

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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

Case No. S-2578

PETITION OF VERIZON MARYLAND, INC.

OPINION OF THE BOARD

(Hearing held July 16, 2003)

(Effective date of Opinion: September 16, 2003)

Case No. S-2578 is a petition pursuant to Section 59-G-2.43 of the Zoning Ordinance (Chapter 59, Montgomery County Code 1994, as amended) for a special exception to construct a public utility building on the north side of Piedmont Road at 12825 Piedmont Road in Clarksburg, Maryland.

Decision of the Board: Special exception **GRANTED**, subject to conditions enumerated below.

The Board of Appeals held a public hearing on Wednesday, July 16, 2003, pursuant to Section 59-A-4.11(a) of the Zoning Ordinance.

Timothy Dugan, Esq. appeared on behalf of the Petitioner, Verizon Maryland, Inc. He called as witnesses: Gregory Brenner, Architect, Rolandrias Bradford, of Verizon, James Donnelly, Real Estate Appraiser, and Kim McCary, Engineer.

No other individuals appeared at the hearing to testify.

EVIDENCE PRESENTED TO THE BOARD:

1. Verizon proposes to construct a one-story telephone office or communications center under the public utility building use category (the "Center"). The building will be about 26.8 feet tall with a first floor of about 2,638 SF. The Center also will have a cellar of about 2,638 SF. The

Center's total square footage (the first floor and cellar) will be about 5,276 SF. (Exhibit 7).

2. The subject property (the "Property") is located on the north side of Piedmont Road, west of the intersection of Stringtown Road and Piedmont Road in Clarksburg, Maryland. The Property is owned by Verizon Maryland, Inc. ("Verizon"). It consists of 2.41 acres of RDT zoned land. Access will be provided from Piedmont Road, a public street. The Property has approximately 220 feet of frontage along Piedmont Road. It is currently developed with a single-family home that will be demolished. From the proposed Center to Piedmont Road, the Property will slope down approximately sixteen feet. (Exhibit 20). The Property is within the Clarksburg Special Protection Area. The site contains no streams, wetlands or floodplains. (Exhibit 8).

3. The general neighborhood is described below using the intersection of Stringtown Road (north-south) and Piedmont Road (east-west) as a reference point. (Exhibits 17 and 32).

The northwest quadrant, which includes the Property, is primarily undeveloped. The Cedarbrook Community Church (immediately to the North) and a few scattered single-family residences contribute to the rural-residential character of the neighborhood.

The southwest quadrant is comprised of the Clarksburg Town Center, where the Clarksburg Master Plan proposes to create a community of mixed-use neighborhoods.

Northeast is the Fountain View subdivision.

Southeast is the planned Newcut Road neighborhood.

Immediately south of the Property, within the Clarksburg Town Center, approximately 1,315 residential units are currently under construction.

The Property is adjoined by the following:

- North – Cedarbrook Community Church;
- South – Model homes located within the Clarksburg Town Center;
- East – The home of Mr. & Mrs. Bo Fang; and
- West – A 72.5 acre tract of undeveloped parcel belonging to Terrabrook Clarksburg, LLC, the developers of the Clarksburg Town Center.

4. The Property is located within the area addressed by the 1982 Damascus Master Plan. Such Master Plan confirmed the existing RDT zoning, and does not contain any specific recommendations for the Property or the proposed use.

5. Located on the north side of Piedmont Road, the Property is just outside of the area addressed by the 1994 Clarksburg Master Plan. Such Master Plan encourages the development of public facilities, such as the Center, and supports such uses that are “essential to the delivery of goods and services by the government and public utilities.” (Exhibit 10(a), page 155).

6. Further, the Property is located within the area addressed by the 1980 Functional Master Plan for the Preservation of Agriculture and Rural Open Space (the “Ag. Preserve Master Plan”), which provides at page 33:

Agriculture will continue as the primary land use in the Agricultural Wedge. Non-agricultural uses must be limited. Necessary non-agricultural uses, however, will continue to be located in the Agricultural Wedge when deemed appropriate.

(Exhibit 10(b) and Exhibit 3, pages 21-27).

7. The M-NCPPC Technical Staff recommended approval of the application based on its opinion that the proposed use comports with the applicable Master Plans and meets the general and specific special exception standards. (Exhibit 30).

