

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. S-2582

**PETITION OF SPRINT PCS/APC REALTY AND EQUIPMENT COMPANY, LLC
AND POTOMAC CONFERENCE CORPORATION OF SEVENTH DAY ADVENTISTS**

OPINION OF THE BOARD
(Effective Date of Opinion: April 23, 2004)

Case No. S-2582 is an application for a special exception pursuant to Section 59-G-2.43 (Public Utility Buildings, Public Utility Structures, and Telecommunication Facilities) of the Zoning Ordinance to permit the construction and operation of a 100-foot flagpole telecommunications facility with three (3) panel antennas that are 36 inches in diameter and related coaxial cables inside the flagpole, and six (6) equipment cabinets. The facility will operate twenty-four (24) hours a day, seven (7) days a week.

The subject property is Parcel N173, Seventh Day Adventist Corporation, located at 8425 Damascus Road, Damascus Maryland, 20872, in the RDT Zone.

Pursuant to the authority contained in Section 59-A-4.125 of the Zoning Ordinance, the Board of Appeals referred the Case to the Hearing Examiner for Montgomery County to conduct a public hearing and submit a written report and recommendation. The Hearing Examiner convened a public hearing on the application on November 12, 2003, and issued a Report and Recommendation, for approval of the special exception, on March 18, 2004.

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

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on April 7, 2004. After careful consideration and review of the record, the Board finds that the special exception can be granted, subject to the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, including the Site Survey, Exhibit 6(b), and the Landscape Plan, Exhibit 51(b), and by the testimony of its witnesses and representations of counsel identified in this report.

2. The support structure for the telecommunication facility must be removed at the cost of the owner of the telecommunication facility when the facility is no longer in use by any telecommunications carrier for more than 12 months.

3. The flagpole must follow approved federal regulations governing the flying of the United States flag.
4. The telecommunication facility must display a contact information sign, no larger than two square feet, affixed to the support structure or to the outside of the equipment compound. This sign must identify the owner and the maintenance service-provider of the support structure 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.
5. Each owner of the telecommunication facility is responsible for maintaining the facility in a safe condition.
6. The Board may, after a duly advertised and conducted hearing convened at its own initiative or at the request of any interested party, prohibit the flag from being flown at night on the flagpole support structure upon a finding that the non-inherent adverse effect of nighttime illumination of the flag will be detrimental per any subsection of Section 59-G-1.21.

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 23rd day of April, 2004.

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.

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I. STATEMENT OF THE CASE

Petition S-2582, filed June 2, 2003, requests a special exception under the RDT Zone for a telecommunication facility, to be built in the form of a flagpole on the property of Damascus Grace Fellowship, a Seventh Day Adventist Church located at 8425 Damascus Road in Damascus, known as Parcel N173 on Tax Map GX12. The petitioner was filed jointly by Sprint PCS/APC Realty and Equipment Company ("Sprint"), which proposes to construct and operate the telecommunication facility, and the Potomac Conference Corporation of Seventh Day Adventists, owner of the subject property.¹

Technical Staff of the Maryland-National Capital Park & Planning Commission ("M-NCPPC") reviewed the present petition and, in a report dated September 17, 2003, recommended *approval* with conditions.² See Ex. 38. The Montgomery County Planning Board ("Planning Board") considered this petition on October 23, 2003 and voted 3 to 1 to recommend *approval*. See Ex. 45.

On July 8, 2003 the Board of Appeals ("Board") scheduled a public hearing in this matter for October 15, 2003. On September 10, 2003 the Board, acting under the provisions of Code § 59-A-4.125, referred the matter to the Office of Zoning and Administrative Hearings to conduct a public hearing and submit a report and recommendation. A public hearing was convened after proper notice on November 12, 2003, at which testimony and other evidence were received in support of the proposed special exception. The record was held open briefly to receive the supplemental submissions and closed on November 26, 2003. It was later reopened to receive a supplemental Staff Report and closed on March 15, 2004.

II. BACKGROUND

For the convenience of the reader, background information is grouped by subject matter.

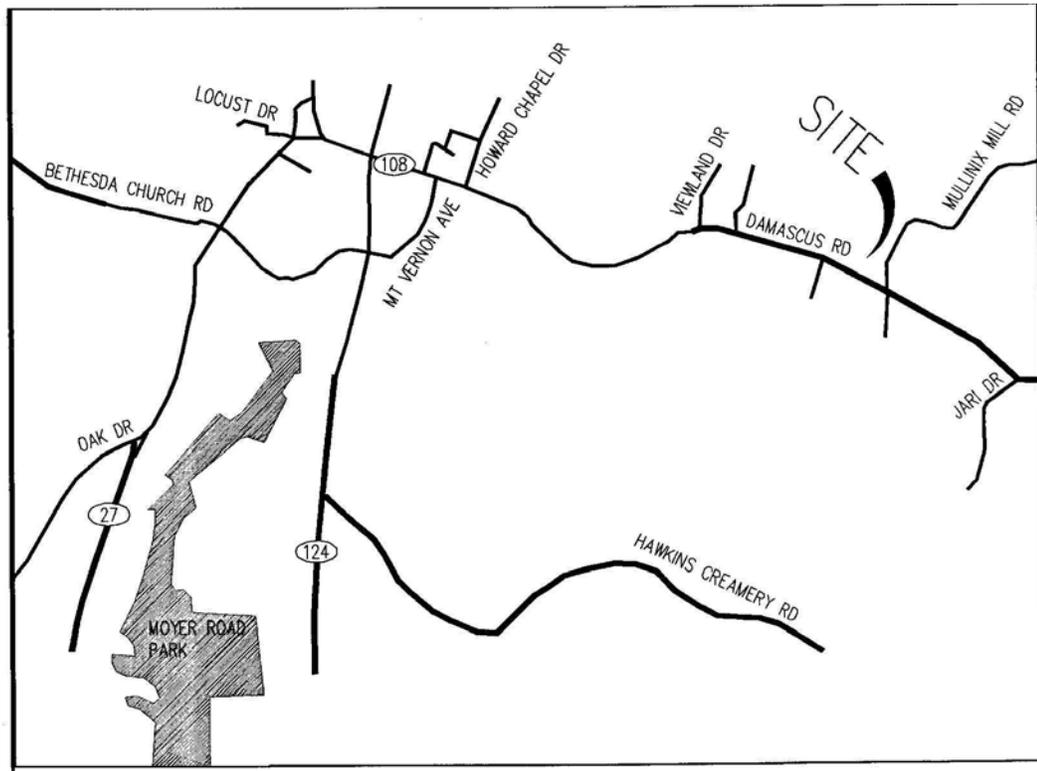
¹ Sprint maintains that the proposed structure is a flagpole, which it describes as a use that is permitted by right and does not require a special exception. See Statement of Justification, Ex. 3 at 2 note 1. Sprint has filed the present application in response to a contrary finding by the Department of Permitting Services that the proposed structure would be a telecommunication facility, and therefore requires a special exception. Sprint does not address, in its objection to the need for a special exception, whether it believes that the equipment compound needed to operate the proposed flagpole telecommunication facility is also permitted by right.

² The Staff Report has been liberally paraphrased and cited in Part I of this report.

A. The Subject Property and Neighborhood

The subject property consists of approximately 5.36 acres of land located at 8425 Damascus Road, in the northwest quadrant of the intersection of Damascus Road and Mullinix Mill Road approximately one mile east of the Damascus town center. Sprint has entered into an agreement with the property owner to lease a 1,690 square feet of the subject property for the proposed flagpole telecommunication facility. See Ex. 6. The subject property abuts farmland to the east, to the north and on most of its western border. Abutting the southwest corner of the property are two or three residences with a stand of mature trees behind and between them, and farmland beyond the trees. Confronting the subject property across Mullinix Mill Road to the east is farmland. Confronting across Damascus Road to the south and southwest is a development of single-family detached homes. The subject property is level at the building site, sloping slightly upward from Damascus Road. It sits at a high point in the topography, with a crest in the hill about 500 feet from the edge of the property. The general location of the subject property may be seen on the vicinity map below.

