

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

**Case No. S-2709
Case No. CBA-1193**

**PETITION OF T-MOBILE NORTHEAST LLC
AND WEST HILLANDALE SWIM CLUB**

OPINION OF THE BOARD
(Opinion Adopted January 5, 2011)
(Effective Date of Opinion: March 8, 2011)

I. CHRONOLOGY

Case No. S-2709, Petition of T-Mobile Northeast, LLC and West Hillandale Swim Club, filed July 17, 2007, is an application for a special exception pursuant to Section 59-G-2.58 (*Telecommunication Facility*) of the Zoning Ordinance which initially proposed: **1)** A 9 panel antenna mounted to a 120-foot monopole; the antennas will measure approximately 59 inches high, 12 inches wide and 6 inches deep; **2)** A screened, 50-foot by 50-foot equipment compound; **3)** Three equipment cabinets on a concrete pad within the compound; the equipment cabinets measure approximately 63 inches high, 51 inches wide and 37 inches deep and will sit atop the equipment pad which measures approximately 20 feet in length and 10 feet in width; **4)** An 8-foot tall wooden fence to screen the equipment cabinets. Coaxial cables will connect the equipment cabinets to the antennas; **5)** The facility is proposed to be in operation 24 hours per day and to be unmanned. The application was modified **1)** to reduce the size of the equipment compound to 30 feet by 30 feet and **2)** to utilize a unipole stealth design with all antennas contained inside of the structure.

Petitioners request a reduction to 45 feet in the required 120-foot setback from the southeastern property line. The Petition includes a request to modify Case No. CBA-1193, the underlying special exception for the swim club.

Maryland National Capital Park and Planning Commission staff issued a Staff Report dated October 29, 2007, recommending approval of the Special Exception. The Montgomery County Planning Board reviewed the application and in a letter dated November 6, 2007, also recommended approval of the special exception.

The Hearing Examiner (Hearing Examiner 1) for Montgomery County held hearings on the application on January 4, 2008 and February 1, 2008, and on June 2, 2008, issued a Report and Recommendation for denial of the special exception. The grounds for recommending denial were:

- A lack of evidence that the proposed location for the support structure has the least visual impact reasonably possible on the site
- A lack of evidence - failure of production and persuasion – on the safety of lead acid batteries in the numbers proposed by T-Mobile

The Board of Appeals considered the Hearing Examiner's June 2, 2008 Report at its Worksession on June 18, 2008 and also considered requests from various parties to the case for Oral Argument on the Report and Recommendation. The Board held Oral Argument on the Report and Recommendation on September 17, 2008, and by Resolution dated January 8, 2009, remanded the case to the Hearing Examiner for further findings on nine points:

1. Petitioners must submit written information sufficient to demonstrate that the support structure as proposed is sited to minimize its visual impact to the greatest degree reasonably possible.
2. Petitioners must submit written information sufficient to demonstrate that the proposed array of back-up batteries would not pose a safety risk to the community that justifies denial of the application.
3. Petitioners must submit a persuasive explanation of why the equipment compound cannot be further reduced in size to lessen its visual impact.
4. Petitioners must submit a revised Landscape Plan that includes the following features:
 - a. The gate located on the Ruppert Road side of the compound.
 - b. Plantings adequate to fully screen the compound on all sides except for the gate and the side facing existing forest (unless it is demonstrated that additional plantings along the Ruppert Road side would be damaging to the large tree currently growing within a few feet of the propose compound location).
 - c. A specified minimum height at planting and expected maximum height and spread after two, five and ten years.
 - d. T-Mobile's commitment to provide for the maintenance of these trees, and replacements for any that die, for as long as the tower or the equipment compound is located on the site.
 - e. T-Mobile's commitment to ensure that all tree-related work is performed by a certified arborist or licensed tree professional.
 - f. T-Mobile's commitment to adjust the location of the compound fence and landscaping as needed to preserve community access to the

path currently used by children walking to the adjacent elementary school.

5. Petitioners must submit written information sufficient to allow the Board to assess whether the proposed floodlights would cause any objectionable illumination or glare, or result in lighting levels exceeding 0.1 foot-candles along the side and rear lot lines.
6. Petitioners must submit written information sufficient to explain the inconsistency between the site plan, Exhibit 155(a), and the aerial photograph, Exhibit 155(d), and to demonstrate that the 300-foot setback requirement would be satisfied.
7. Petitioners must submit written evidence that T-Mobile intends to comply with Montgomery County's Hazardous Material Storage registration requirements as they relate to the subject property, or has received approval from the County for an exemption from such compliance.
8. The Board also asks the Hearing Examiner to inquire into the conditions under which batteries such as are proposed for this special exception would degrade.
9. The Board asks the Hearing Examiner to address the specific standards in the Code for community swimming pools, or explain her position, if it is her position, that she and the Board are not required to consider them.

Hearing Examiner 1 held the remand hearing on March 9, and April 8, 2010. Shortly thereafter, Hearing Examiner 1 left the Office of Zoning and Administrative Hearings, and the case was assigned to another Hearing Examiner (Hearing Examiner 2) who issued a Report and Recommendation for denial of the special exception on October 28, 2010. The grounds for Hearing Examiner 2's recommendation of denial are:

- Conflicts and inconsistency with Petitioner's documents over the 300-foot setback requirement.
- Lack of information about the contractor proposed to monitor and eliminate the risks of lead acid batteries as backup for the cell phone system.

The Board of Appeals considered the October 28, 2010 Report and Recommendation at a Worksession on November 17, 2010, together with requests for Oral Argument from several parties.

The Board held Oral Argument on January 5, 2010. Edward Donohue, Esquire appeared on behalf of the Petitioners. Judith Harrison also appeared in support of the application. Susan Present, Emma Stelle and Doris Stelle appeared in opposition to the application.