8. Mr. Brenner, who was accepted as an expert in the field of architecture, testified about the proposed development and its similarity to other similar public utility facilities providing similar services. Mr. Brenner testified that the proposed Center’s appearance and operations will be those of a usual, typical, generic, switching station and will cause only the adverse impacts inherent to such a facility. He concluded that the proposed Center will not be incompatible with the surrounding neighborhood. He further testified that no non-inherent adverse impacts are anticipated. Mr. Brenner concluded that the proposed Center will not adversely affect the character, health, safety or welfare of the neighborhood.

9. Mr. Brenner testified that the Ag. Preserve Master Plan does not directly address telecommunications centers. He testified that the Ag.

Preserve Master Plan acknowledges that not all land within the preserve will be preserved for farming. (Exhibit 10(b), page 35). The Plan recognizes a need for commercial uses to serve the agricultural industry and rural community at large. He further testified that public utility buildings and structures are allowed in the RDT zone by special exception. Furthermore, he stated that the Property is too small to be used for farming purposes and has been used for residential purposes for over forty years. Mr. Brenner then addressed the proposed Center's consistency with the Clarksburg Master Plan. (Exhibit 10(a)). He noted that the Center will support the planned growth of the Clarksburg area by providing needed telephone, facsimile, Internet, and high-speed data communications infrastructure. Mr. Brenner stated that considering the effect of the full cut off and low wattage type of lighting, and its location in relation to the proposed Center and the surrounding properties, it will not be detrimental to the surrounding neighborhood.

10. The Center will be staffed by one or two Verizon employees. They will work there only part-time, for about three to four hours, during weekdays. They will be there sometime between the hours of 7AM and 6PM. Approximately four or five other Verizon employees, who will be driving Verizon service vehicles, will come and go infrequently, primarily during the weekday. The total expected number of visits per day (of such four or five employees) is expected to total approximately four or five. The visits will primarily occur during the mid-day hours. Co-locators who provide similar services as Verizon and who are entitled by U.S. law to use the building for their equipment, are expected to visit even less frequently. They are expected to visit only two to three times weekly with the visits generally occurring during the mid-day hours. Contractors servicing the switching equipment or providing other services will visit only as needed. Outside of Verizon's regular business hours, it is possible that Verizon employees, co-locators, or other contractors will be on-site conducting service calls, equipment installations or facility maintenance necessary to avoid service interruptions. However, Verizon's experience with such activity at other facilities is that it has been infrequent. (Exhibit 3, pages 78-79).

11. The Technical Staff accepted the Petitioner's traffic statement, provided by Mr. Papazian who wrote that the Center will have no detrimental effect on adjacent intersections and roads and will generate 5 or fewer AM and 5 or fewer PM weekday peak hour trips. (Exhibit 3, page 79, and Exhibit 17, page 6).

12. Mr. Brenner testified that the Center will not produce any objectionable noise. He stated that the only equipment to generate sounds will be the HVAC and mechanical equipment to be located on the west side of the building, furthest away from Mr. Fang's home and behind a 7 foot tall masonry and steel fence. (Exhibit 20). He testified that all other equipment will be located within the building. (Exhibit 7). Mr. Brenner also testified that, periodically, the Property's green space and landscaping will be maintained with lawnmowers and other motorized landscaping equipment, and that noise levels are not expected to be greater than those associated with similar activity for a residence; therefore, he did not expect such sounds to be objectionable.

13. Mr. Brenner testified that he understands that public utility buildings are allowed by special exception in the RDT zone under Section 59-C-9.3(f) of the Zoning Ordinance.

14. Mr. McCary testified that although the Property is located in the RDT Zone, the R-200 development standards apply pursuant to Section 59-C-9.74(b)(2). He noted that interpretation was confirmed by both the M-NCPPC Technical Staff and the County's Department of Permitting Services Zoning Compliance Division. (Exhibit 3, page 19).

15. Mr. Brenner and Mr. McCary testified about the Petitioner's compliance with the applicable setbacks, as follows.

The established front building setback line is labeled "ESTABLISHED BUILDING LINE" on the Site Plan (Exhibit 20). The distance between such line and the existing Property line at Piedmont Road is about 150 feet. The dimension will change when land is dedicated for the public right of way as a result of the subdivision of the Property. Following dedication, the distance between the established building setback line and the new property line will be about 135 feet.

