

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
E side of Old Court Road; 215 feet N of	*	DEPUTY ZONING
Liberty Road		
2 nd Election District	*	COMMISSIONER
4 th Councilmanic District		
(8514 Liberty Road)	*	FOR BALTIMORE COUNTY
Liberty Crossing Land LLLP	*	
<i>Legal Owners</i>		
Verizion Wireless	*	
<i>Contract Lessee</i>		
		Case No. 2010-0147-SPHA
	*	

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by Kenneth L. Hankin on behalf of the legal owners of the subject property, Liberty Crossing Land LLLP, and Brian Stover on behalf of the contract lessee, Verizon Wireless. Special Hearing relief is requested in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to confirm that the proposed wireless telecommunications tower will not be located 200 feet or less from any other owner's residential property line and that a variance from Section 426.6.A.1 of the B.C.Z.R. is not required, and to amend the site plan approved in Case No. 97-587-X. In the alternative, Petitioner is requesting Variance relief from Section 426.6.A.1 of the Baltimore County Zoning Regulations to allow a wireless telecommunications tower to be set back 70 feet from another owner's residential property line in lieu of the required 200 feet. The subject property and requested relief are more fully described on the two-page site plan that was marked and accepted into evidence as Petitioner’s Exhibits 1A and 1B.

Appearing at the requisite public hearing in support of the requested relief on behalf of Petitioner Verizon Wireless was Stephanie Petway with Network Building & Consulting, LLC

(“NBC, LLC”), Petitioner’s wireless site development consultant. Arnold Jablon, Esquire and David Karceski, Esquire appeared as attorneys for Petitioner. Also appearing in support of the requested relief were Sherri Linton, a radio frequency engineer with Verizon Wireless for the northeast region, and Michael McGarity, a professional engineer specializing in wireless communications projects, and Mitch Kellman, Petitioner’s zoning consultant, both with Daft – McCune – Walker, Inc., the firm that prepared the site plan. There were no Protestants or other interested persons in attendance at the hearing.

Testimony and evidence proceeded by way of a proffer from Mr. Karceski and revealed that the subject property is an irregular-shaped property containing approximately 11.71 acres, more or less, zoned B.R. (Business, Roadside). The property is located on the northeast side of the intersection of Liberty Road and Old Court Road in the Randallstown area of Baltimore County. The property is improved with a large existing commercial building that contains a self-storage facility and a number of other retail uses including a grocery store. The property is situated in a commercial corridor of Liberty Road, with a number of commercial and institutional uses nearby. Immediately to the west and north is a church and cemetery, to the east is another church and cemetery. To the north is an elderly housing complex with two 74 unit, two-story elderly housing facilities, known as “Randallstown Nonprofit Housing Corporation” and “Randallstown II Nonprofit Housing Corporation,” respectively. As shown on the aerial photographs that were marked and accepted into evidence as Petitioner’s Exhibits 4A and 4B, these properties surround the subject property and the adjacent zoning is D.R.5.5. Further to the north and east are residential neighborhoods.

Mr. Karceski described the property and the requested zoning relief and proffered the testimony of Petitioner’s land use, planning, and zoning experts, Messrs. McGarity and Kellman with Daft – McCune – Walker, Inc. (“DMW”). Mr. McGarity is a civil engineer and Director of

Wireless Services for DMW. He has been with DMW since 1997 and has over 10 years of experience managing wireless telecommunications projects for numerous wireless carriers and has a detailed knowledge of site design and implementation as it relates to the Baltimore County Zoning Regulations and specifically the telecommunications tower Regulations. He has testified numerous times before this Commission as an expert and was offered and accepted as such in this case. Mr. Kellman is the Director of Zoning Services for DMW. He has been with DMW since 2000 and has over 11 years of experience working in zoning administration and subdivision regulation for the public sector. He was previously employed with the Baltimore County Zoning Review Office where he reviewed zoning petitions and development plans and made determinations regarding compliance with County regulations. He has testified extensively as an expert before this Commission and was offered and accepted as an expert in zoning and the Baltimore County Zoning Regulations. Mr. McGarity and Mr. Kellman's resumes were marked and accepted into evidence as Petitioner's Exhibits 2 and 3, respectively.

Mr. Karceski indicated in his opening remarks that his client, Petitioner Verizon Wireless, desires to provide enhanced wireless services to its customers. They have identified a coverage gap in the area and desire to erect a 90 foot tapered steel monopole with exterior antennae at the rear of the property, behind the existing building, as shown on the site plan. Initially, Petitioner prepared a search ring in order to find suitable locations to alleviate the coverage gap. After investigating possible sites, the subject property was identified as the most ideal location. Specifically, its location and height would meet the coverage needs, while also meeting the requirements of Baltimore County that any new tower be constructed to accommodate at least three wireless providers, erected in a medium or high density commercial zone when available, and located and designed to minimize its visibility from residential and transition zones. As noted previously, the subject property is surrounded to the north, east, and west by property zoned

D.R.5.5, with a church and cemetery and elderly residential housing buildings located behind the subject property -- the closest property lines to where the proposed telecommunications tower would be located. As a result of the above, Petitioner is seeking special hearing relief to confirm that the proposed tower on the subject property would not be located 200 feet or less from an other owner's residential property line. In the alternative, Petitioner is seeking a variance to allow the tower to be set back 70 feet from another owner's residential property line.