Decision of the Board: Special Exception **Granted** Subject
To the Conditions Enumerated Below.

II. FINDINGS OF FACT

1. Visual Impact

Through the testimony of Matt Chaney, [Transcript January 4, 2008, p. 213; Transcript March 9, 2010, pp. 19-150], the expert testimony of James Clayton Hankinson [Transcript March 9, 2010, pp. 216-274 Transcript April 8, 2010 pp. 9-153], the expert testimony of Brian Morgan; [Transcript March 9, 2010 pp. 219, 247, 261, 268 and 274; Transcript April 8, 2010 pp. 7-53], and Exhibit Nos. 217 (c), (d), (e), (h) and (i), the Petitioners demonstrated that the proposed structure is sited and screened to minimize its visual impact. The proposed 120 foot monopole will be disguised as a flagpole. As shown on the Line of Sight Profile [Exhibit No. 217(i)], the special exception compound ground elevation is 351 feet. The site is screened on three sides by existing, mature trees. The size of the proposed equipment compound has been reduced from 50 feet by 50 feet to 30 feet by 30 feet, the inside elevation of the compound will be graded in order to lower and further screen the equipment cabinets, and the compound will be screened by an eight foot board-on-board fence, giving it an elevation of 359 feet at the top of the fence. Eight Fosters Holly trees are proposed for planting around the compound, two Honey Locust trees are proposed at the entrance to the swim club property. Petitioners have revised their application to eliminate the proposed access road and to orient the gate toward Ruppert Road [Exhibit Nos. 217, 217(d)]. In response to Opposition suggestions that the structure be located behind the pool, witnesses for the Petitioner testified that siting the structure to the north (rear) of the pool in a location which would meet the required 300-foot setback from off-site dwellings would require significant grading and construction of a high, very visible retaining wall. They further testified that such a location would also require removal of a significant number of mature trees, resulting in a net loss of trees greater than if the structure is sited as proposed. [Transcript, March 9, 2010, pp. 33-36 (testimony of Mr. Chaney), and Transcript, March 9, 2010, pp. 230-235 (expert testimony of Mr. Hankinson)].

Neighbors opposed to the special exception voiced concern about the visual impact of a 120-foot structure on their community. They presented evidence of tree loss in the neighborhood, which they argued would increase the visibility of the pole. [Exhibit Nos. 172, 172(l), 172(m), 265, and 265(a)]. Neighbor Emma Stelle testified [Transcript, April 8, 2010, p. 196, Exhibit No. 246] that her home will have a direct line of sight to the facility.¹ At the Oral Argument on January 5, 2011, she stated that the elevation of her home is 338 feet.

¹ Hearing Examiner 1 suggested in her Report and Recommendation that Ms. Stelle's home was the only home so impacted. Exhibit 167 (June 2, 2008 Report and Recommendation), pp. 32-33.

2. Setbacks and Setback Reduction

The final site plan, which was signed and sealed by a professional engineer, and the sworn statement of professional engineer Marianne Crampton, Vice President of KCI Technologies, demonstrate that the structure is set back at least 300 feet from all neighboring residences, thus complying with Section 59-G-2.58(a)(2)(A). [See Exhibit No. 267(a), Site Plan, Exhibit No. 292].

With regard to the requested reduction from the required 120 foot setback from the southeastern property line,² the testimony of Matt Chaney [Transcript March 9, 2010, pp. 19-150], the expert testimony of James Clayton Hankinson [Transcript March 9, 2010, pp. 216-274; Transcript April 8, 2010 pp. 9- 153], the expert testimony of Brian Morgan; [Transcript March 9, 2010 pp. 219, 247, 261, 268 and 274; Transcript April 8, 2010 pp. 7-53], and Exhibit Nos. 217 (c), (d), (e), (h) and (i), indicate that the proposed location for the structure allows it to meet the required 300' setback from all off-site dwellings while taking advantage of existing tree cover for screening, allowing the structure to be located in the location which minimizes its visual impact to the greatest degree reasonably possible. Mr. Chaney testified that this location also eliminates the need for the significant grading or tree removal on site that would be necessary if the structure were moved to the rear of the site, behind the pool. [Exhibit No. 285, p. 10]. The evidence shows that the reduction would still leave the unipole, at the closest point, 135' from the Cresthaven school building.

3. Safety

Petitioners provided written information to demonstrate that battery back-up power is safe, information setting forth the conditions under which lead-acid batteries would degrade, and documentation stating that they will comply with Montgomery County's Hazardous Material Storage registration requirements [See Exhibit Nos. 217, 217(a), 217(b)].

Dr. Judith Harrison was accepted as an expert in physical chemistry. Dr. Harrison testified that the use of lead-acid batteries as a back-up power source is safe [Transcript, February 1, 2008, pp. 162-169, and Transcript, April 8, 2010, pp. 155-185]. She also provided a written submission to this effect [Exhibit No. 181]. She testified that these batteries are used in many applications worldwide, including 1,500 T-Mobile telecommunications facilities in the Washington, DC, Metropolitan area. Dr. Harrison testified that the most common time for lead-acid battery failure is during a float charge, and that the Sentinel system removes batteries from constant "float." [Exhibit No. 285, pp. 13-14].

² Section 59-G-2.58(a)(1)(A) of the Zoning Ordinance requires that a support structure be set back from the property line at least one foot for every foot of height (in this case, 120 feet). Section 59-G-2.58(a)(1)(D) allows the Board to reduce that setback to not less than the building setback of the applicable zone if (i) the applicant requests a reduction; and (ii) evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.