The side yard setback with Mr. Fang's property line will be about 49 feet. The minimum required side yard setback is only 12 feet. The side yard setback with the open space area, along the westerly property line, will be about 149 feet. The minimum side yard setback is a total of 25 feet for both sides, with a minimum of 12 feet for any one side. The rear yard setback is about 152 feet (required minimum setback is 30 feet). In addition, the driveway is at least about 24.5 feet from any side yard property line, which exceeds the minimum setback requirement. The minimum driveway side yard setback must be equal to twice the minimum

side yard setback, which for the Center is 24 feet (2 times 12 feet) pursuant to Section 59-E-2.83(b). (Exhibit 20).

16. Mr. McCary testified that no minimum or maximum number of parking spaces is required. Verizon proposes to provide a total of 7 spaces, including 1 handicap space. (Exhibit 20).

17. Mr. McCary testified that Section 59-E-2.83(d) requires the shading of driveway and parking areas to “assure that at least 30 percent of the paved area, including driveways, are shaded. Shading must be calculated by using the area of the tree crown at 15 years after the parking facility is built.” He testified that the proposed trees will meet the 30% shade requirement based upon calculations of their expected canopies at 15 years of growth. (Exhibit 43).

18. Mr. Brenner testified that the parking area will be illuminated by three, full cut off light fixtures, with 100-watt bulbs, on fifteen-foot tall light poles. (Exhibits 27 and 29). He also testified that one wall-mounted, projection cut off light fixture with a 50 watt bulb, will be installed at the building door on the west facade. (Exhibits 28 and 29). The photometric plan indicates that less than 0.1 foot candles will be measured at the Property’s perimeter, pursuant to Section 59—G-1.23(h)(2). (Exhibit 29).

19. Mr. Brenner testified that the landscaping will contribute to the Center’s residential character and buffer and/or screen views. He stated that the trees and shrubs planted along the driveway and parking area will not only buffer and screen the building but also help to diffuse light. He noted that evergreen trees will be planted along the east Property line to screen partially the view of the Center from the closest home, the Fang home. Mr. Brenner further testified that the Petitioner agreed with the M-NCPPC Technical Staff’s recommendation to supplement the Center’s streetscape landscaping with four (4) London Plane trees which are shown on the Landscape Plan. (Exhibit 21).

20. Mr. Brenner testified that the building materials will include a brick veneer, an asphalt shingle roof, and a masonry chimney to reflect the type of materials used on homes in the surrounding neighborhood. (Exhibits 23-26). Mr. Brenner testified that the building will be constructed to a scale and height that will be compatible with the nearby properties (Exhibits 23, 24, 25, 26 and 30).

21. Mr. Brenner testified that one, two-sided, non-illuminated, free-standing, sign will be placed along the driveway. The sign will not be

taller than 5 feet from the proposed finished grade. He also testified that a non-illuminated sign will be attached to the west façade next to the door. (Exhibits 12 and 31).

22. Mr. McCary testified that the following forestation plans have been approved: (a) a Natural Resources Inventory and Forest Stand Delineation (Exhibit 8); and (b) a Forest Conservation Plan and Worksheet (Exhibit 9), and that Verizon proposes to preserve all existing forested areas of about 0.37 acres. He testified that the proposed Center will not conflict with the preliminary forest conservation plan, which the Board is required to find under Section 59-G-1.23(d).

23. Mr. McCary and the M-NCPPC Technical Staff noted that the Property is located partially within the Clarksburg Special Protection Area ("SPA") and the Little Bennett watershed. (Exhibit 17, page 7). Mr. McCary testified that the entire site's imperviousness is about 10.4%. Within the SPA, he stated that the imperviousness is about 12.2%. (Exhibit 20).

Mr. McCary explained that because the imperviousness within the SPA is less than 15%, the Petitioner is not required to provide an approved preliminary water quality plan; therefore, the provisions of Section 59-G-1.23(e) do not apply. He testified that the Petitioner was required, and did provide, a water quality inventory and stormwater management concept plan to the Montgomery County Department of Permitted Services ("DPS"). He continued that DPS agreed that a water quality plan was not required, and that the Petitioner's submitted plans were found acceptable, as evidenced by DPS's letter accepting the Petitioner's water quality inventory and stormwater management concept plan. (Exhibit 44).