Vicinity Map, excerpted from Ex. 51(b)



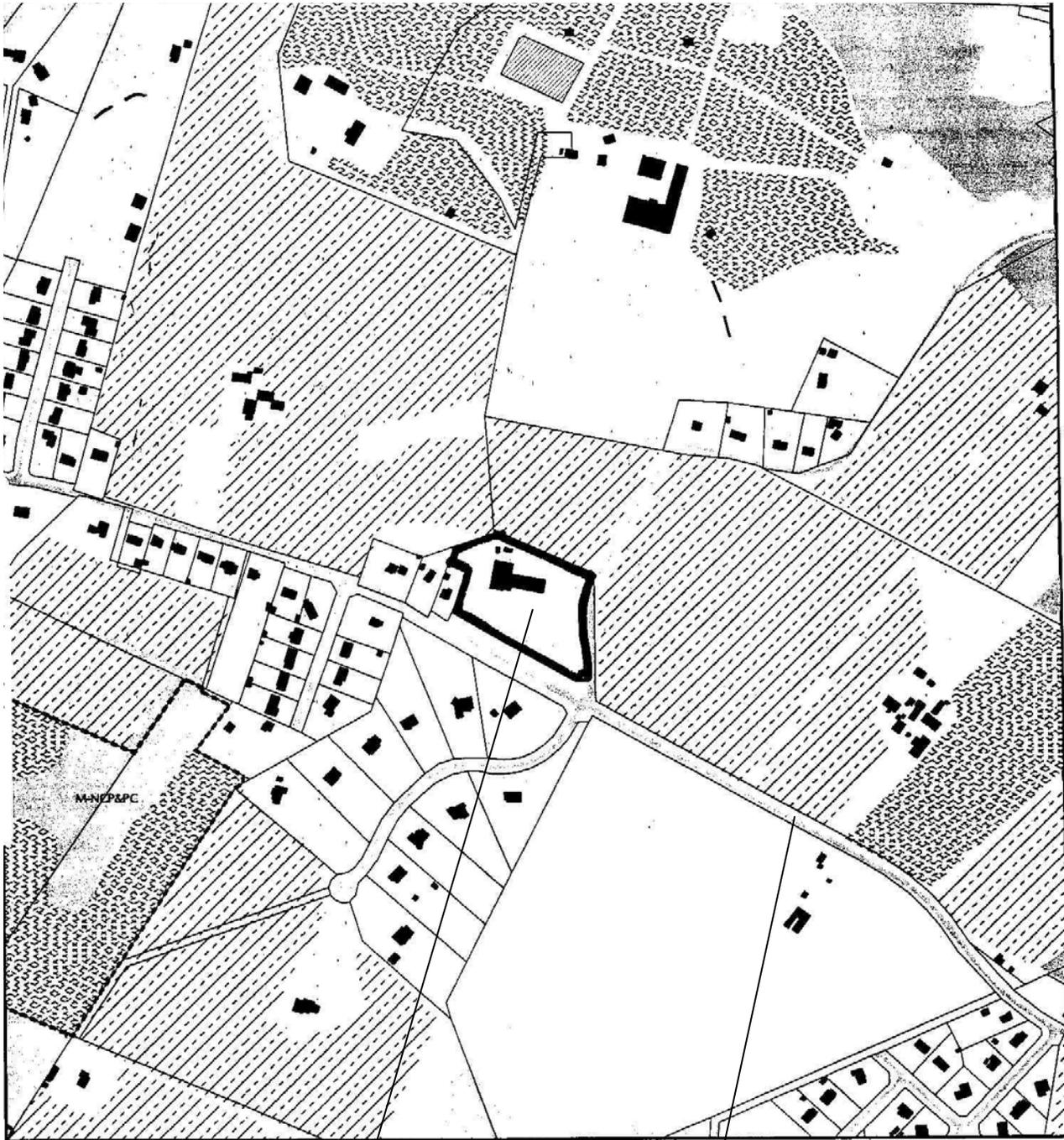
The subject property is developed with a brick church building surrounded on all sides by surface parking, and two small storage sheds in the parking lot behind the church. The east wing of the church building is approximately 25 feet in height. The west wing, which houses the main worship area, is approximately 45 feet high with a 70-foot steeple. The church has parking lot lights, on a timer, that are set to go off at 1:00 am. It also has flood lights that shine up on the steeple at one end of the church building and the fellowship hall at the other end. Those lights stay on until about 11:00 p.m. In addition, lights on the front of the church and on two church signs located along Damascus Road stay on all night. The property has several large evergreens along the rear (north) property line, a few scattered shrubs in the parking area and an unfenced stormwater retention pond in the southeast corner.

Neither Technical Staff nor the Petitioners recommended a definition of the general neighborhood for this case. Based on the written and pictorial information in the record, the Hearing Examiner concludes that the general neighborhood of the subject property includes all the farmland abutting the subject property, the farmland confronting the subject property either directly across Mullinix Mill Road or diagonally across Damascus Road, the residences near the southwest corner of the property and the residential development confronting across Damascus Road. The general neighborhood is a mix of open space, agricultural and residential uses. Property north of Damascus Road is classified under the RDT (Rural Density Transfer) Zone and property south of Damascus Road under the RC (Rural Cluster) Zone. The relationship of the subject property to surrounding land uses is shown on the neighborhood map on the next page.

B. Master Plan

The subject property is in the area covered by the Damascus Master Plan, which is silent as to both special exceptions and telecommunication facilities. The RDT Zone permits certain special exceptions, including public utility structures (a category that includes telecommunication facilities).

Neighborhood Map, Excerpted from Staff Report, Ex. 38



Map compiled on August 07, 2003 at 11:35 AM | Site located on base sheet no - 236NW08

Subject
Property

Damascus
Road

C. Proposed Use

Sprint seeks to construct a telecommunication facility in the form of flagpole, which would measure 100 feet from the ground to the top of the ornamental gold ball displayed on the pole. It would have a diameter of 36 inches at the base tapering to 26 inches at the top. The flagpole would be located directly behind the lower portion of the church building. It would, in accordance with zoning requirements, accommodate two additional telecommunication providers. The support structure would consist of a 70-foot pole topped by a 30-foot structure made up of three ten-foot sections, each of which would hold the antennas for one carrier. Sprint would install its three panel antennas in the top ten feet of the structure, leaving the other two sections for other carriers. The fiberglass casing for each of the ten-foot sections would be removable for maintenance purposes. Neither the antennas nor associated cables would be visible; they would be entirely encased within the flagpole. Antenna emissions would comply with all applicable requirements of the Federal Communications Commission ("FCC") and the United States Environmental Protection Agency ("EPA"), and would not interfere with radio, television or telephone reception. See Exs. 4, 10 and 11, as referenced in Ex. 5 at 2.

Sprint proposes to fly a United States flag measuring approximately 15 x 25 feet, 24 hours a day.³ Flag protocol would require that the flag be illuminated all night. Sprint proposes to accomplish this with one or two lighting fixtures that would be mounted on the ground, about eight feet from the base of the flagpole, projecting a narrow beam of light onto the flag. Little or no illumination would be cast on the flagpole, minimizing the potential for glare. Sprint representatives testified that the same lighting fixture has been used at other Sprint flagpole installations, including three in Montgomery County, without any complaints from neighbors. The Petitioners have no objection to a condition such as the one the Board has imposed in other similar cases, which allows community members to request a hearing if the lighting is objectionable. In addition, a representative of the church located on the

³ Sprint's Statement of Operations noted that Sprint is willing to consider not flying the flag if the surrounding community so desires or the Board prefers, in which case the pole could be painted to blend with its surroundings. The record does not indicate any preference on the part of community members for a monopole without a flag, and that possibility was not addressed at the hearing.

subject property testified that, at least until 11:00 p.m., the floodlights that the church uses would likely be brighter and more noticeable than the lighting proposed for the flag.