Mr. Randy Ogg of Encell Technologies qualified as an expert in the field of batteries as applied to cellular facilities. Mr. Ogg testified that the back-up battery array proposed for the special exception did not pose a risk to the surrounding community. He also testified about the Sentinel battery control system which T-Mobile proposes to use to prolong battery life. Mr. Ogg testified that batteries normally degrade in 2 to 3 years, but that with the Sentinel system, battery life can be extended to two to three times normal. [Transcript March 9, 2010, pp. 151-181, Exhibit No. 285, pp. 12-13].

Mr. Chaney testified that T-Mobile had reached a settlement agreement with Montgomery County and has registered this facility and all existing facilities in the County in compliance with the County's Hazardous Material Storage registration requirement. [Exhibit No. 217, Testimony of Matt Chaney, Transcript, March 9, 2010, pp. 30-31, Exhibit No. 285, p. 9].

Neighbors opposed to the special exception voiced concern about the presence of the batteries on the swim club property, and submitted evidence to support those concerns. [Exhibit Nos. 159(f), 159(g), 248].

T-Mobile engineer Gus Druedson testified about the structural integrity of the support structure, and the likely fall zone of the structure. Mr. Druedson testified that the structure is engineered to be very sturdy and to have a fall zone of 39.25 feet [Transcript, January 4, 2008, pp. 69-70]. Petitioners also submitted written information about the structure's design [Exhibit No. 69].³

4. Setback from Off-Site Dwellings

Petitioners submitted a final site plan, signed and sealed by a professional engineer at KCI Technologies, which shows that the proposed structure will be at least 300 feet from neighboring residences. Petitioners also submitted a sworn statement from professional engineer Marianne Crampton, confirming the accuracy of that site plan. Ms. Crampton indicates in her statement that "[i]n the site plans dated March 24, 2010 and presented at the April 8, 2010 hearing, KCI clearly labeled the various setback lengths of the proposed tower from off-site residences. In no instance does the proposed tower fail to meet the 300-foot setback requirement as prescribed by Montgomery County Zoning Ordinance Section 59-G-2.58." [See Exhibit No. 267(a), Site Plan, Exhibit No. 292].

Neighbors opposing this special exception pointed out that the various site plans and aerial photographs submitted by the Petitioners were not wholly

³ During the remand hearings, Opponents submitted evidence and testimony [Transcript, April 8, 2010, pp. 264-269, Exhibit Nos. 261, 262] challenging the structural integrity of the unipole and Peititoners' assertion that the fall zone of the structure is 39.25 feet. Because this was beyond the scope of the remand Order (the Board having already been satisfied that the structure was sound and the fall zone adequate based on the evidence adduced during the first series of hearings), neither the Hearing Examiner nor the Board made findings regarding this evidence.

consistent, but did not submit evidence to contradict the accuracy of Exhibit No. 267(a).

5. Height

The proposed unipole is requested to be 120 feet tall [Exhibit No. 217(d)].

6. Applicants

West Hillandale Swim Club, the property owner, is a co-applicant with T-Mobile for the special exception and the requisite modification to the swim club special exception. [Exhibit Nos. 1(b), 38(a)].

7. Signs, Illumination

No signs or illumination are proposed for the support structure. Two floodlights are proposed for the compound, inside the eight-foot fence, which Mr. Hankinson testified will be turned on only in the event of a nighttime emergency. [Exhibit No. 285, p. 15.] Petitioners have submitted a lighting plan demonstrating that no illumination outside the compound fence will exceed 0.1 footcandles along the side and rear property lines. [Exhibit No. 217(h)].

8. Removal When Not in Use

T-Mobile has committed to removing the facility within twelve months of cessation of operations [Exhibit No. 38(a), p. 9].

9. Telecommunications Transmission Facility Coordinating Group (Tower Committee) Review

Petitioners submitted a March 2007 recommendation from the Tower Committee. [Exhibit Nos. 9 and 167, p. 133]. While not recommending approval of the special exception because of its inability to meet the required setbacks from all property lines, the recommendation finds that there are no co-location opportunities which would meet the coverage objectives of the proposed special exception and that the requested 120-foot height is necessary to meet T-Mobile's coverage objective. [Exhibit Nos. 9 and 48(a)].

10. Economic Value

Petitioners presented the report and expert testimony of Oakleigh Thorne, a Certified Real Estate Appraiser. Mr. Thorne testified that the proposed 120 foot unipole will not have a negative economic impact on surrounding properties or on the general neighborhood. He based his opinion on a series of studies that his

firm undertook for AT&T, Verizon and Cingular regarding the impact of existing monopoles on surrounding property values. He testified that the results of these studies consistently showed no discernible negative economic impact due to the presence of telecommunications facilities on adjacent properties. He further testified that based on in-depth analysis of sales and interviews with homeowners, once these facilities are constructed they are considered part of the communications infrastructure and ignored. Finally, he testified that if the swim club property were sold for re-development, the property would be equally valuable with or without the unipole. [Exhibit No. 167, pages 50-54].

Opponents of the special exception disputed Mr. Thorne's expert opinion. One local realtor testified that she had had clients who would not consider properties where the local school had power lines or a cell tower because they felt it was not safe for their children. Other opponents testified that they believed that given a choice, a potential buyer would choose a home that was not near a monopole over one that was near a monopole, and took issue with the size of the equipment cabinet (which at that point was 2,500 square feet). [Exhibit No. 167, pp. 55-56].⁴

11. Noise, Vibration, Fumes, Dust, Illumination, Glare, Physical Activity

The proposed telecommunication facility will be unmanned and will have maintenance visits once or twice monthly. The associated equipment, contained in closed cabinets, and the antennas, located inside the support structure, will be silent. [Exhibit No. 38(a), pp. 3-4]. There will be two floodlights inside the compound that will be screened by the 8-foot board-on-board fence, and which will project no glare outside the compound. Petitioners have submitted a Lighting Plan, Exhibit No. 217(h), which shows that there will be no lighting in excess of 0.1 footcandles along the side and rear lot lines.