24. Mr. McCary testified that the site is located in Categories W-1 and S-1 for public water and sewer respectively, and that the proposed use will not adversely affect the health or safety of the surrounding neighborhood.

25. Mr. McCary testified that because the Property is not recorded by a plat of subdivision, the use will require approval of a preliminary plan of subdivision to conform to Chapter 50 of the Montgomery County Code. Mr. McCary testified that the Petitioner already filed a preliminary plan application, identified as Preliminary Plan No. 1-03088.

26. Mr. Bradford of Verizon testified that the development of the Center will accommodate the growth of the area and is necessary for the public convenience.

27. Mr. Donnelly, an expert in the field of real estate appraisal, testified that the proposed Center will not be detrimental to the economic value of the surrounding properties or the general neighborhood. (Exhibit 14).

FINDINGS OF THE BOARD:

Based on the Petitioner's binding testimony, the evidence of record and the exhibits presented at the public hearing, the Board concludes that the requested special exception can be granted, as conditioned below.

In reaching its conclusion, the Board reviewed the following sections of the Zoning Ordinance and determined compliance with each section as stated below:

Section 59-G-1.2 Conditions for granting.

59-G-1.21 Standard for evaluation. A special exception must not be granted absent the findings required by the Article. In making these findings, the Board of Appeals . . . must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The Board interprets this section to require the following analysis:

- (1) Make a determination as to the general neighborhood affected by the proposed use.

- (2) Establish those inherent, generic, physical and operational characteristics associated with a given use, in this case construction and operation of a communications center, to create an evaluation standard. The evaluation standard does not include the actual physical size and scale of operations of the use proposed.
- (3) Determine separately the physical and operational characteristics of the use proposed, in this case, the use as proposed by Verizon.
- (4) Compare the generic characteristics of the evaluation standard with the particular characteristics of the use proposed. Inherent adverse effects are those caused by characteristics of the use proposed consistent with the generic characteristics of the evaluation standard. Non-inherent adverse effects are those caused by characteristics of the use proposed that are not found in the evaluation standard.

Applying the above analysis to this case, the Board finds as follows:

(1) The General Neighborhood.

The Board adopts that description of the neighborhood as provided earlier in this Opinion, on page **Error! Bookmark not defined.**, under Paragraph 2, under Evidence Presented to the Board, and incorporates it by reference.

(2) Evaluation Standard – Physical and Operational Characteristics

The inherent, generic physical characteristics of a public utility building, public utility structure and telecommunication facility include an institutional design necessary to satisfy building code requirements and accommodate electronic and mechanical equipment; lighting for safe access and building security; and parking for employees, co-locators and consultants who need to visit the facility.

The generic operational characteristics for public utility/communication centers may include:

- Visitation by employees of Verizon and co-locators, as well as service consultants;
- Deliveries of equipment and supplies;
- HVAC and mechanical equipment located outdoors will generate sound and other sounds from vehicles and ground maintenance can also occur;

- Outside lighting is needed to ensure safe access and to safeguard the building for security;
- Limited landscaping, however in residential areas landscaping will be compatible with the surrounding area;
- A limited degree of traffic is generated from the use, because the building is not open to the public; and
- Sufficient amount of parking for employees.

(3) Proposed Use Physical and Operational Characteristics

The Board finds that the following physical and operational characteristics will not have an adverse effect on the neighborhood. In evaluating the impact of the use, the following seven criteria have been analyzed: size, scale, scope, lighting, noise, traffic and environment.

The size, scale and scope of the subject use will be compatible with the surrounding neighborhood. The proposed single-story building will cover approximately two and one-half percent (2.5%) of the subject site, which is similar to a residential use. The proposed building materials and landscaping are comparable to residential uses.

Based on the submitted lighting design plan, the Board finds that the proposed lighting, with full cutoff lights, will not have adverse impacts on adjacent properties and will not cause glare, light trespass or sky glow.

The noise levels generated by mechanical equipment for the subject use will not exceed acceptable noise levels.

