower on property zoned D.R.5.5 pursuant to section 426.5 of the B.C.Z.R. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner’s Exhibit 1.

Appearing at the requisite public hearing in support of the requested special hearing and special exception was Amy Bird, Petitioner T-Mobile's consulting Zoning Manager, and Sean P. Hughes, Esquire, attorney for Petitioner. Also appearing in support of the requested relief were Michael McGarity, Petitioner's wireless services engineering consultant, and Mitch Kellman, Petitioner's land use and zoning consultant, both with Daft McCune Walker, Inc. ("DMW"), the firm that prepared the site plan, and Rajkanwar Brar, consulting radio frequency engineer with T-Mobile. Also attending the hearing as an interested party on behalf of the current lessee of the property was Diane Vance with Easter Seals Greater Washington-Baltimore Region, Inc. There were no Protestants or other interested persons in attendance.

Testimony and evidence offered revealed that the subject property is irregular-shaped and consists of approximately 10.99 acres, more or less, zoned D.R.5.5 and R.C.6. The property is located on the south side of Dogwood Road, west of North Rolling Road and east of the Diamond Ridge Golf Course, in the Woodlawn area of Baltimore County. The property is improved with an existing two-story building near the northeast corner of the property. Vehicular access is via an asphalt driveway from Dogwood Road near that same northeast corner, with a parking area adjacent to the building. The building is presently leased by Easter Seals Greater Washington-Baltimore Region, Inc. for use as an adult daycare facility. According to Ms. Vance, Director of the facility, Easter Seals has been at the subject site for the past 12 years, and may eventually seek to purchase the property, especially if they decide to expand into childcare services.

At this juncture, the property owner, Mr. Helfrich, and the proposed lessee, T-Mobile, seek to erect a wireless communications tower on the property, southwest of the existing building, in order to provide enhanced coverage for wireless services in the area, in particular

911 services and E-911. The proposed tower would be a monopole, approximately 120 feet in height, three feet in diameter at the base and tapering to two feet near the top. The tower antennae would be located internally and would have capacity for at least two other carriers in the future. The tower would be located within a 650 square foot telecommunications compound consisting of the monopole, two T-Mobile equipment cabinets (and room for an additional cabinet in the future) placed on a 10 foot by 20 foot concrete pad, as well as additional utility cabinets.

In support of the requested relief, Ms. Bird and Messrs. McGarity, Kellman, and Brar were offered and accepted as experts in their respective fields.¹ Their testimony can be summarized as follows: T-Mobile has a federal license that requires it to provide coverage for wireless services in Baltimore. T-Mobile identified a coverage gap in this area of Woodlawn through receipt of customer complaints and through a computer aided analysis using specially designed software. Mr. Brar, the radio frequency engineer, identified an area within the larger coverage gap, from which antennae can be used to fill in the coverage gap. This smaller area within the coverage gap is called a search ring. T-Mobile's site acquisition specialists conducted an extensive search for an appropriate site to either co-locate antennae on existing structures or to build a new facility. A number of existing locations were identified in the search ring and were ruled out. The first, at a federal building located at 7500 Security Boulevard, was rejected by the General Services Administration due to it being a secure facility. Other locations at 3300 and 3320 Lord Baltimore Drive were ruled out due to concerns over signal interference. A nearby school building was also considered, but T-Mobile was told the County did not want wireless towers at school locations. Ms. Bird also explained that T-Mobile normally desires to

¹ The resumes outlining the backgrounds and qualifications of Messrs. McGarity, Kellman, and Brar were marked and accepted into evidence as Petitioner's Exhibits 5, 9, and 12, respectively.

co-locate their antennae whenever possible, but they could not do so in this case. Lacking existing structures for co-location, T-Mobile identified the subject property, a large residentially zoned tract on which it proposes the aforementioned 120 foot tall monopole within a 650 square foot telecommunications compound, as depicted on the site plan.

As part of the process required for a new tower, the Tower Review Committee (“TRC”) met on August 26, 2008 and considered the application made by Petitioner on July 1, 2008. In its December 10, 2008 Inter-Office Correspondence which was marked and accepted into evidence as Petitioner’s Exhibit 2, the Tower Review Committee made several advisory comments for consideration by the Development Review Committee (“DRC”), including that T-Mobile demonstrated that no other co-location opportunities exist at or near the location that would provide the requested coverage for the intended area, and that the monopole would be constructed to accommodate two additional wireless service providers as required. The Tower Review Committee also noted that the proposed new tower would be located in a D.R.5.5 zoned area and would meet the 200 foot setback from a residential property line; however, concerns were noted as to the new tower’s proximity to the existing adult daycare facility -- specifically within the fall zone of the tower (92 feet). To alleviate this concern, it was noted (and reiterated by Petitioner at the hearing) that T-Mobile would design the tower to buckle and collapse on itself in the event of a tower failure. In unanimously approving the proposed new tower, the TRC concluded it would meet all the requirements of Section 426 of the B.C.Z.R., while allowing the needed emergency and non-emergency communications for citizens in the area.