III. FINDINGS AND CONCLUSIONS PERTAINING TO REMAND REQUIREMENTS

1. Petitioners must submit written information sufficient to demonstrate that the support structure as proposed is sited to minimize its visual impact to the greatest degree reasonably possible.

Based on the evidence set forth under Section II(1) above, the Board finds that the Petitioner has provided substantial evidence that the support structure as proposed is sited to minimize its visual impact to the greatest degree reasonably

⁴ During the remand proceedings, Opponents submitted information from the Federal Housing Administration [Exhibit 172(b)] which, they say, shows that FHA views the presence of a cell tower as a hazard and a nuisance, and potentially an obstacle to obtaining a government backed mortgage. The Board finds that this information is outside the scope of the remand phase of the case, and makes no further findings about it.

possible. The structure is surrounded on three sides by existing, mature trees, and will be disguised as a flagpole. The equipment compound has been reduced in size to 30 feet by 30 feet. It will be surrounded by an 8 foot board-on-board fence, which will be landscaped with 8 evergreens (Foster's Hollies). Evidence indicates that this location is preferable to locating this pole to the rear of the property because this location eliminates the need for the significant grading, a retaining wall, and tree removal.

With respect to the effect of topography on the visual impact of the facility, the Board finds persuasive the Line of Sight Profile contained on Exhibit No. 217(i). The Board disagrees with Hearing Examiner 2's finding that "the proposed location constitutes a non-inherent factor given the unique topography" [Exhibit No. 285 (Hearing Examiner 2 Report and Recommendation, October 28, 2010), p. 32]. The Board understands from this finding that the Hearing Examiner refers to the elevation of the Stelle home at 912 Schindler Drive in relationship to the telecommunication facility, and the impact of the facility on the view from that home. Ms. Emma Stelle testified at the Oral Argument on January 5, 2011, that the elevation of her home is 338 feet. As shown on Exhibit No. 217(i), the special exception compound ground elevation is 351 feet. The eight-foot fence around the compound would extend to an elevation of 359 feet. The Board finds that this would prevent views inside the compound from at least the first and second floors of the Stelle home, mitigating the impact of the facility on the home, and that the topography as related to the location of the structure is therefore not a non-inherent adverse effect.

2. Petitioners must submit written information sufficient to demonstrate that the proposed array of back-up batteries would not pose a safety risk to the community that justifies denial of the application.

In light of the facts referenced in Section II(3) above, the Board finds that Petitioners have satisfied this requirement. The Board finds persuasive the written submission [Exhibit No. 181] and expert testimony [Transcript, February 1, 2008, pp. 162-169, and Transcript, April 8, 2010, pp. 155-185.] of Dr. Judith Harrison that the use of lead-acid batteries as a back-up power source is safe. The Board also finds persuasive the expert testimony of Randy G. Ogg of Encell Technologies [Transcript March 9, 2010, pp. 151-181] that the back-up battery array proposed for the special exception does not pose a risk to the surrounding community. The Board appreciates opponents' concerns about the presence of the batteries on the swim club property, and acknowledges the evidence submitted by Ms. Present to support those concerns [Exhibit Nos. 159(f), 159(g). 248], but finds Petitioners' evidence and expert witness testimony more persuasive.

The Board further finds that in addition to providing testimony and written information to demonstrate that such back-up power is safe, Petitioners have demonstrated that they will comply with Montgomery County's Hazardous Material Storage registration requirements, and have provided information about the conditions under which lead-acid batteries would degrade [See Exhibit Nos. 217, 217(a), 217(b), the testimony of Mr. Ogg [Transcript March 9, 2010, pp. 151-181],

the testimony of Dr. Harrison [Transcript, April 8, 2010, pp. 160-164], and the testimony of Mr. Chaney [Exhibit No. 285, p. 9].

In reaching these findings about the safety of the use of batteries as a backup power source, the Board notes Randy Ogg's testimony about the Sentinel battery control system which T-Mobile proposes to use to prolong battery life [Transcript March 9, 2010, pp. 151-181], but finds that use of the Sentinel system is not necessary to its finding that the batteries pose no safety risk. The purpose of the Sentinel system is to extend the useful life of the batteries by controlling the charging cycle, but the batteries would be safe without this added system, as Dr. Harrison testified [Transcript, April 8, 2010, p. 160]. The Board does not mean to discourage use of the Sentinel system.

With respect to the structural integrity of the support structure, and the likely fall zone of the structure, the Board is persuaded by the testimony of T-Mobile engineer, Gus Druedson [Transcript, January 4, 2008, pp. 69-70] and the written information [Exhibit No. 69] submitted about the structure's design that the structure itself is safe and that the fall zone is adequate. Mr. Druedson testified that the structure is engineered to be very sturdy and to have a fall zone of 39.25 feet.

During the remand hearings, Opponents submitted evidence and testimony [Transcript, April 8, 2010, pp. 264-269, Exhibit Nos. 261, 262] challenging the structural integrity of the unipole and Petitioners' assertion that the fall zone of the structure is 39.25 feet. Having been satisfied following the first set of hearings that the structure and fall zone were safe, the Board finds that this new information is beyond the scope of its remand order, and thus the Board relies on the original evidence in making its findings.

3. Petitioners must submit a persuasive explanation of why the equipment compound cannot be further reduced in size to lessen its visual impact.

Petitioners have reduced the size of the equipment compound from the original request of 50 feet by 50 feet to 30 feet by 30 feet. [Exhibit No. 217(e)]. The Board finds that this reduction in size lessens the visual impact of the compound.

4. Petitioners must submit a revised Landscape Plan that includes the following features:
 - a. The gate located on the Ruppert Road side of the compound.