In support of the special hearing request, Mr. Karceski asserted that there is a distinction in Section 426.6.A of the B.C.Z.R. between the phrases "other owner's residential property line" contained in Section 426.6.A.1, which refers to the tower's minimum 200 foot setback requirement, and "any other owner's property or zoning line" contained in Section 426.6.A.2, which refers to the structure housing the equipment for the tower meeting the minimum setback requirements. Mr. Karceski argued that the proposed tower in the instant matter would be at least 470 feet from the closest residential property line on nearby Valley Hill Court, and would also be more than 200 feet from the Randallstown and Randallstown II elderly housing facilities. Moreover, in his view, the two phrases referenced above indicate that the 200 foot setback should not be looked at in terms of the residential zone (i.e. – the adjacent D.R. Zone), but rather in terms of the residential property line, which are the residential properties on Valley Hill Court. Therefore, it could be argued that a variance from Section 426.6.A.1 of the B.C.Z.R. is not necessary.

In the alternative, Mr. Karceski discussed the unusual features of the property and the legal threshold that must be met for variance relief to be granted. Specifically, Mr. Karceski pointed to the irregular shape of the property and its topography. As shown on the site plan, the property has a narrow strip of land that provides access to the site from Old Court Road, and also has two separate access points from Liberty Road. The subject property also surrounds a much smaller

property with a building pad site that is home to a video rental store. As to the topography, the dotted lines on the site plan show that the subject property is elevated from its Liberty Road and Old Court Road frontage, and sits above the other properties nearby. This is also illustrated in the photographs of the site that were collectively marked and accepted into evidence as Petitioner's Exhibit 5. In addition, at the rear of the site near the location of the proposed tower, the elevation increases significantly to the residentially zoned property. As to practical difficulty, Mr. Karceski explained that the site is already a built-out commercial shopping center known as "Liberty Crossroads" and the building and parking improvements are existing. The site itself, and the placement of the tower on the site, is an ideal location for the telecommunications tower. As the photo-simulations that were marked and accepted into evidence as Petitioner's Exhibits 6A through 6C indicate, there would be very little visual or other impacts associated with the presence of the tower (in fact, it resembles the existing light towers on the site). In Petitioner's view, it would be inopportune to allow such an obviously well suited site not to be utilized, given the coverage needs and the location's compliance with Baltimore County's mandates with regard to the erection of new towers.

Finally, Mr. Karceski noted that the instant proposal was considered by the Baltimore County Tower Review Committee ("TRC") on October 27, 2009 and recommended for approval by the TRC in its Memorandum dated December 17, 2009, which was marked and accepted into evidence as Petitioner's Exhibit 7. In the conclusion of its advisory comments, the TRC stated that:

a new 90-foot tower in the proposed location would serve to fill in Verizon's coverage gap in the area and help them toward their goal of seamless connectivity. It would meet all of the requirements of Section 426 [of the B.C.Z.R.], while allowing for needed emergency and non-emergency communications for customers in the area.

Near the conclusion of the hearing, the undersigned conveyed concerns over the design of the proposed tower and inquired as to how the tower would be constructed and what would be the “fall zone” of the proposed tower. In response, Ms. Petway indicated that the tower would be designed specifically so that it would not have a broad fall zone. Ms. Petway also referenced a report prepared by Petitioner’s tapered steel pole supplier, ROHN Products, LLC, which discusses in great detail the characteristics of the tower. A copy of the cover letter to that report, which summarized the findings, was marked and accepted into evidence as Petitioner’s Exhibit 8. In short, the proposed tower would be designed and engineered not to fail in virtually any circumstances, but in the event that it did, the tower would not simply “fall over” with a fall zone of at least 90 feet -- the height of the tower. Rather, the tower would be designed so that stronger sections are provided in the lower portion of the pole (approximately the first 50 feet of the pole). The design would enable the pole to fail through a combination of bending and buckling in the upper portion of the pole should a catastrophic wind loading occur. Failure in this scenario would result in the upper portion of the pole “folding over” the lower portion, resulting in no more than a 50 foot fall zone radius. The design would also make it highly unlikely that the pole would completely break or shear off and hit the ground, but would more likely be a local buckling failure.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental Protection and Resource Management dated December 11, 2009 which indicates that development of the property must comply with the Forest Conservation Regulations. If this project does not qualify for any of the exemptions listed in Section 33-6-102 of the Baltimore County Code, then this site must comply with the Forest Conservation Law. Recent changes to the current regulations do not allow for forest conservation waivers. However, since the site was developed prior to the forest

conservation regulations, Petitioner may request a forest conservation variance to base the afforestation calculations on the limit of disturbance rather than the entire site coverage.