The antennas at the top of the flagpole would be connected by coaxial cables running down the flagpole and then underground to an equipment compound approximately 130 feet away, on the north side of the parking lot. The equipment compound would measure 26 by 65 feet and would be built into the side of a small slope created by a berm running along the rear of the parking lot. As shown on the following page, the compound would be surrounded by a board-on-board fence measuring eight feet high on the parking lot side and tapering up to a height of six feet in the rear, along the top of the berm. Sprint's engineer testified that the lower six-foot height on the berm is designed to prevent unauthorized entry while reducing the visual impact of the fence.

The compound would be near two existing small, wood-frame storage buildings in the parking lot, one of which would be directly in front of the compound. The compound would contain five cabinets, each about the size of a refrigerator, which would hold Sprint's telecommunication equipment. In keeping with the requirements of the Zoning Ordinance, the compound would have enough space to accommodate equipment for two other carriers. The compound would be served by underground telephone and electric cables. The locations proposed for the flagpole and compound are shown on the Site Survey reproduced on page 10.

The proposed facility would operate 24 hours a day, seven days a week. It would be unmanned, with service visits once or twice a month. Sprint personnel would use the existing driveway and parking lot, with a six-foot gravel extension of the driveway to transition from the edge of the existing pavement to the gate into the equipment compound. Sprint's engineer testified that there would be no objectionable odors, fumes or dust, and no noise or vibrations.

Sprint represents that the proposed flagpole design was chosen to protect the visual character of the surrounding area. Enclosing the antennas inside the flagpole would result in the facility providing a lower level of coverage than a traditional monopole, because the flagpole design cannot incorporate dual-pole antennas that are better able to combine signals received. However, Sprint's

D. Need for Proposed Facility

Sprint is “committed to providing reliable seamless telecommunications service to its users, and seeks to create a seamless, state-of-the-art all-digital wireless network.” Ex. 3 at 3. This requires strategically locating antenna facilities so that the limited geographical coverage provided by each facility provides effective coverage, in conjunction with other facilities, with a minimum overlap. Sprint has submitted coverage studies that show a coverage gap on Damascus Road, east of Damascus. See Ex. 20. Sprint’s radio frequency engineer, Henri Edoh, has determined that the facility proposed for the subject property would provide continuity of coverage with an existing Sprint facility located on a PEPCO pole in Damascus. See RF Engineering Justification Statement, Ex. 21. Mr. Edoh testified, and stated in writing, that there are no existing structures in the area that Sprint could use to fill this coverage gap through co-location. The church steeple is neither tall enough to provide the coverage nor wide enough at the top to accommodate internal antennas. Sprint’s undisputed evidence indicates that the proposed flagpole is necessary to mount the antennas at a height sufficient to service the intended coverage area and provide connectivity with other sites.

The County Tower Coordinator Recommendation supports Sprint’s evidence concerning the need for the facility. The Tower Coordinator recommended approval of the proposed facility at the subject property, finding that the RF signal contour maps show a need for coverage along Damascus Road, that the proposed facility at the proposed height would meet Sprint’s coverage objectives, and that there do not appear to be any co-location opportunities that would provide the desired coverage. See Ex. 43. The County’s Telecommunication Transmission Facility Coordinating Group has also recommended approval of the proposed facility. See Ex. 17.

Both the owner of the subject property, the Potomac Conference Corporation of Seventh Day Adventists (the “Potomac Conference”), and the Damascus Grace Fellowship Church that sits on the property are in favor of the proposed special exception because the revenue generated would support the church’s outreach ministries in the area, and the facility would provide enhanced mobile coverage for parishioners who live in the area. See Ex. 39.

The County's Agricultural Advisory Committee, an arm of the Department of Economic Development, has in the past stated its support for additional telecommunication towers in the rural and agricultural areas of the County, noting that the revenue generated by locating such a facility on farmland can support farming operations. See letter dated Oct. 3, 2001, Ex. 16. The Hearing Examiner finds the applicability of this policy statement to the present case to be limited. First, the subject property is not in agricultural use, therefore there is no reason to expect that the revenues would support farming activities. Second, the letter is more than two years old, and many telecommunication facilities have been erected in rural areas of the County since that time.

E. Visual Impact and Property Values

The proposed flagpole facility would be set back approximately 313 feet from Mullinix Mill Road, 118 feet from the north property line, 345 feet from Damascus Road and 305 feet from the nearest dwelling. The flagpole would be visible from the farmland to the north and east, screened only by a thin, widely-spaced row of evergreen trees. It would be partially screened from residences across Damascus Road by the church building, and its height would be balanced, at least to a degree, by the 70-foot church steeple. The visual environment in the neighborhood already includes utility poles and wires. The nearest residence, southwest of the property, would not be able to view the base of the flagpole, which would be screened by the church building. The backyard of that residence currently has a clear view of the church's rear parking lot. The landscape plan submitted after the hearing indicates that the equipment compound would be surrounded by landscaping on three sides, which would screen it from view from the closest residence and from abutting agricultural lands. The proposed landscaping would also soften the compound's visual impact on residences across Damascus Road. See Ex. 51(b).

The first photograph on the next page is an aerial view of the subject property with the church in the middle, surrounded by its parking lot. It identifies the locations of the proposed flagpole and equipment compound, plus three locations (P1 through P3) from which additional photographs were taken. These photographs, which follow on the next two pages, have been altered to simulate how the proposed flagpole would appear on this site.

**Aerial Photograph of Subject Property, Ex. 25(a)
(Locations of Simulation Photos Identified as P1-P3)**



**Photo Simulation P1, Exhibit 25(b)
View from Northeast Corner of Property, near Damascus/Mullinix Mill Road Intersection**