Petitioner also indicated it could comply with the Zoning Advisory Committee comments from the Office of Planning dated February 6, 2009 that were marked and accepted into evidence as Petitioner’s Exhibit 3. Specifically, the Planning Office indicated that it does not oppose the

special hearing request. As to the special exception, they noted that the proposed tower would be visible from Dogwood Road. In order to improve the appearance of the tower and reduce its visibility, the Planning Office recommended that (1) the tower be a concealment monopole with internal antennae, (2) that the tower be a color not to stand out amongst its surroundings and blend in with existing trees and wooded areas, and (3) that Petitioner provide Class A screening around the fenced compound. In response, Petitioner's attorney, Mr. Hughes, indicated the proposed tower is in fact a concealment monopole, that the color would typically be a white or off-white or similar color that would blend in better than a darker color, and that Petitioner would provide adequate screening, and would also erect a more attractive board-on-board fence around the compound as opposed to the chain link fence indicated the site plan.

In addition, the TRC's independent analyst, Columbia Telecommunications Corporation, published its findings with regard to the visibility of the proposed tower in its report dated November 25, 2008 that was marked and accepted into evidence as Petitioner's Exhibit 4. Columbia noted that Dogwood Road to the west of the site is hilly with trees along the road that will likely screen the monopole from view from the roadway, though some homes directly across the street from the improved area of the property will see the monopole; they noted the tower would also be visible over the horizon from the elementary school located east of the property. The report also indicated that it appears the view of the monopole will likely be minimized because of its distance from residential areas north of the subject property and from trees between the monopole and the homes, and that the same appears to be true for residential areas to the south of the site.

Further evidence indicated that the proposed telecommunications tower at the subject site would not have any negative impacts to the special exception criteria set forth in Section 502.1

of the B.C.Z.R. Ms. Bird and Mr. Kellman both specifically addressed these factors and offered their opinions that the proposed use would not be detrimental to the health, safety or general welfare of the locality involved; would not tend to create congestion in roads, streets or alleys therein; would not create a potential hazard from fire, panic or other danger; would not tend to overcrowd land and cause undue concentration of population; and would not interfere with adequate provisions for public requirements, conveniences or improvements. They also testified that the proposed use would not interfere with adequate light and air; would not be inconsistent with the purposes of the property's zoning classification or inconsistent with the spirit and intent of the Zoning Regulations; and would not be inconsistent with impermeable surface and vegetative retention requirements or be detrimental to the environmental and natural resources of the site and vicinity.

In particular, Ms. Bird introduced photo simulations that were marked and accepted into evidence collectively as Petitioner's Exhibit 7. The simulations include a map of the surrounding area with red dot points, and photographs taken from those red dot locations in the direction of the proposed pole location, with the size and shape of the proposed pole superimposed on the photographs from the various distances. This gives the viewer a firsthand look at how visible the pole would be from the particular locations. As seen in the photographs, although the pole is visible from all these locations, the view certainly could not be characterized as unreasonably obtrusive. In addition, the proposal to have a monopole with interior antenna slots and a light color to blend in with the horizon would likely make the pole even less conspicuous. Ms. Bird also pointed out that compared with the size of the entire site (almost 11 acres), the proposed tower and telecommunications compound would be relatively small (approximately 650 square feet) and take up very little space. Further, traffic originating from

the compound would be minimal, with only a service technician visiting the site every four to six weeks. There would also be no lighting required for the monopole, further lessening the tower's visual impact. A report study dated July 10, 2008 by Jeppesen, Inc., an aviation consulting company, that was marked and accepted into evidence as Petitioner's Exhibit 10 reveals that marking and lighting is not required for less than 200 feet in height.

Providing additional testimony specifically as to the need for the enhanced wireless service was Rajkanwar Brar. Mr. Brar is a radio frequency engineer employed with T-Mobile. He obtained an engineering degree at the University of Pune, India in 1995 and has extensive experience in GSM (Global Standard for Mobile Communications) and RF (Radio Frequency) Design.

Mr. Brar introduced a computer generated propagation map showing the existing on-air coverage without the proposed telecommunications facility that was marked and accepted into evidence as Petitioner's Exhibit 13A. He also submitted a similar map taking into account the predicted signal strength with the proposed tower at the subject location that was marked and accepted into evidence as Petitioner's Exhibit 13B. As shown on these exhibits, the color blue indicates where the signal strength is sufficient indoors to have continuous communication and properly hand off to the next cell tower. In addition, the green areas indicate sufficient in-vehicle coverage. Mr. Brar then noted the lack of comprehensive coverage in the subject area as indicated by the predominance of green (in-vehicle coverage). He indicated that adding the aforementioned facility would increase the overall coverage and provide the needed indoor and in-vehicle coverage as depicted in Petitioner's Exhibit 13B. It would also allow for enhanced 911 services.