Construction of the Center will not require any clearing or grading of forest area. Imperviousness from the construction is suitable. Thus, the Board finds that no adverse impacts to the environment will occur with the proposed Center.

The traffic impact on the surrounding neighborhood will be negligible. There will be a maximum of two part-time Verizon employees for the building. Contractors and other telecommunication employees are expected to visit occasionally during the weekday. The number of peak hour trips to and from the Center will be minimal and will have no measurable impact on traffic conditions in the area.

(4) Comparison of Characteristics

(1) Inherent Adverse Effects.

After considering the generic characteristics of a communications center and comparing them with the proposed physical and operational characteristics of the Petitioner's use, the Board finds that all of the physical and operational characteristics of the proposed use will be inherent adverse effects.

(2) Non-Inherent Adverse Effects.

The Board finds no non-inherent adverse effects from the proposed use.

Section 59-G-1.21 General Conditions.

(a) A special exception may be granted when the Board finds from a preponderance of the evidence of record that the proposed use:

(1) Is a permissible special exception in the zone.

The Board finds that public utility buildings/telecommunication centers are allowed by special exception in the RDT Zone under Section 59-C-9.3.(f) under the general category of public utility building.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The Board finds that the proposed application satisfies the standards and requirements for public utility buildings/telecommunication centers, as discussed below, in accordance with Section 59-G 1.21(a)(2).

(3) Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny a special exception must be consistent with a recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting of a particular special

exception at a particular location will be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The Board finds that the Property is consistent with the 1982 Damascus Master Plan, the 1980 Functional Master Plan for the Preservation of Agriculture and Rural Open Space and the 1994 Clarksburg Master Plan. None of the plans make specific recommendations for the Property or the proposed use. A public utility building such as the proposed use will support the development contemplated by the Master Plans for the area. Further, such uses are allowed by special exception in the RDT zone, under Section 59-C-9.3(f).

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The Board finds that the proposed Center will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of the proposed building, intensity and character of activity, traffic and parking conditions, and number of similar uses, in accordance with Section 59-G-1.21(a)(4).

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed development will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood, in accordance with Section 59-G-1.21(a)(5). The Board concludes that the subject property is located in a transitioning area that is planned for residential and other development. The use will be compatible with its surrounding area and will not adversely impact the character of the area.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed special exception will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity in accordance with Section 59-G-1.21(a)(6).

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The Board finds that the proposed special exception will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature, in accordance with Section 59-G 1.21(a)(7).

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed special exception will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area, in accordance with Section 59-G-1.21(a)(8).

(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

(i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

. . .

The Board finds that the use requires approval of a preliminary plan of subdivision. Accordingly, the Board will include obtaining such approval among its conditions of approval. The Board also finds that at the time of

subdivision, the Planning Board will address the adequacy of public facilities.

(ii) With regard to findings related to public roads, the Board . . . must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

The Board finds that the proposed use will have no detrimental effect on the safety of vehicular or pedestrian traffic. The Board further finds that the existing roadway is adequate and will support the low level of activity required for the subject use.

59-G-1.23 General Development Standards

(a) Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

The Board finds that the Property is zoned RDT, and the applicable development standards are those for the R-200 Zone pursuant to the provisions of Section 59-C-9.74(b)(2). The Board further finds that the proposed Center meets such development standards. The Board further finds that the proposed Center meets the other applicable development standards under Section 59-G-2.43, as explained below, pursuant to Section 59-G-1.23(a).

(b) Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.

The Board finds that the proposed Center meets the relevant parking requirements, including those for special exceptions as provided in Section 59-E-2.83, as explained below, pursuant to Section 59-G-1.23(b).

(c) Minimum frontage. In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:

. . .

The Board finds that the above provision does not apply to the subject application.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

The Board finds that the proposed development is not in conflict with the preliminary forest conservation plan, pursuant to Section 59-G-1.23(d).

(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

The Board finds that the proposed development was not required to obtain an approved preliminary water quality plan; therefore, the provisions of Section 59-G-1.23(e) do not apply.

(f) Signs. The display of a sign must comply with Article 59-F.

The Board includes in its conditions of approval that the proposed signs must comply with Article 59-F, pursuant to Section 59-G-1.23(f).