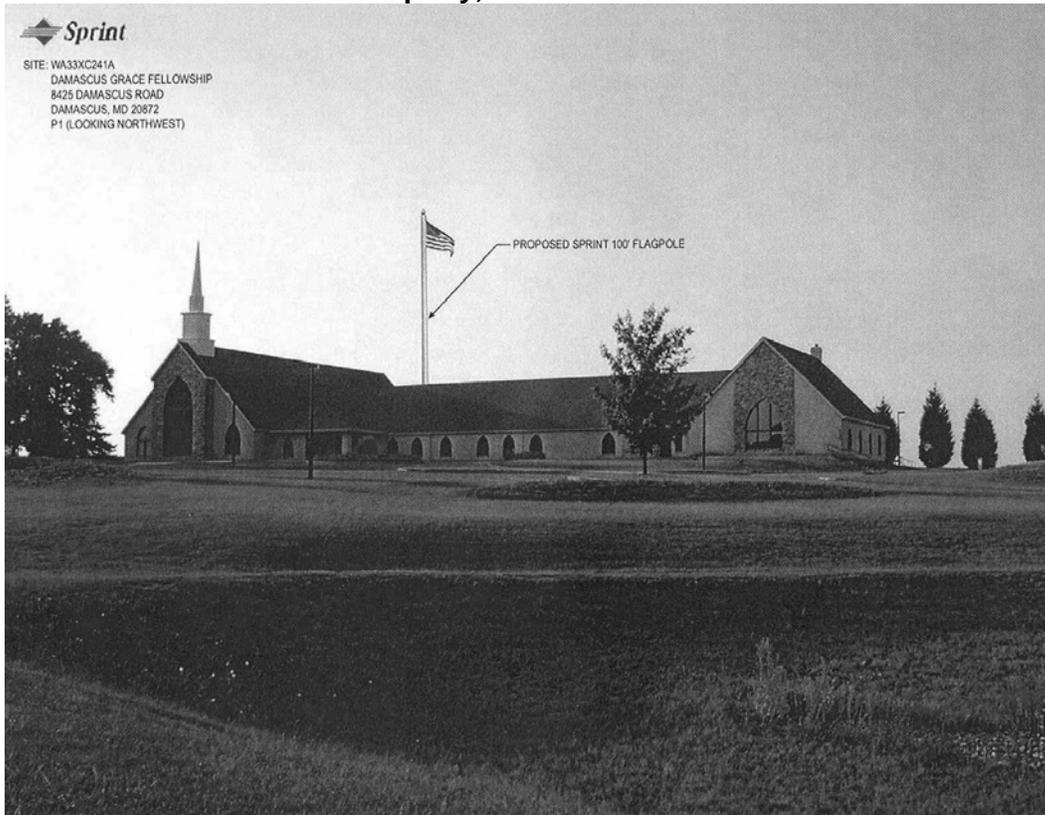
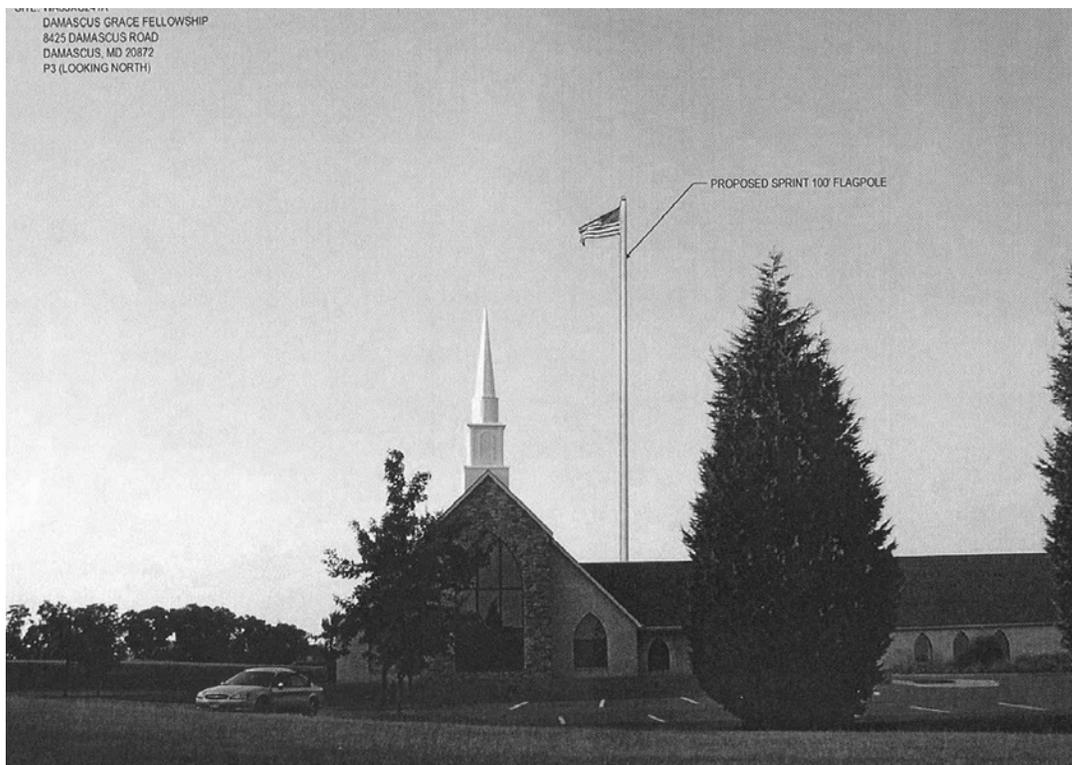


Photo Simulation P2, Exhibit 25(c)
View from Center of Property's Damascus Road Frontage



Photo Simulation P3, Exhibit 25(d)
View from Southwest Corner of Property, Near Closest Residence



Sprint submitted into the record several reports by various consultants concerning the potential impact of cell phone towers on real property values. See Ex. 22. While none of these reports was prepared specifically for the subject property, and some were prepared for properties outside Montgomery County, they provide probative evidence suggesting that, at least in a strong real estate market, cell phone towers do not appear to have an adverse effect on real property values. Moreover, as discussed above, the visual impact of the proposed facility would be mitigated by its location behind the church building, the proximity of the church steeple, the existing visual intrusion of utility poles and wires, and existing and proposed landscaping.

F. Environment

The proposed special exception is exempt from forest conservation requirements because it would disturb only a very small land area and would not require removing any forest. See Ex. 7. However, Environmental Planning Staff at the MNCPPC recommended that, as a condition of approval, the Petitioners be required to “[p]rovide additional trees on the perimeter of the site or convert non-used area of lawn into a ‘Bayscape’ landscape in keeping with the County-wide goal of increasing forest and improving water quality.” Ex. 38 at 1. Staff described “bayscapes” as environmentally-sound landscapes designed to benefit people, wildlife, and the Chesapeake Bay. Bayscaping uses low maintenance landscape plans that require little mowing and less use of fertilizers and pesticides, with attractive, colorful, primarily native plants that reduce pollution and provide diverse wildlife habitats. See Ex. 38 at 4.

Sprint’s chief counsel in this case testified that Environmental Planning Staff voiced a desire to see grasses or other environmentally appropriate landscaping not only in the rear of the property, near the proposed equipment compound, but also in the southwest corner of the property. Tr. at 50-51. Sprint objects to installing landscaping in any portion of the site that would not be physically affected by its proposed facility. The Planning Board addressed this issue in its consideration of the petition and recommended modification of the bayscaping condition that Technical Staff had recommended. The Planning Board made the following specific observations:

While disturbance of this site from the installation of the flagpole monopole and equipment compound is minimal, this site is within the Patuxent watershed and thus subject to a greater degree of environmental protections. The church structure was granted an exemption from forest conservation for its construction, but there is a concern that even small changes can incrementally have a negative impact on the surrounding ecology. In this instance, since the church is deriving financial benefit from the proposed use, the Board believes that the church should work with Sprint to install some additional tree cover for this site.

Therefore the Board supports the staff concept of requiring additional trees found in condition #4, and defines that requirement as being up to one-half acre of planting, preferably near the parking lot. The board believes that this area is generally consistent with the requirement for the amount of area being disturbed by the desired use, and will serve to give more shade, lower surface temperatures and decrease thermal pollution.

