

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-2535

**PETITION OF SPRINT PCS/APC REALTY
AND EQUIPMENT COMPANY, LLC
AND MELVIN G. AND C. M. PAISLEY**

OPINION OF THE BOARD

(Hearing Date: October 25, 2002)

(Effective Date of Opinion: February 21, 2003)

Case No. S-2535 is an application for a special exception pursuant to Section 59-G-2.43 (Public Utility Building, Public Utility Structure, and Telecommunication Facility) of the Zoning Ordinance to permit the construction and operation of a telecommunications facility consisting of a 155-foot flagpole, three (3) panel antennas inside the flagpole, and six 3 foot x 3 foot x 6 foot equipment cabinets located within a 44 foot x 56 foot compound and screened by a 7-foot fence.

Pursuant to the authority in Section 59-A-4.125 of the Montgomery County Code, the Board of Appeals referred the application to the Hearing Examiner for Montgomery County to conduct a public hearing. The Hearing Examiner convened a public hearing on October 25, 2002, and on December 6, 2002, issued a written Report and Recommendation for approval of the special exception.

The subject property is Lot 28, Block A, Tewksbury Manor Subdivision, located at 5600 Sundown Road, Gaithersburg, Maryland, in the RDT Zone.

Decision of the Board: Special Exception **granted**, subject
to conditions enumerated below

At its Worksession on January 22, 2003, the Board of Appeals voted to adopt the Hearing Examiner's Report and Recommendation and grant the special exception subject to the following conditions:

1. Petitioner shall be bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorneys, to the extent that such evidence and representations are identified in the Hearing Examiner's Report and Recommendation and in the opinion of the Board.
2. The monopole must be removed at the cost of the Petitioner when it is no longer used by a telecommunications carrier to provide service.
3. The flagpole must follow approved United States regulations governing the flying of the United States flag.
4. Lighting of the flagpole, as required by United States regulations, will consist of two ground-mounted narrow beam spotlights of not greater than 250 watts each.
6. Upon an assertion of objectionable glare from the illumination of the flagpole, the Board may convene a hearing to address possible detrimental effects of this non-inherent characteristic.
7. Petitioners must improve the entrance to the property off Sundown Road to Maryland State Highway Administration standards before the telecommunication facility becomes operational.

On a motion by Allison Ishihara Fultz, seconded by Angelo M. Caputo, with Donna L. Barron, Louise L. Mayer and Donald H. Spence, Jr., Chairman in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 18th day of February, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.