(g) Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

The Board finds that the proposed structures are well related to the surrounding area and otherwise meet the requirement of Section 59-G-1.23(g).

(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

The Board finds that the proposed lighting incorporates glare and spill control devices which will minimize glare and light trespass and that the lighting levels will not exceed 0.1 foot candles at the perimeter.

59-E-2.83. Parking and Loading Facilities for Special Exception Uses in Residential Zones.

This Section applies to an off-street parking facility for a special exception use that is located in a one-family residential zone if 3 or more parking spaces are provided. These standards are intended to mitigate potential adverse visual, noise, and environmental impacts of parking facilities on adjacent properties. In addition, these requirements improve the compatibility and attractiveness of parking facilities, promote pedestrian-friendly streets, and provide relief from un-shaded paved areas.

(a) Location. Parking facilities must be located to maintain a residential character and a pedestrian-friendly street orientation.

Seven parking spaces, including one handicap space, will be provided. The Board finds that the proposed parking plan will maintain a residential character and a pedestrian friendly street orientation pursuant to Section 59-E-2.83(a).

(b) Setbacks. Each parking and loading facility, including each entrance and exit driveway, must be set back a distance not less than the applicable building front and rear yard and twice the building side yard required in the zone.

. . .

The Board finds that the parking area and driveway are set back not less than the applicable R-200 Zone building front and rear yard, and twice the building side yard, distances required, pursuant to Section 59-E-2.83(b).

With respect to the parking area, it is set back behind the established front yard building line, which is 150 feet from the existing property line. The westerly edge of the parking area is set back about 106 feet from the westerly property line. The easterly edge of the parking area is set back about 93 feet from the easterly property line. Both parking area setbacks exceed the minimum side yard setback of 24 feet (2X12 feet). The rear edge of the parking area is set back about 122 feet from the rear property line, which is in excess of the minimum rear setback of 30 feet.

With respect to the driveway, the driveway necessarily accesses the front of the property. The driveway's easterly edge is set back a minimum of 24.5 feet from the easterly property line. Its westerly edge is set back a minimum of about 96 feet from the westerly property line. Both driveway side yard setbacks exceed the minimum side yard setback of 24 feet (2X12 feet). The driveway ends at the southerly edge of the beginning of the parking area and is about 170 feet from the rear property line, which is in excess of the minimum rear setback of 30 feet.

(c) Screening. Each parking and loading facility, including driveway and dumpster areas, must be effectively screened from all abutting lots. Screening must be provided in a manner that is compatible with the area's residential character. Screening must be at least 6 feet high, and must consist of evergreen landscaping, a solid wood fence, a masonry wall, a berm, or a combination of them. Along all street right-of-ways screening of any parking and loading

facility must be at least 3 feet high and consist of evergreen landscaping, a solid wood fence, or masonry wall.

The Board finds that the parking and loading facility, driveway and dumpster area are effectively screened from all abutting lots and are screened in a manner compatible with the area's residential character, pursuant to Section 59-E-2.83(c).

(d) Shading of paved areas. Trees must be planted and maintained throughout the parking facility to assure that at least 30 percent of the paved area, including driveways, are shaded. Shading must be calculated by using the area of the tree crown at 15 years after the parking facility is built.

The Board finds that the proposed tree planting plan will assure that at least 30 percent of the paved area will be shaded when the trees reach their expected tree crowns at 15 years, pursuant to Section 59-E-2.83(d).

(e) Compliance Requirement. For any cumulative enlargement of a surface parking facility that is greater than 50% of the total parking area approved before May 6, 2002, the entire off-street parking facility must be brought into conformance with this Section.

An existing surface parking facility included as part of a special exception granted before May 6, 2002, is a conforming use.

The Board finds that the above provision does not apply to the proposed use.

Section 59-G-2.43 Public Utility Building, Public Utility Structure and Telecommunication Facility

(a) A public utility building or public utility structure, not otherwise permitted, may be allowed by special exception. The findings of this subsection (a) do not apply to electric power transmission or distribution lines carrying in excess of 69,000 volts. For other buildings or structures regulated by this section, the Board must make the following findings:

(1) The proposed building or structure at the location selected is necessary for public convenience and service.