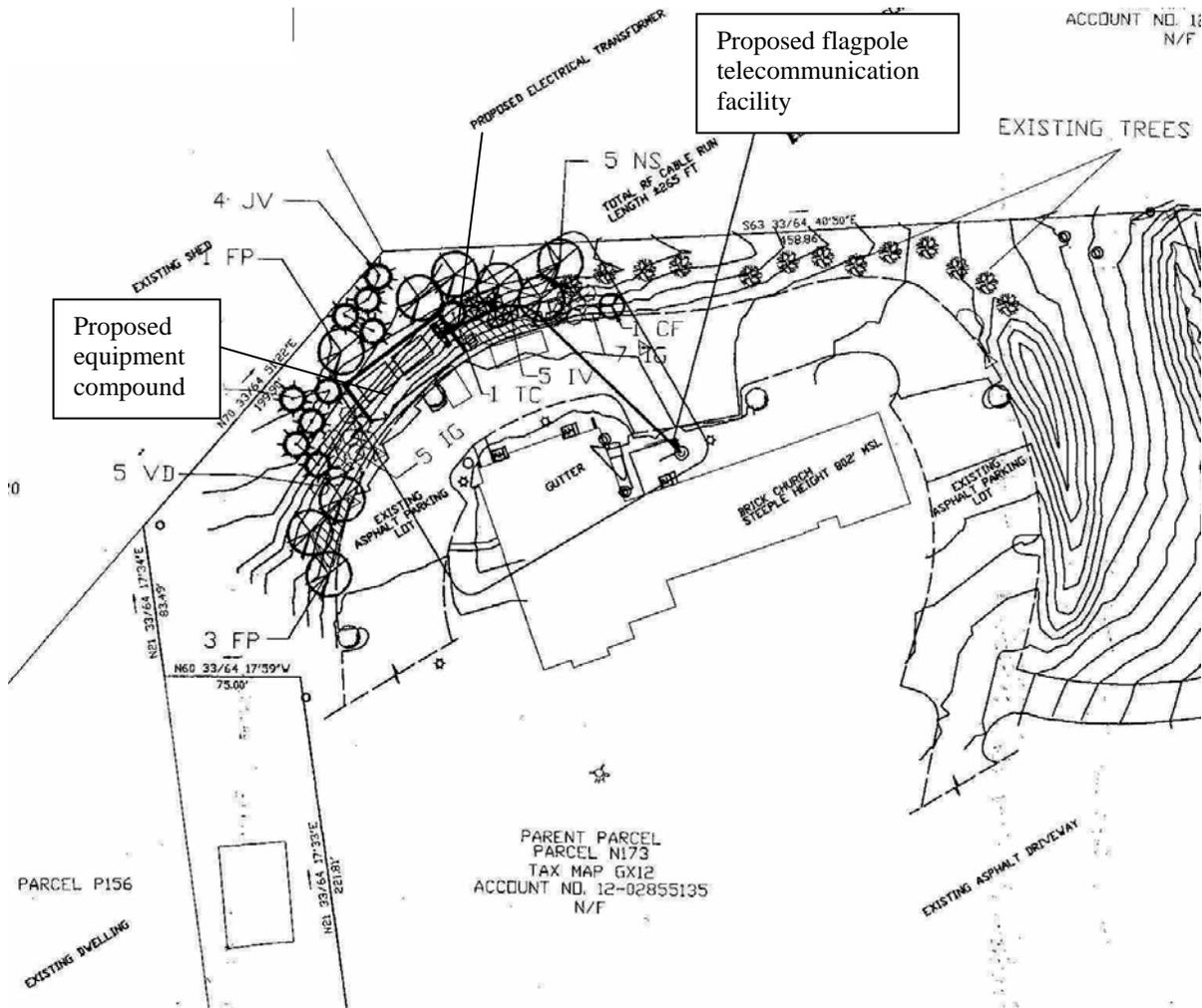
Ex. 45 at 1. Three of the four Planning Board members present voted to recommend approval of the proposed special exception. The Vice-Chair voted to recommend denial. In her dissent she objected primarily to the amount of additional area of forestation, which she believed to be larger than the amount of disturbance, rather than the concept of additional planting. *See id.*

Sprint submitted into the record, following the hearing, a Landscape Plan that depicts the addition of new landscaping surrounding the equipment compound, consisting of shade trees, evergreens, flowering trees and shrubs. After reviewing the proposed landscaping, Technical Staff submitted a supplemental memorandum stating that the amount of landscaping proposed is “measurably more than usually proposed for this type of use, particularly when the monopole is less conspicuous due to its ‘stealth’ flagpole design, and located behind a building.” Ex. 53. Staff opined that the proposed planting meets the intent of the condition recommended by the Planning Board, “to the extent fair for the impact of the proposed use.” *Id* The proposed Landscape Plan is reproduced on the next page, with the plant list below.

G. Community Participation

One neighborhood resident, Troy Witmer, participated in the hearing on this case. Mr. Witmer lives directly across Damascus Road from the subject property. He voiced a concern that the proposed facility, including the equipment compound, would be visible from the front of his house. Sprint representatives suggested during the hearing that they would discuss with Mr. Witmer possible

Landscape Plan, Exhibit 51(b)



PLANT LIST:

Symbol	Qty	Scientific Name	Common Name	Size
Shade Trees				
	NS	<i>Nyssa sylvatica</i>	Blackgum	2-20' Cal
	FP	<i>Fraxinus pennsylvanica</i>	Green Ash	2-20' Cal
Evergreen Trees				
	TC	<i>Tsuga canadensis</i>	Eastern Hemlock	4'-5' H 3"
	JV	<i>Juniperus virginiana</i>	Eastern Red Cedar	4'-5' H 3"
Flowering Trees				
	CF	<i>Cornus florida</i>	Flowering Dogwood	4'-5' H
Shrubs				
	IG	<i>Ilex glabra</i>	Inkberry	18"-24" H
	IV	<i>Ilex verticillata</i>	Winterberry	24"-36" H
	VD	<i>Viburnum dentatum</i>	Arrowwood	24"-36" H

landscaping approaches to respond to his concern. The record does not indicate whether discussions subsequently took place between Mr. Witmer and Sprint. However, based on the Hearing Examiner's review of the proposed Landscape Plan, it appears that the visual impact of the equipment compound on Mr. Witmer's property would be significantly reduced by the landscaping that Sprint now proposes.

The record in this case includes nine letters in opposition to the proposed facility, from local residents Sara A. Morgan and Gwen E. Harper, Connie and Mark Stoner, Pam Furr, R. Lane and Charlotte Betts, Terry Purkable, Andrew Lund, Ray and Marika Luhn, Tony and Erica Petrolle, Stacy Carlini, and Mr. and Mrs. Adolf B. Forage. See Exs. 29-31, 33-35, 46-48 and 50. These residents are concerned that the proposed flagpole facility would be unsightly, would decrease real estate values, and would be inconsistent with the rural, agricultural nature of the community. Several of the letters stated that the authors had driven to other areas of the County to see flagpole telecommunication facilities, and found that these facilities stuck out like sore thumbs. The opposition believes that the facility proposed at this location would also be out of place, as it would be much taller than the church steeple, which is by far the tallest structure currently in the area.

The Hearing Examiner notes that by permitting telecommunication facilities in the RDT Zone, the County Council has determined that such facilities are not inherently incompatible with the purposes of that zone or the rural, agricultural areas classified under it. Moreover, several of the letters in opposition mistakenly describe the proposal as including six outbuildings, which greatly exaggerates the nature of the use.

Some of the opposition letters expressed concern about possible radiation effects from the proposed tower, or potential television interference. Sprint has presented substantial, probative evidence that the maximum level of exposure to radio frequency energy from Sprint base stations is far below the maximum permitted by the regulations of the Federal Communications Commission ("FCC"). See Ex. 18. The standards established by the FCC are based on maximum exposure limits set forth by the National Council on Radiation Protection and Measurements, an independent group of experts chartered by the United States Congress. See *id.* Sprint has also submitted substantial, probative

evidence that the proposed facility has been designed to preclude the possibility of interference with other services such as radio and television. See Ex. 11.

III. SUMMARY OF TESTIMONY

A. *Applicant's Case in Chief*

1. James R. Michal, co-counsel for Sprint

Mr. Michal represented the Petitioners before the Planning Board and served as co-counsel in these proceedings. Having been sworn as a witness, he offered testimony regarding the Planning Board hearing on this matter, at the Hearing Examiner's request, because the Hearing Examiner's office had not yet received a copy of the Planning Board's written recommendation.