The Board finds that Petitioners have fulfilled this requirement, as indicated on the Landscape Plan. [Exhibit No. 217(e)].

- b. Plantings adequate to fully screen the compound on all sides except for the gate and the side facing existing forest (unless it is demonstrated that additional plantings along the Ruppert Road side would be damaging to the large tree currently growing within a few feet of the propose compound location).

The Board finds that Petitioners have fulfilled this requirement, as indicated on the Landscape Plan. [Exhibit No. 217(e)].

- c. A specified minimum height at planting and expected maximum height and spread after two, five and ten years.

The Board finds that Petitioners have fulfilled this requirement, as indicated on the Landscape Plan. [Exhibit No. 217(e)].

- d. T-Mobile's commitment to provide for the maintenance of these trees, and replacements for any that die, for as long as the tower or the equipment compound is located on the site.

The Board finds that Petitioners have fulfilled this requirement. [Testimony of Matt Chaney, Transcript, March 9, 2010, pp. 70-71].

- e. T-Mobile's commitment to ensure that all tree-related work is performed by a certified arborist or licensed tree professional.

The Board finds that Petitioners have fulfilled this requirement. [Testimony of Matt Chaney, Transcript, March 9, 2010, pp. 70-71, Exhibit No. 217].

- f. T-Mobile's commitment to adjust the location of the compound fence and landscaping as needed to preserve community access to the path currently used by children walking to the adjacent elementary school.

The Board finds that Petitioners have fulfilled this requirement [Exhibit Nos. 217, 217(e)].

- 5. Petitioners must submit written information sufficient to allow the Board to assess whether the proposed floodlights would cause any objectionable illumination or glare, or result in lighting levels exceeding 0.1 foot-candles along the side and rear lot lines.

Petitioners have submitted a Lighting Plan, Exhibit No. 217(h), which shows that there will be no lighting in excess of 0.1 footcandles along the side and rear lot lines.

- 6. Petitioners must submit written information sufficient to explain the inconsistency between the site plan, Exhibit 155(a), and the aerial

photograph, Exhibit 155(d), and to demonstrate that the 300-foot setback requirement would be satisfied.

The Board finds that Petitioners have satisfied this requirement. See II(2), above. [Exhibit Nos. 217, 217(f), 267, Site Plan].

7. Petitioners must submit written evidence that T-Mobile intends to comply with Montgomery County's Hazardous Material Storage registration requirements as they relate to the subject property, or has received approval from the County for an exemption from such compliance.

The Board finds that Petitioners have satisfied this requirement and will comply with County HAZMAT registration requirements. [Exhibit No. 217, Testimony of Matt Chaney, Transcript, March 9, 2010, pp. 30-31].

8. The Board also asks the Hearing Examiner to inquire into the conditions under which batteries such as are proposed for this special exception would degrade.

The Board finds that the expert testimony of Randy Ogg, of Encell Technologies, [Transcript March 9, 2010, pp. 151-181] as well as the expert testimony of Judith Harrison [Transcript, April 8, 2010, pp. 160-164] satisfies this requirement. Mr. Ogg testified that batteries normally degrade in 2 to 3 years, but that with the Sentinel system, battery life can be extended to two to three times normal. Dr. Harrison testified that the most common time for lead-acid battery failure is during a float charge, and that the Sentinel system removes batteries from constant "float."

9. The Board asks the Hearing Examiner to address the specific standards in the Code for community swimming pools, or explain her position, if it is her position, that she and the Board are not required to consider them.

The Board adopts Hearing Examiner 2's finding that "co-location of a swimming pool and a cell phone tower...seems permissible where two or more special exceptions are authorized for the same property so long as they do not conflict with each other, both are jointly compatible with the community and each one can satisfy the separate requirements of the code." Exhibit No. 285, p. 44. The Board further finds as detailed in Section II above, that the proposed telecommunications facility meets the standards in the Zoning Ordinance and is therefore permissible in conjunction with the existing community swimming pool.

IV. CONCLUSIONS OF LAW

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both

specific and general. The special exception is also evaluated in a site-specific context, because there may be locations where it is not appropriate. Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (see Code §59-G-1.21(a)), the Board concludes that the proposed special exception would satisfy all of the specific and general requirements for the use.

A. Section 59-G-1.2.1 Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are "the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations." Code § 59-G-1.21. 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." *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Maryland National Capital Park and Planning Commission Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a telecommunication facility. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Physical and operational characteristics associated with a telecommunication facility include antennas installed on or within a support structure with a significant height; an equipment platform and equipment cabinets that may or may not be enclosed within a fence; visual impacts associated with the height of the support structure; RF emissions; a very small number of vehicular trips per month for maintenance; and some form of back-up power. In the present case, Technical Staff concluded that the proposed facility would have no non-inherent adverse effects. [See Exhibit No. 22 Staff Report at p. 14]. Staff noted that the facility would comply with FCC regulations related to RF emissions and its only impact would be visual, because it would be noiseless and unstaffed, requiring only occasional servicing. Staff also recommended a flag pole design to reduce visual impact. Staff found no unusual site characteristics.

The Board agrees with Hearing Examiner 1's finding that the proposed support structure and the presence of a fenced equipment compound are inherent characteristics of the use; all telecommunication facilities must be attached to a support structure, and the 120-foot unipole proposed here is below the 155-foot height that the Zoning Ordinance suggests is generally acceptable. Moreover, all telecommunications facilities have equipment cabinets, and free-standing monopole sites typically house the cabinets in a fenced enclosure. Likewise, the anticipated level of vehicular trips and staffing is inherent in the use.