In accordance with Section 59-G-2.43(a)(1), the Board finds that there is a need for the Petitioner's proposed use. The Clarksburg Communications Center is necessary to meet the rising demand for telecommunications services from existing residences and businesses and for the area's planned development.

(2) The proposed building or structure at the location selected will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties.

The Board finds that the proposed use will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties, in accordance with Section 59-G-2.43(a)(2).

(b) A public utility building allowed in any residential zone, must, whenever practicable, have the exterior appearance of residential buildings and must have suitable landscaping, screen planting and fencing, wherever deemed necessary by the Board.

The Board finds that to the extent practicable, the proposed Center has an exterior appearance similar to a residential building and has suitable building materials, landscaping, screen planting and fencing.

(c) The Board may approve a public utility building and public utility structure exceeding the height limits of the applicable zone if, in the opinion of the Board, adjacent residential developments and uses will not be adversely affected by the proposed use.

The Board finds that the proposed building height of 26.8 feet does not exceed the maximum 50 feet height limit according to the applicable R-200 Zone height standard. Further, the Board finds that the proposed height is compatible with the surrounding neighborhood.

(d) Any proposed broadcasting tower must have a setback of one foot

from all property lines for every foot of height of the tower; provided, that any broadcasting tower lawfully existing on September 1, 1970, is exempt from the setback limitations imposed by this subsection, and may be continued, structurally altered, reconstructed or enlarged; provided further, that any structural change, repair, addition, alteration or reconstruction must not result in increasing the height of such tower above the then existing structurally designed height.

The Board finds that Section 59-G-2.43(d) is not applicable.

(e) Examples of public utility buildings and structures for which special exceptions are required under this section are buildings and structures for the occupancy, use, support or housing of switching equipment, regulators, stationary transformers and other such devices for supplying electric service; telephone offices; railroad, bus, trolley, air and boat passengers stations; radio or television transmitter towers and stations; telecommunication facilities; above ground pipelines. Additional standards for telecommunication facilities are found in subsection (j).

The Board finds that the proposed use is a public utility building and not subject to the provisions of subsection (j), which pertains to antenna structures.

(f) Reserved

(g) In addition to the authority granted by Section 59-G-1.22, the Board may attach to any grant of a special exception under this section other conditions that it may deem necessary to protect the public health, safety or general welfare.

In accordance with Section 59-G-2.43(g), the Board finds that the conditions of approval enumerated below should apply to the proposed project.

Based on the foregoing, the Board **GRANTS** this special exception subject to the following conditions:

Pursuant to Section 59-A-4.127, the Petitioner is bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorney, to the extent that such evidence and representations are identified in this Opinion. In particular, the Petitioner

will construct and operate the proposed facility in accordance with the following conditions:

1. The Petitioner will comply with the requirements of all submitted statements, plans, and statements of operations.

2. For those exhibits that were not revised, the Petitioner will comply with all requirements. For revised exhibits, the Petitioner will comply with all requirements reflected thereon. The exhibits include, but are not limited to, the following:

Exhibit 3	Petitioner's Statement
Exhibit 3, page 77	Traffic Engineer's Letter
Exhibit 7	Building Elevations
Exhibit 8	Natural Resources Inventory /Forest Stand Delineation
Exhibit 9	Forest Conservation
Exhibit 12	Signs
Exhibit 20 (revising 4(b))	Site Plan
Exhibit 21 (revising 5)	Landscape Plan
Exhibit 27 (revising 13, pg. 1)	Parking Lot Light Fixture
Exhibit 28 (revising 13, pg. 2)	Wall Mounted Light Fixture
Exhibit 29 (revising 6)	Photometric Plan

3. If a future modification request for the use increases imperviousness above 15%, a water quality plan must be submitted to DPS and the Planning Board.

4. Conformance with Chapter 50 (Subdivision Regulations) of the Montgomery County Code including approval of a preliminary plan of subdivision by the Montgomery County Planning Board.

5. Coordination of site access with the Montgomery County Department of Public Works and Transportation at the time of preliminary plan review.

6. Compliance with DPS requirements for stormwater management, sediment and erosion control at the time of preliminary plan review.

7. Compliance with Article 59-F for the signs.

On a motion by seconded by Angelo M. Caputo, seconded by Allison Ishihara Fultz, 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 case.

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 16th day of September, 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.