Mr. Michal testified that no community members appeared in opposition at the Planning Board hearing. He said that although one member of the Planning Board had some concerns over lighting, the members present voted 3 to 1 to recommend approval of the project. He said the one vote against the project was cast by the Vice Chair, Wendy Purdue, not because she was against the project but because she did not agree with the condition (recommended by Technical Staff and adopted by the majority of the Planning Board) that would require Sprint to install "bayscaping" beyond the Sprint compound area. Another Planning Board member, John Robinson, agreed to vote for approval, but stated that he wanted the condition to limit the amount of bayscaping that would be required to a specified area such as an acre.

With regard to lighting, Mr. Michal testified that in other cases the issue of lighting had been dealt with by agreeing to revisit the issue in the future if any community concerns arose. He noted that Sprint has erected flagpole telecommunication facilities, with nighttime lighting, at three rural locations in Montgomery County (one on Sundown Road, one on Woodfield Road at Wesley Grove Methodist Church, and one on Brink Road at Goshen United Methodist Church). There have been no complaints about the lighting so far. Tr. at 18-20.

2. Jerry Baugher, church representative

Mr. Baugher is one of the lay pastors at Damascus Grace Fellowship, a Seventh Day Adventist Church. He testified that the property on which his church is located (the subject property) is owned by the Potomac Conference, which is a legal entity that owns all of the Adventist church properties in the area. Damascus Grace Fellowship approved the proposal to lease space to Sprint and then asked the Potomac Conference for its approval as the land owner.

Mr. Baugher stated that the revenue from the Sprint lease would stay within the local church and benefit the local community through outreach activities. He noted that his church has been located on the subject property since October of 1990, and has been in the Damascus area for almost 60 years.

With regard to the current landscape, Mr. Baugher testified that both Mullinix Mill Road and Route 108 (Damascus Road) have utility poles with wires. He also stated that the church has parking lot lights on a timer that are set to go off at 1:00 am. The church has a number of lights, including flood lights that shine up on the steeple at one end of the church building and the fellowship hall at the other end, all of which are on until about 11:00 p.m. These floodlights are on the ground, shining up at the building, and Mr. Baugher believes that they throw more light than what Sprint is proposing for the flagpole. Tr. at 28. In addition, lights on the front of the church and on two church signs stay on all night. Mr. Baugher said that the neighbors have never complained about the lights and, in the past, have asked the church to keep the parking lot lights on later to deter people from parking in the lot late at night.

Mr. Baugher also testified that the church would be open to having additional trees or bayscaping added to the property, but that it might have a negative impact on the adjacent farms, particularly if it draws more critters to the area.

3. Carsten Marc Harris, Sprint project manager

Mr. Harris is a project manager for wireless site development at Sprint. He plans the entire site with the help of experts until the site is constructed and on air. To accomplish this he must

find a good location, and do due diligence to coordinate both legal aspects and engineering efforts. He is currently working on 18 proposed telecommunication facilities in the Washington, D.C. area.

Mr. Harris explained that Sprint has a policy of locating its facilities on existing structures because it is faster and less costly. However, that was not possible in this situation. He described in brief the design of the new structure proposed and said the flagpole will be removed by Sprint when it is no longer used by any carrier.

Mr. Harris testified that Sprint held a meeting at the church with community members, at which pictures of the propagation maps, plans and photo simulations were presented. They also went outside to look at the site and discuss roughly where the facilities would be. Mr. Harris also stated that he has been in direct contact with the Potomac Conference, which supports this project.

Mr. Harris was aware of the recommendation for bayscaping on the site. He stated that Sprint is not opposed in principle to installing some kind of bayscaping, but needs to know what the parameters are and how the church feels about it before making a commitment. In particular, he would need an upper limit on the cost involved. It was agreed that the record would be held open to allow Sprint to submit in writing what it is willing to provide in terms of bayscaping, with the land owners' written consent.

In response to questioning by a neighbor, Mr. Harris stated that although the Tower Coordinator's Report identified the site for the equipment compound as "on a hill," only the back fence of the compound would be on a hill. The compound itself would be built into the side of a small hill by cutting into a berm. This would allow the compound to be built at the same grade as the parking lot with the berm forming the perimeter of the compound and partially blocking it from view. The board-on-board fence surrounding the compound would rise six feet above the top of the berm to provide a barrier against unauthorized entry.

4. Marc Marzullo, civil structural engineer

Mr. Marzullo is a civil structural engineer employed by Entrex Communications, which specializes in the design of telecommunication infrastructure. His company works for several wireless

carriers in the Washington, D.C. area, including Sprint. He testified that he has worked on approximately 300 new and existing telecommunication facilities for Sprint in the Washington/Baltimore area in the last three years. He estimated that more than 75 of those sites are in Montgomery County.

Mr. Marzullo has worked on about a dozen flagpole-style telecommunication facilities for Sprint in the Washington area, including six in Montgomery County. Tr. at 59. He identified photographs of the three flagpole facilities on Sundown Road, Brink Road and Woodfield Road, all in Gaithersburg. Each of these locations has a 100 to 150-foot flagpole that is lit at night, and two are in residential areas. The lighting product that has been used at these facilities is the same one proposed in this case. It is a spotlight with a very narrow beam, which illuminates the flag with no or very little illumination on the pole, resulting in very little light reflection. The light is mounted on the ground, generally five to eight feet from the base of the pole. Mr. Marzullo confirmed that there have been no complaints about the lighting at other flagpole telecommunication facilities. Tr. at 83-84.

Mr. Marzullo stated that he has visited the subject property eight to ten times. He described the area surrounding the property as agricultural in nature. The subject property abuts farmland to the east, to the north and on most of its western border. Abutting the southwest corner of the property are two or three residences with substantial mature tree growth behind them. Across the street from the subject property to the south and southwest is a residential development. The subject property sits at a high point in the topography, with a crest in the hill about 500 feet from the edge of the property.

Mr. Marzullo also described the size, zoning classification and current uses of the subject property. It is developed with a church building that is surrounded on all sides by surface parking, as well as two small out-buildings used for storage. The worship area of the church, on the west side of the building, is approximately 45 feet high with a 70-foot steeple. The east end of the church has a single story, approximately 25 feet high. The property has several large evergreens along the rear (north) property line, and an unfenced stormwater retention pond in the southeast corner. Mr.

Marzullo described the height of the proposed flagpole and the height of the existing church steeple as relatively balanced, at 100 feet and 70 feet respectively.

Mr. Marzullo then described the dimensions of the proposed flagpole structure and how it would accommodate three wireless carriers. He also described the setbacks of the flagpole structure from the property lines, which would range from 118 feet to 345 feet, and the setback from the nearest residence, which would be 305 feet. He opined that the nearest residence, southwest of the property, would not be able to view the base of the flagpole, which would be screened by the church building. That residence would have a view of part of the fence surrounding the equipment compound, which would measure 26 by 65 feet.

The compound would contain five cabinets, each about the size of a refrigerator, to hold Sprint's telecommunication equipment. It would have enough space to accommodate additional equipment for other carriers, and would be served by underground telephone and electric cables. The facility would be unmanned, with service visits only once or twice a month. Sprint personnel would use the existing driveway and parking lot, with a six-foot gravel extension of the driveway. Mr. Marzullo stated that no trees would be removed and there would be no objectionable odors, fumes or dust, and no noise or vibrations.

Mr. Marzullo testified that Sprint would have a sign on one of the cabinets, inside the equipment compound, identifying the site name and emergency contact information. He did not testify concerning compliance with the Zoning Ordinance requirement for an identification sign visible on the exterior. See § 59-G-2.43(j)(8).

Mr. Marzullo also identified photographs of the subject property provided in Exhibit 26, and photo simulations of the proposed flagpole facility from three angles. See Ex. 25, Tr. at 88-90.

5. Henri Comlan Edoh, Sprint Radio Frequency Engineer

Mr. Edoh is a radio frequency engineer working under contract for Sprint. He is responsible for the radio frequency (RF) design elements of Sprint telecommunication facilities in Montgomery, Prince George's and Frederick Counties, including the facilities proposed here. Mr. Edoh

has worked on over 50 sites in this market in the last three years, including at least three flagpole facilities in Montgomery County.