Hearing Examiner 1 concluded that Petitioners did not successfully demonstrate that the location proposed for this cell tower satisfies the requirement under Section 59-G-2.58(a)(4) that the support structure must be sited to minimize its visual impact, and found that failure to satisfy that specific condition for the use should be considered a non-inherent characteristic. With the benefit of evidence and testimony adduced during the remand hearing, the Board disagrees with this finding and finds that the proposed location, with the proposed landscaping and screening, minimizes its visual impact and satisfies Section 59-G-2.58(a)(4), for the reasons stated in Sections II(1) and III(1), above. The Board agrees with Hearing Examiner 1 that the need to request approval for a reduction of the required property line setback is not necessarily associated with or typical of the use, and should be considered non-inherent, but finds that this non-inherent characteristic does not prevent approval of the special exception.

The Board adopts Hearing Examiner 1's finding that some form of back-up power can be expected with, and can be considered inherent to, any cell site, given the importance of maintaining cell phone service during power outages. Weighing all of the evidence and testimony given at the initial hearings and on remand, particularly the expert testimony of Dr. Harrison and Mr. Ogg as set forth in Sections II(3) and III(2), above, the Board finds that T-Mobile has demonstrated that its proposal to install an array of 16 batteries at the subject site would not result in safety hazards to the community.

The Board adopts Hearing Examiner 1's finding that there are no unusual site characteristics that should be considered non-inherent adverse effects. [Exhibit No. 167, p. 128].

For all of the reasons stated above and in the following sections, the Board concludes, based on a preponderance of the evidence, that the inherent and non-inherent adverse effects of the proposed special exception justify approval of the application.

B. Section 59-G-2.58. Telecommunications Facility - Specific Standards

- (a) Any telecommunications facility must satisfy the following standards:

(1) A support structure must be set back from the property line as follows:

- a. In agricultural and residential zones, a distance of one foot from the property line for every foot of height of the support structure.
- b. In commercial and industrial zones
- c. The setback from a property line is measured from the base of the support structure to the perimeter property line.
- d. The Board of Appeals may reduce the setback requirement to not less than the building setback of the applicable zone if the applicant requests a reduction and evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.

Conclusion: The subject site is in a residential zone, so the applicable property line setback is equal to the proposed height of the support structure (the cell tower, or in this case, the flagpole, which is 120 feet). The location proposed for the tower in this case satisfies this setback requirement on three sides of the property. To the southeast, however, the tower would be situated 45 feet from the property line shared with the adjacent elementary school. Petitioners have requested a waiver of 75 feet of the 120-foot setback requirement. Based upon Hearing Examiner 1's conclusion, and as discussed in Section II(2) above, the Board finds that the evidence supports a decision to approve the requested setback reduction on grounds that it would permit the facility to be located close to the forested area along the school property line, thereby taking advantage of that natural screening, allowing a less obtrusive location than might be possible under the normal setback requirement, and avoiding the necessity for significant grading or tree removal on site. The Board further finds that the setback reduction allows the structure to be located in the location that minimizes its visual impact to the greatest degree reasonably possible. Finally, the Board finds that the unipole will be, at the closest point, 135' from the Cresthaven school building

(2) A support structure must be set back from any off-site dwelling as follows:

- a. In agricultural and residential zones, a distance of 300 feet.
- b. In all other zones, one foot for every foot in height.
- c. The setback is measured from the base of the support structure to the base of the nearest off-site dwelling.

d. The Board of Appeals may reduce the setback requirement in the agricultural and residential zones to a distance of one foot from an off-site residential building for every foot of height of the support structure if the applicant requests a reduction and evidence indicates that a support structure can be located in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street.

Conclusion: The subject site is a residential zone, so the 300-foot setback applies. Based upon Hearing Examiner 1's conclusion [Exhibit No. 167, p. 130], and as discussed in Sections II(2) and III(6) above, the Board finds that the final site plan, signed and sealed by a professional engineer, together with the sworn statement of Marianne Crampton, are substantial evidence of compliance with this standard [See Exhibit No. 267(a), Site Plan, Exhibit No. 292]. Because of the confusion regarding this measurement that was caused by some of the earlier exhibits of the Petitioner, the Board will impose a condition requiring the Petitioner to submit a certification from an independent land surveyor of compliance with this requirement.

- (3) The support structure and antenna must not exceed 155 feet in height, unless it can be demonstrated that additional height up to 199 feet is needed for service, collocation, or public safety communication purposes. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection pursuant to the building permit, the applicant must certify to the Department of Permitting Services that the height and location of the support structure is in conformance with the height and location of the support structure as authorized in the building permit.

Conclusion: Petitioners request a support structure height that is lower than 155 feet.

- (4) The support structure must be sited to minimize its visual impact. The Board may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and adjoining and nearby residential properties. The support structure and any related equipment buildings or cabinets must be surrounded by landscaping or other screening options that provide a screen of at least 6 feet in height.

Conclusion: The Board finds that the Petitioner has provided substantial evidence that the support structure as proposed is sited to minimize its visual impact to the greatest degree reasonably possible, and that the equipment

cabinet will be well-screened, based on the facts set forth in Sections II(1) and III(1), above. The Board is persuaded by the testimony of Mr. Chaney [Transcript, March 9, 2010, pp. 33-36] and Mr. Hankinson [Transcript, March 9, 2010, pp. 230-235] that siting the structure to the north of the pool in a location that would meet the required 300-foot setback from off-site dwellings would not minimize its visual impact since such siting would require significant grading and construction of a high, very visible retaining wall, and would also require removal of a significant number of mature trees, resulting in a net loss of trees greater than if the structure is sited as proposed.

The Board is mindful of opponents' concern about the visual impact of a 120-foot structure in their community, but notes that height is an inherent adverse characteristic of monopoles and is not a basis for denial. The Board also takes note of community evidence about loss of trees in the neighborhood but finds that the evidence is not directly linked to the specific screening of this property.