Turning first to the Petition for Special Hearing, wireless telecommunications towers and facilities are governed by Section 426 of the B.C.Z.R. Section 426.5 of the B.C.Z.R. provides that wireless telecommunication towers are permitted in the B.R. Zone as a matter of right. In addition, however, a petitioner must also meet mandatory setback requirements for these towers. In the event these setbacks cannot be met, variances from the wireless telecommunications facility requirements are authorized, pursuant to Section 426.11 of the B.C.Z.R. and governed by Section 307 thereof. Section 426.6.A.1 of the B.C.Z.R. states that “[a] tower shall be set back at least 200 feet from any other owner’s residential property line.” In the instant matter, Petitioner, through its attorneys, contends that a variance in this case is not necessary. They assert that the phraseology of Section 426.6.A.1, wherein the tower shall be setback at least 200 feet from any other owner’s *residential property line* (emphasis added), explicitly does not mention “zoning line.” Petitioner believes it meets this requirement because the nearest residential property lines are the residential properties at Valley Hill Court, over 470 feet away.

In this case, I disagree with Petitioner’s analysis on the necessity of the variance and believe a variance is required in this case. As shown on the site plan, the property line to the rear at the northeast side of the subject property is the boundary that is potentially implicated by the 200 foot setback requirement of Section 426.6.A.1 of the B.C.Z.R. The properties adjacent to this boundary that are owned by Mount Olive United Methodist Church and Randallstown II Nonprofit Housing Corporation, respectively, are zoned D.R.5.5 and these nearest property lines are approximately 70 feet from the proposed location of the telecommunications tower. Section 426.5.D designates “Residential Zones” and includes the D.R. Zone. In my view, this is a strong factor in the determination here that the boundary lines of the adjacent properties are “residential

property lines” as referenced in Section 426.6.A.1 of the B.C.Z.R. In addition, there is a property line that bisects the two adjacent properties and runs perpendicular to the subject property, as also shown on the site plan in proximity to the proposed location of the tower. This property line also constitutes a “residential property line” and is certainly less than 200 feet from the proposed tower location. Hence, in my judgment a variance request is required.

In this case, Petitioner did in fact request the variance from Section 426.6.A.1 of the B.C.Z.R. as an alternative in order to permit the proposed tower location to be set back 70 feet from another owner’s residential property line in lieu of the required 200 feet. After considering the testimony and evidence presented in support of the request, I am persuaded to grant the relief. I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Certainly, the subject property is unlike other properties in the area in shape and topography. I also find that strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship upon Petitioner. Petitioner has identified a coverage gap in its wireless service and is required by the Federal Communications Commission to ensure that its network is adequate to serve its customers and meet its licensing requirements. This need is also supported by the Baltimore County Tower Review Committee. The subject property is located in a commercial corridor with similar commercial and institutional uses along Liberty Road and, after an investigation into potential sites, is viewed as a suitable location for the proposed tower, with minimal impact. Finally, I find that the variance request can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare. In viewing the surrounding area on the whole, the proposed location of the tower on the subject property is an ideal location. It is located well within the search ring prepared by Petitioner and would likely have very little impact, especially visually, on the community. The 90 foot tower would be

buffered by the self storage building located in front of it, and would be approximately 545 feet from Liberty Road. It would also be buffered from the properties to the rear by the elevation of those properties over 10 feet about the surface location of the tower, plus the tall line of mature trees that runs along the property line. In my view, the visual appearance of the tower would not be unlike the appearance of the light poles on the property that light up the parking lot and rear alley.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioner's special hearing should be denied in part and granted in part, and the variance request should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 14th day of January, 2010 that Petitioner's Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to confirm that the proposed wireless telecommunications tower will not be located 200 feet or less from any other owner's residential property line and that a variance from Section 426.6.A.1 of the B.C.Z.R. is not required, be and is hereby **DENIED**; and

IT IS FURTHER ORDERED that Petitioner's Special Hearing request to amend the site plan approved in Case No. 97-587-X be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner's Variance request from Section 426.6.A.1 of the Baltimore County Zoning Regulations to allow a wireless telecommunications tower to be set back 70 feet from another owner's residential property line in lieu of the required 200 feet, be and is hereby **GRANTED**.

The relief granted herein is subject to the following conditions:

1. Petitioner is advised that it may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code). If this project does not qualify for any of the exemptions listed in Section 33-6-102 of the Baltimore County Code, then this site must comply with the Forest Conservation Law. Recent changes to the current regulations do not allow for forest conservation waivers. However, since the site was developed prior to the forest conservation regulations, Petitioner may request a forest conservation variance to base the afforestation calculations on the limit of disturbance rather than the entire site coverage.

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