Based on coverage plots submitted in Exhibit 20, Mr. Edoh testified that that Sprint currently has a coverage gap on Damascus Road, east of Damascus, and that the facilities proposed for the subject property would provide continuity of coverage with an existing Sprint facility that was co-located on a PEPCO pole in Damascus. Mr. Edoh stated that there are no existing structures in the area that Sprint could be used to fill this coverage gap through co-location. He acknowledged that the flagpole design results in some reduction in coverage compared to a traditional monopole design because the former cannot incorporate dual-pole antennas that are better able to combine signals received by the facilities. He noted, however, that there is less need for this capability in a rural environment, where there are fewer structures for signals to bounce off of. Tr. at 111-112.

Mr. Edoh testified that the Tower Committee gave the proposed facility a favorable recommendation. See Exs. 17, 43. He noted that the proposed facility would operate in compliance with applicable FCC regulations and would not interfere with any household appliance, computer, telephone or the like.

B. Community Participation

Mr. Troy Witmer lives at 25830 Bowman Acres Lane, Damascus, directly across the street from the proposed site. He questioned whether the compound would be located on the hill or built into the hill. Mr. Harris was called to clarify that the compound would be built into the hill with only outside perimeter fencing on top of the hill. Mr. Witmer was concerned about the facility being in direct view of his property. It was suggested that he speak with Sprint representatives regarding landscaping possibilities.

IV. CONCLUSIONS

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 Hearing Examiner concludes that the proposed special exception, with the conditions recommended at the end of this report, would satisfy all of the specific and general requirements for the use.

A. 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.

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 characteristics associated with a telecommunication facility are the placement of antennas on a structure of a substantial height above grade, supported by equipment and a power source on the ground. As Technical Staff observed, the height of the structure and whether the antennas are visible or hidden varies. Ex. 38 at 5. The significant operational characteristic is the propagation and receipt of radio waves to and from the antennas. Traffic is limited to periodic maintenance visits by employees.

In this case, Technical Staff “does not believe there are significant non-inherent effects for this use at this location because the proposed ‘stealth’ flagpole design and level of use anticipated will not significantly impact the character of this area.” *Id.* Staff went on to state that the visibility of the structure would be mitigated by its distance from the road and location behind the church building, and that the equipment compound would be screened by fencing and being built into the slope adjoining the parking area. *Id.*

The Hearing Examiner finds that most of the physical and operational characteristics of the proposed telecommunication facility are consistent with the characteristics typically found at such a facility and, therefore, should be considered inherent. The proposed facility would be 100 feet tall, which is not unusual for a telecommunication facility and is well below the 155 feet permitted under the zoning ordinance without special need findings. See Code § 59-G-2.43(j)(3). The equipment compound would be of a size and type typical for telecommunication facilities, and would be screened from view by a solid wood fence. In addition, the fencing would be partially screened from the south by the compound’s location behind the church and one of its storage sheds, and would be well screened from the west, south and east by landscaping. The operational characteristics are typical of a telecommunication facility, with a limited number of employee trips for maintenance.

The only characteristics of the proposed telecommunication facility that the undersigned considers non-inherent are the disguise of a 100-foot flagpole with the antennas inside the pole, plus the flying of the American flag and its illumination at night. Because telecommunication facilities may

take a number of different designs, neither the flagpole design nor the related illumination can be considered inherent in the use.

Having identified the inherent and non-inherent adverse effects, the next step is to analyze their impacts. The general neighborhood in the present case contains a mix of agricultural and rural residential uses. Although several neighbors voiced a concern about visual impact, an objective assessment of the evidence supports the conclusion that the proposed telecommunication facility would not have a substantial adverse effect on the character of the neighborhood. The proposed 100-foot flagpole would be a noticeable addition to the landscape. However, the base would be screened from view on two sides by the church building and partially screened on the other two sides by evergreen trees. The pole itself would be visually balanced, to some degree, by the church steeple. The visual environment already includes utility poles and wires. Moreover, the most noticeable addition to the visual landscape would be not an unattractive array of antennas, but a large American flag. The lack of substantial adverse visual impact is supported by the conclusion of the Maryland Historical Trust that the proposed facility would have no adverse effect on nearby historic properties. See Ex. 14.

In general, one of the characteristics of a rural neighborhood, be it agricultural or residential, is little or no artificial ambient light in the sky. At the subject property, however, the existing church is illuminated by floodlights until 11:00 p.m., and some of its exterior lights are on all night long. Thus, artificial ambient light is already a feature of the general neighborhood. One member of the Planning Board suggested that the Board of Appeals consider alternatives to all-night illumination of flagpole monopoles, such as lowering the flag in the evenings, because the lighting has the potential to disturb area residents. See Ex. 45 at 2. The undersigned finds that the evidence does not presently support a requirement to lower the flag to avoid lighting. However, in light of the general rural character of the neighborhood, the recommended conditions of approval include a condition authorizing future review and change to the practice of flying the flag at night if conditions warrant. The possibility of having the flag lowered every evening and raised again every morning was not discussed at the hearing.

For all of the above reasons and those outlined in the following sections, the Hearing Examiner concludes that with the conditions recommended at the close of this report, the proposed telecommunication facility would have no non-inherent adverse effects that warrant its denial.

B. Specific Standards

The specific standards for a telecommunication facility are found in §59-G-2.43. The provisions of the subsections therein and the findings with respect thereto are as follows:

- (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.

Conclusion: The undisputed evidence submitted by Sprint in the form of RF Engineering Coverage Maps and the testimony and statement of its RF Engineer indicates that the proposed facility, at the proposed height, is necessary to fill a coverage gap along Damascus Road in the vicinity of the subject property. The Tower Committee accepted Sprint's evidence as valid and recommended approval of the proposed facility as necessary for public convenience and service. This conclusion is supported by the evidence in this proceeding.

- (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.

Conclusion: The evidence supports the conclusion that the proposed telecommunication facility would be constructed and operated in compliance with all applicable safety standards, including the emission standards established by the FCC and the EPA, and therefore would not endanger the health and safety of workers and residents in the community or prove detrimental to neighboring properties. See Ex. 3 at 8. In particular, the flagpole would meet all applicable wind and ice load requirements, and would be designed to collapse upon itself in the unlikely event of a structural collapse. See *id.* The proposed facility may have a beneficial effect on public safety by providing

cellular phone users with an improved ability to report accidents, crimes or other emergencies. Moreover, the visual impact of the proposed flagpole and equipment compound would be mitigated by their location behind the church building, the proximity of the church steeple and existing utility wires, and both existing and proposed additional landscaping.

- (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, whenever deemed necessary by the Board.

Conclusion: The proposed telecommunication facility does not appear to constitute a “public utility building.” Nonetheless, the Petitioner has proposed adequate fencing and landscaping of the equipment compound and has reduced the monopole’s visual impact by disguising it as a flagpole.

- (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.

Conclusion: The proposed tower would exceed the 50-foot height limit of the RDT Zone. However, the evidence indicates that adjacent residential uses would not be adversely affected to any substantial degree, and certainly not more so than they would be by any other telecommunication facility at the same location.

- (d) Any proposed broadcasting tower shall 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, shall be exempt from the setback limitations imposed by this subsection

Conclusion: The facility proposed in this case is not a broadcasting tower. As outlined further under part (j) below, the proposed telecommunication facility would satisfy applicable setback requirements.

- (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, and 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).

Conclusion: No finding necessary; the proposed use is a telecommunication facility.

- (f) Reserved
- (g) In addition to the authority granted under 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.

Conclusion: Recommended conditions are set forth below.