With respect to the effect of topography on the visual impact of the facility, as noted in Section III(1), the Board finds persuasive the Line of Sight Profile contained on Exhibit No. 217(i), and disagrees with Hearing Examiner 2's finding that "the proposed location constitutes a non-inherent factor given the unique topography" [Hearing Examiner 2 Report and Recommendation, October 28, 2010, p. 32]. Evidence in the record indicates that the compound will be at an elevation on 351 feet, with an additional 8 feet of fencing (resulting in an elevation of 359 feet), and that the home with the most direct view of the facility (the E. Stelle home) is at an elevation of 338 feet. The Board finds that with this elevation difference and the screening proposed by the Petitioner, the topography should not cause the equipment compound to have an unduly adverse impact on the Stelle home, as a six foot person should not be able to see over the fence and into the equipment compound from the first or second floors of the Stelle home.

- (5) The property owner must be an applicant for the special exception for each support structure. A modification of a telecommunications facility special exception is not required for a change to any use within the special exception area not directly related to the special exception grant. A support structure must be constructed to hold no less than 3 telecommunications carriers. The Board may approve a support structure holding less than 3 telecommunications carriers if: 1) requested by the applicant and a determination is made that collocation at the site is not essential to the public interest; and 2) the Board decides that construction of a lower support structure with fewer telecommunications carriers will promote community compatibility. The equipment compound must have sufficient area to accommodate equipment sheds or cabinets associated with the telecommunication facility for all the carriers.

Conclusion: The Board adopts Hearing Examiner 1's finding that the property owner is an applicant for the telecommunications facility special

exception, and that undisputed evidence demonstrates that both the support structure and the equipment compound can accommodate no less than three telecommunications carriers. Exhibit Nos. 1(b) and 167, p. 132.

- (6) No signs or illumination are permitted on the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.

Conclusion: No signs or illumination are proposed on the antennas or the support structure. Exhibit No. 167, p. 132.

- (7) Every freestanding support structure must be removed at the cost of the owner of the telecommunications facility when the telecommunications facility is no longer in use by any telecommunications carrier for more than 12 months.

Conclusion: T-Mobile has committed to remove the support structure when it is no longer in use by any telecommunications carrier for more than 12 months. [Exhibit No. 167, p. 132].

- (8) All support structures must be identified by a sign no larger than 2 square feet affixed to the support structure or any equipment building. The sign must identify the owner and the maintenance service provider of the support structure or any attached antenna and provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Board of Appeals notified within 10 days of any change in ownership.

Conclusion: T-Mobile has agreed to comply with this requirement. [Exhibit No. 167, p. 133].

- (9) Outdoor storage of equipment or other items is prohibited.

Conclusion: No storage of equipment or other items outside the equipment compound is proposed. [Exhibit No. 167, p. 133].

- (10) Each owner of the telecommunications facility is responsible for maintaining the telecommunications facility, in a safe condition.

Conclusion: No finding necessary. [Exhibit No. 167, p. 133].

- (11) The applicants for the special exception must file with the Board of Appeals a recommendation from the Transmission Facility Coordinating Group regarding the telecommunications facility. The recommendation must be no more than one year old.

Conclusion: T-Mobile filed with the Board a recommendation from the Transmission Facility Coordinating Group that was issued in March 2007, less than one year before it applied for the special exception. [Exhibit No. 167, p. 133].

- (12) Prior to the Board granting any special exception for a telecommunications facility, the proposed facility must be reviewed by the County Transmission Facility Coordinating Group. The Board and Planning Board must make a separate, independent finding as to need and location of the facility.

Conclusion: The present application was reviewed by the Transmission Facility Coordinating Group. [Exhibit No. 9]. The Planning Board, adopting the reasoning in the Staff Report, found a need for the facility and recommended approval at the proposed location. [Exhibit Nos. 30] Based upon Hearing Examiner 1's conclusion, and as discussed in Section II(9) above the Board finds that T-Mobile has demonstrated a need for the proposed facility to provide enhanced cell phone service to its customers. Exhibit No. 167, p. 133. Based on the evidence of record, as detailed under Section 59-G-2.58(a)(4), above, the Board finds that the location of the facility is appropriate.

- (b) Any telecommunications facility special exception application for which a public hearing was held before November 18, 2002 must be decided based on the standards in effect when the application was filed.

Conclusion: Not applicable.

- (c) Any telecommunications facility constructed as of November 18, 2002 may continue as a conforming use.

Conclusion: Not applicable.

C. Section 59-G-1.21 - General conditions

(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

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

Conclusion: A telecommunications facility is a permitted use in the R-90 Zone.

- (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.

Conclusion: The Board finds that the proposed use would comply with all of the standards and requirements set forth for the use in Code §59-G-2.58, as detailed in Section IV(B), above.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any 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 granting a particular special exception at a particular location would 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.

Conclusion: The Board adopts Hearing Examiner 1's finding that the evidence supports Technical Staff's conclusion that the proposed use would be generally consistent with the recommendations of the *1997 Approved and Adopted White Oak Master Plan*. Exhibit No. 167, p. 135.

(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 or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.

Conclusion: Hearing Examiner 1 found that the proposed facility would be sufficiently harmonious with the general character of the neighborhood to support approval, at the location currently proposed, even though she was not convinced that it was sited to minimize its visual impact. [Exhibit No. 167, p. 135]. The Board, with benefit of evidence and testimony adduced on remand, as discussed in Sections II(1), II(2), III(1), III(3), IV(A) and IV(B) above, finds that the proposed location is sited to minimize its visual impact. The Board further finds, based upon the preponderance of the evidence and the findings of Hearing Examiner 1, that the proposed facility is sufficiently harmonious with the general character of the neighborhood to support approval, at the location currently proposed, and that un-refuted evidence demonstrates that public services and facilities would be adequate to serve the proposed development. [Exhibit No. 167, p. 135].