Turning first to the special exception, I have reviewed Petitioner's proposal in the context of Sections 426 and 502.1 of the B.C.Z.R. and am persuaded that Petitioner has met its burden, and that the request meets all of the customary special exception criteria with very little negative impact on the surrounding community. Petitioner presented uncontroverted testimony that there is a need for wireless coverage in the area, that there were no other viable alternative locations or opportunities to co-locate their antennae, that the antennae would be mounted inside the pole, and that the proposed telecommunications facility would have no detrimental impacts on the health, safety and general welfare of the locale.

Petitioner also addressed the concern regarding locating the proposed 120 foot tower within a fall line of the adjacent building currently utilized by the lessee, Easter Seals, operating an adult daycare facility. The daycare facility is approximately 92 feet from the proposed telecommunications compound. As indicated previously, the new tower is designed to buckle and essentially collapse into itself in the event of a pole failure. This was further explained in a report dated November 26, 2007 from Paul J. Ford and Company, consulting structural engineers, which was marked and accepted into evidence as Petitioner's Exhibit 11. This report was prepared for another proposed T-Mobile site in Silver Spring, MD, but utilizing the same type of 120 foot monopole that is proposed in the instant matter. The report indicates the following with regard to the design:

This pole will be designed with the top 39.25 feet meeting the design wind criteria, while the lower 80.75 feet of the pole, anchor rods, and foundation are over-designed to resist more than the design wind loads. When steel becomes overstressed it does not suddenly break, it will bend and buckle. In the unlikely event that this pole would experience a wind event that would cause a collapse, the upper portion of the pole would become overstressed first and would buckle. The upper portion of the pole would then swing down and hang from this level or, at worst, break of resulting in a fall radius of approximately 39.25 feet. Once the upper portion is no longer upright catching the full force of the wind, the stresses

on the lower portion of the pole are reduced, making further collapse of the pole unlikely.

I am persuaded that Petitioner will take the necessary steps to ensure that the proposed 120 foot monopole in the instant matter is designed and erected in a manner consistent with the characteristics discussed in this report.

Turning now to the Special Hearing request, I am persuaded by the testimony and evidence presented that this relief should also be granted. Petitioner adduced substantial evidence that the location of the new tower and compound will not result in overlapping use between this 650 square foot space needed for the special exception and the existing building that is used by Easter Seals as an adult daycare facility. Because there is no conflict or overlap, there is no prohibition under Section 102.2 of the B.C.Z.R. for such dual use. By way of example, this situation could be compared to a wireless cell tower that is surrounded by a farmer's agriculturally used field. Finally, I find that the existing building and its use by Easter Seals as an adult daycare facility is a permitted use, with no conflicting uses vis-à-vis the proposed wireless telecommunications tower.

Pursuant to the advertisement, posting of the property, and public hearing on these petitions held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's request for special hearing and special exception should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 22nd day of April, 2009 that Petitioner's request for Special Hearing relief filed pursuant to 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

be and are hereby GRANTED.

IT IS FURTHER ORDERED that the request for Special Exception to allow a telecommunications facility tower on property zoned D.R.5.5 pursuant to section 426.5 of the B.C.Z.R. be and is hereby GRANTED.

This Order is subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is 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, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The tower shall be a concealment monopole where all the antennae are located within the pole structure. The pole shall also be of a type and have characteristics consistent with the design and construction of the monopole discussed in the report dated November 26, 2007 from Paul J. Ford and Company, consulting structural engineers, which was marked and accepted into evidence as Petitioner's Exhibit 11.
3. The tower shall be a white or off-white (such as galvanized gray) color that would blend in with the horizon and the surroundings. The color shall be approved by the Office of Planning.
4. Petitioner shall provide Class A screening around the telecommunications compound through appropriate landscaping as shown on Petitioner's Exhibit 1, as well as an 8 foot high board-on-board fence surrounding the compound. The Class A screening and fencing shall be approved by the Office of Planning.
5. During construction of the telecommunications tower and compound and thereafter as part of its maintenance of the site, Petitioner shall have access to the site in common with the co-lessee, Easter Seals, but shall not materially interfere with or impact Easter Seals' use of the property; in particular their access, parking, and use of the adult daycare building.
6. Petitioner shall provide the co-lessee, Easter Seals, a valid certificate of liability insurance from year to year naming Easter Seals Greater Washington-Baltimore Region, Inc. as an additional insured. Furthermore, Petitioner T-Mobile and the property owner

7. In compliance with Section 426.6 of the B.C.Z.R., upon completion of the tower and every five years thereafter, Petitioner shall submit to the Code Official written certification from a professional engineer verifying that the tower and any structure housing equipment for the tower meets all applicable Building Code and safety requirements.

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