

**SECOND CORRECTED OPINION
SUBJECT PROPERTY DESCRIPTION**

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. S-2495

PETITION OF SPRINT PCS/APC REALTY AND EQUIPMENT COMPANY, LLC

OPINION OF THE BOARD

(Date of Decision: January 8, 2003)

(Effective Date of Opinion: January 31, 2003)

Case No. S-2495 is an application, filed on October 30, 2001, for a special exception pursuant to Section 59-G-2.43 (Public Utility Buildings, Public Utility Structures and Telecommunications Facilities) of the Zoning Ordinance to permit a telecommunications facility enclosed in a 60 x 60 foot compound which includes six equipment cabinets and a 193 foot monopole, with 3 flush mounted antennas, for a total height of 195 feet, six inches.

Pursuant to the provisions of Section 59-A-4.125 of the Montgomery County Zoning Ordinance, the Board of Appeals referred the case to the Hearing Examiner for Montgomery County to conduct a public hearing and render a written Report and Recommendation.

The Hearing Examiner convened a public hearing on October 4, 2002. The record in the case was closed on October 25, 2002, and on December 12, 2002 the Hearing Examiner issued a Report and Recommendation that the special exception be remanded to the Hearing Examiner with a request that the applicant reconsider the location and height of the requested monopole. On December 23, 2002, the Board of Appeals received a request for Oral Argument on the Report and Recommendation from Janet A. Brown, Esquire.

The subject property is Parcel 700, located at 13201 Lewisdale Road, Clarksburg, Maryland, in the RDT Zone.

Decision of the Board:

Special exception **granted** subject to
Conditions enumerated below.

The Board of Appeals has carefully considered the Hearing Examiner's Report and Recommendation. At its Worksession on January 8, 2003, the Board voted to deny the request for Oral Argument, to adopt only the factual findings in the Report and Recommendation, and to **grant** the special exception.

The Board differs with the Hearing Examiner's findings with respect to (1) inherent/non-inherent characteristics of the use; (2) necessity for public convenience and service; (3) appearance, screening and landscaping; and (4) harmony with the general neighborhood in terms of scale.

Section 59-G-1.2.1 Standard for Evaluation

The Board finds that the 195.5-foot maximum height of the proposed monopole is an inherent characteristic. A monopole will inherently be taller than other structures, and, although 195.5 feet is taller than some other monopoles, and taller than the monopole initially proposed, the Board finds that the requested height is within the height range for monopoles allowed by Section 59-G-2.43(j)(3) of the Zoning Ordinance. The Board notes the Hearing Examiner's finding that due to the lower elevation of the proposed site for the monopole, "the top of the tower [will be at] approximately the same elevation as proposed for the original site" [Report and Recommendation, pp. 19-20].

Section 59-G-2.43 (a)(1) The proposed building at the location selected is necessary for public convenience and service.

The Board finds persuasive the recommendation of the Telecommunications Transmission Facility Coordinating Group (TTFCG, or Tower Committee) that the application be approved. The Tower Committee's report states: "We conclude that Sprint makes a convincing case for coverage in this area and that a new tower is necessary to provide service" [Exhibit No. 56, p. 8]. The Board notes the emphasis in Montgomery County law and practice on co-location of telecommunication carriers on a single monopole, and finds the Hearing Examiner's suggestion that more structures at lower heights might be beneficial inconsistent with Montgomery County law and policy. [See Montgomery County Code, Sections 2-58E and 59-G-2.43(j)(5)].

Section 59-G-2.43(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 the proposed screening and landscaping, together with the proposed painting of the monopole and use of low-profile antennas satisfy this requirement. The Board appreciates and encourages the use of other 'camouflage' configurations for monopoles, but notes that in areas such as the

proposed location, which do not have other structures or tree-cover present, a 'camouflage' configuration will not necessarily make the structure less noticeable.

Section 59-G-1.21(a)(4) Will be in harmony with the general character of the neighborhood considering ... scale ...

The Board recognizes that monopoles are almost always visually obtrusive. At the same time, the Board finds that since these structures, although taller than their surroundings, are permitted by special exception, and as the height of a monopole is an inherent adverse effect, provided that it falls within the range contemplated by the Zoning Ordinance, the Board finds that the height of the proposed monopole is an inherent adverse effect and is harmonious with the general character of the neighborhood.

Therefore, based upon the foregoing, the Board finds that the requested special exception should be granted, subject to the following conditions:

1. Petitioner shall be bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorney, to the extent that such evidence and representations are identified in the Hearing Examiner's Report and Recommendation and in the opinion of the Board.
2. The applicant must submit a revised site plan illustrating a new access path that goes behind the existing garage and avoids all existing trees.
3. The applicant must provide a board-on-board fence, eight feet in height, that surrounds the support structures.
4. The applicant must submit a final natural Resources Inventory/Forest Stand Delineation (NRI/FSD) to Environmental Planning staff prior to the issuance of building permits, and/or sedimentation and erosion control permits. The final NRI/FSD must indicate all property boundaries and the new access path to the enclosed area.
5. The applicant must submit a Tree Protection Plan to Environmental Planning staff prior to the release of sediment and erosion control or building permits, as appropriate. An inspector from MNCPPC staff must be contacted for pre-construction inspection of tree protection measures.
6. Compliance with Department of Permitting Service requirements for stormwater management and sediment erosion control, prior to the

issuance of building permits and/or sediment and erosion control permits.

7. All future telecommunications providers must utilize low-profile antennas.
8. The applicant shall provide certification of the actual total height of the monopole, after its installation, to the Board of Appeals.
9. The telecommunications facility must be removed, at the cost of the applicant, when the telecommunication facility is no longer in use by any telecommunication carrier.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Donna L. Barron, Allison Ishihara Fultz 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 31st day of January, 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.