(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.

Conclusion: Based upon Hearing Examiner 1's conclusion and as discussed in Section II(10) above, the Board finds that the proposed use will not be detrimental to the use, peaceful enjoyment and economic value of surrounding properties or the general neighborhood. [Exhibit No. 167, p. 135].

- (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.

Conclusion: Based upon Hearing Examiner 1's conclusion and as discussed in Sections II(11) and III(5), above, the Board finds that with the recommended conditions, the proposed special exception would cause no objectionable noise, vibrations, fumes, odors, dust or physical activity at the subject site. [Exhibit No. 167, p. 135].

- (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.

Conclusion: No other special exceptions have been identified in the general neighborhood, except for the Swim Club. The Board adopts Hearing Examiner 1's conclusion that the proposed special exception would not increase the intensity or scope of special exception uses sufficiently to affect the area adversely or alter its residential nature. [Exhibit No. 167, p. 136].

- (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.

Conclusion: Based on the evidence and findings set forth in Sections II(3) and III(2), above, the Board finds that there is substantial evidence in the record that the proposed battery back-up power poses no risk, and that relevant evidence of record demonstrates little risk of collapse of the monopole or of damage in the event that collapse did occur.

- (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.

Conclusion: The Board adopts Hearing Examiner 1's conclusion that the subject property would continue to be served by adequate public facilities with the proposed use and would have no adverse effect on public facilities. [Exhibit No. 167, p. 136].

(A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.

(B) If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

Conclusion: Subdivision approval would not be required. The Board adopts Hearing Examiner 1 and Technical Staff's conclusion that the very small number of vehicle trips the proposed use would generate can be accommodated by the local roadway network. No other traffic test applies under the Growth Policy in effect when this application was filed, in July 2007. [Exhibit No. 167, pp. 136-137].

(C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

Conclusion: The Board adopts Hearing Examiner 1's finding that the evidence strongly supports a conclusion that the proposed use would have no detrimental effect on the safety of vehicular or pedestrian traffic on the public roads, as it would contribute only a minimal number of vehicles to area roadways. [Exhibit No. 167, p. 137].

(b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

Conclusion: No finding necessary.

(c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

Conclusion: The Board finds, with benefit of the testimony and evidence adduced on remand, that the Petitioners have met their burden of proof and persuasion, as set forth above.

D. 59-G-1.23 - General Development Standards

Pursuant to Section 59-G-1.23, each special exception must comply with the development standards of the applicable zone where the special exception is located, unless the specific conditions for the use specify development standards, which is the case for telecommunications facility special exceptions. Section 59-G-1.23 also requires compliance with applicable parking requirements under Article 59-E, forest conservation requirements under Chapter 22A, and sign regulations under Article 59-F, and states that a special exception must incorporate glare and spill light control devices to minimize glare and light trespass and, in a residential zone, may not have lighting levels along the side and rear lot lines exceeding 0.1 foot candles.

The Board adopts Hearing Examiner 1's findings that (1) ample parking would be available in the Swim Club's parking lot for the modest needs of this use, (2) no forest conservation requirement applies because no forest would be disturbed, and (3) the single sign proposed is required under the specific conditions for the use. Exhibit No. 167, p. 138. The Board further finds that the Petitioners have submitted a lighting plan which demonstrates that there will be no lighting levels exceeding 0.1 foot-candles along the side and rear lot lines. See Sections II(11), III(5) and IV(C)(6), above.

Therefore, based upon the foregoing, on a motion by David K. Perdue, Vice-Chair, seconded by Stanley B. Boyd, with Walter S. Booth and Catherine G. Titus, Chair in agreement, and Carolyn J. Shawaker necessarily absent, the Board grants the special exception in Case No. S-2709 and the special exception modification in Case No. CBA-1193, subject to the following conditions:

CONDITIONS

1. Petitioners shall be bound by all of the testimony of their witnesses and exhibits of record, including the Site Plan, Exhibit 155(a), and the Landscape Plan (Exhibit number to be filled in after submission), and by the representations of counsel identified in this report.
2. T-Mobile must enter into an agreement with the Hillandale Swim Club that will permit it to preserve, maintain and replace as necessary, perpetually until the proposed tower is removed from the site, all existing trees that are within 50 feet of

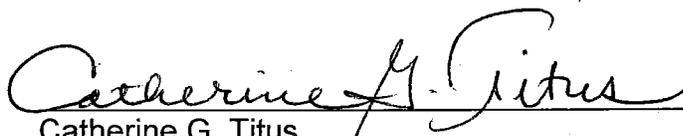
the equipment compound or within 75 feet of a property line that currently abuts a residential lot or the elementary school property.

3. The side of the equipment compound facing Schindler Drive may not be widened at any future time, including to accommodate a potential co-locator.

4. The Board of Appeals reserves jurisdiction to impose additional conditions in the future related to the use of an emergency generator on site, if future evidence such as complaints from neighbors so warrants.

5. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits or a use-and-occupancy permit, necessary to implement the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and facility comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

6. After the unipole is erected but before the facility is placed in use, Petitioner shall file with the Board a certification from an independent land surveyor that dwellings on properties adjoining the subject site are not less than 300' from the pole. For each adjacent residential property, the measuring point from the pole shall be the point on the circumference of the pole at its base that is closest to the adjoining dwelling. The measurement point for each adjoining residential property shall be the part of the main building (excluding projections exempt under Section 59-B-3) closest to the pole. An independent land surveyor means a professional land surveyor licensed in Maryland who is not an employee of Petitioners, any affiliate of Petitioners or any contractor engaged by Petitioners for construction of the facility that is the subject of this petition.


Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 8th day of March, 2011.


Katherine Freeman
Executive Director

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. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