- (h) Petitions for special exception under this section may be filed on project basis.

Not applicable.

- (i) A petitioner under this section is considered an interested person for purposes of filing a request for a special exception if the petitioner states in writing under oath that a bona fide effort has been made to obtain a contractual interest in the subject property for a valid consideration without success, and that there is an intent to continue negotiations to obtain the required interest or in the alternative to file condemnation proceedings should the special exception be granted.

Not applicable.

- (j) Any telecommunication 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.

Conclusion: As shown on the Site Survey, Ex. 6(b), the flagpole proposed as a support structure in this case would be set back more than 100 feet from all property lines. At its closest point, the flagpole would be approximately 118 feet from the northeast property line.

- b. In commercial and industrial zones, a distance of one-half foot from [the] property line for every foot of height of the support structure from a property line separating the subject site from commercial or industrial zoned properties, and one foot for every foot of height of the support structure from residential or agricultural zoned properties.

Not applicable.

- c. The setback from a property line is measured from the base of the support structure to the perimeter property line.

No finding necessary.

- 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: No such reduction is requested in this case.

- (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.

Conclusion: As shown on the Site Survey, Ex. 6(b), the flagpole support structure proposed in this case would be set back approximately 305 feet from the nearest residence.

- b. In all other zones, one foot for every foot in height.

Not applicable.

- c. The setback is measured from the base of the support structure to the base of the nearest off-site dwelling.

No finding necessary.

- 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: No such reduction is requested in this case.

- (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 communications purposes. At the completion of construction and before the final inspection of the building permit, the applicant must submit documentation to the Department of Permitting Services as to the height and location of the support structure.

Conclusion: The support structure proposed in this case would be 100 feet in height.

- (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 support structure proposed in this case would be sited behind the church building, well set back from the street and the nearest residence, to minimize its visual impact. Sprint has proposed a “stealth” flagpole design, with the antennas hidden inside the pole, to make the structure less visually obtrusive. In addition, the equipment compound would be enclosed in a solid wood fence measuring six to eight feet in height. The compound fence would be partially screened from the south by the church building and one of the church’s storage sheds, and would be well screened from the west, north and east by proposed landscaping.

- (5) The property owner must be an applicant for the special exception for each support structure. A modification of a telecommunication 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 telecommunication carriers. The Board may approve a support structure holding less than 3 telecommunication 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 telecommunication 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 property owner, the Potomac Conference, is co-applicant for the special exception proposed here. The evidence establishes that both the proposed flagpole support structure and the equipment compound would accommodate up to three telecommunication carriers.

- (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: The Petitioners propose to illuminate the flag to be flown at the top of the support structure, but they do not propose any illumination on the antennas or the support structure itself. The light fixture illuminating the flag would be mounted on the ground near the base of the flagpole.

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

Conclusion: Sprint has agreed to comply with this provision.

- (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: The Petitioners' written Statement in Support, Exhibit 3, states that the Petitioners consent to this requirement, although the site engineer who testified at the hearing appeared to be unaware that the identification sign must be posted externally. This requirement is recommended as a condition of approval.

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

Conclusion: No outdoor storage of any kind is proposed.

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

Conclusion: The Petitioners consent to this requirement. See Ex. 3 at 15.

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

Conclusion: The Petitioners filed the required recommendation, Exhibit 21, dated November 6, 2002, roughly seven months before the instant petition was filed.

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

Conclusion: Both the County Telecommunication Transmission Facility Coordinating Group (the "Tower Committee") and the Planning Board have reviewed the proposed facility and recommended approval. The undisputed evidence submitted by Sprint during this proceeding, in the form of RF Engineering Coverage Maps and the testimony and statement of its RF Engineer, indicates that the proposed facility, at the proposed height, is necessary to fill a coverage gap along Damascus Road in the vicinity of the subject property.

C. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and the Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 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 telecommunication facility is a permitted use in the RDT 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 proposed use would comply with the standards and requirements set forth for the use in Code §59-G-2.43, as detailed in Part 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 evidence supports Technical Staff's conclusion that the proposed use would be consistent with the *Damascus Master Plan*, which is silent as to special exceptions.

- (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.

Conclusion: The proposed facility would have no effect on population density, a very low intensity and character of activity, and a negligible impact on traffic and parking. The only noticeable impact of the proposed use would be visual. One might legitimately ask whether a 100-foot monopole could ever be "in harmony" with the general character of a rural agricultural/residential area. As the term "harmony" is used in common parlance, the answer may be that it cannot be. Some degree of visual impact is inherent with any telecommunication facility because of the need to place antennas at a height substantially above grade. However, when the District Council enacted legislation permitting monopoles in the RDT Zone by special exception, it implicitly found that the inherent adverse effects of such facilities – including their visual impact – are acceptable in rural areas. Thus, the "harmony" finding required by the Zoning Ordinance must be construed to require a level of harmony consistent with the inherent adverse effects of a monopole.

In light of its "stealth" flagpole design, with antennas hidden inside the flagpole, the support structure would have less visual impact on the neighborhood than a traditional monopole with its array of visible antennas. Its visual impact would be further reduced by its location behind the church and its proximity to the church steeple and existing telephone poles and wires. Several community members protested that a 100-foot flagpole would "stick out like a sore thumb" and degrade the rural landscape. Some based their opinion on having viewed existing flagpole monopoles in the County. The Petitioners submitted photographic simulations and site drawings

showing how the proposed flagpole facility would appear, as well as detailed information about the location of the flagpole relative to the property lines, existing structures on the site, and nearby residences. The undersigned concluded in Part IV. A. above that the height of the proposed flagpole facility, and therefore the associated visual impact, are inherent characteristics of the use. The stealth flagpole design is a non-inherent characteristic, but acts to reduce rather than increase the facility's visual impact.

Having weighed the totality of the evidence concerning visual impact, the Hearing Examiner concludes, based on the preponderance of the evidence, that the proposed use would be sufficiently in harmony with the general character of the neighborhood to support approval.

- (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: Like the "harmony" finding under paragraph (4) above, the requirements of this paragraph (5) must be construed to take into account the inherent adverse effects associated with telecommunication facilities. The preponderance of the evidence supports the conclusion that the proposed use would not be meaningfully detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, and would have less impact on the neighborhood than a traditional monopole with an array of visible antennas. Moreover, enhanced ability to use cellular telephones would bring benefits to the neighborhood in terms of convenience and safety.

- (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: The evidence supports the conclusion that the proposed use would cause no objectionable noise, vibrations, fumes, odors, dust or physical activity at the subject site. The preponderance of the evidence indicates that the ground-mounted flag lighting would not cause objectionable illumination or glare. Nonetheless, the recommended conditions of approval include a

condition that authorizes later review of the impacts of that lighting and the imposition of a requirement for alternative procedures, such as lowering the flag at night, if conditions so warrant.

- (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: The general neighborhood of the subject property is a combination of rural residential and agricultural. The evidence supports the conclusion that the proposed use would not increase the number, intensity, or scope of special exception uses in the area sufficiently to affect the area adversely or alter its character. While Technical Staff did not comment on whether any similar uses exist in the area, Sprint notes that no approved special exceptions are shown on the Certified Zoning Map, Exhibit 16, which displays the area within 1,000 feet of the subject property.

- (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: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (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 evidence supports the conclusion that the subject property would continue to be served by adequate public facilities with the proposed use. The only utility the proposed facility would use is telephone service, and its effect on public roads would be negligible.

- (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 granting the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is

considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

Conclusion: Subdivision approval would not be required. The proposed use would generate far fewer than 50 vehicular trips during the weekday peak hours. Accordingly, the proposed use is not subject to Local Area Transportation Review requirements. Moreover, the subject property is located in a rural policy area where Policy Area Transportation Review requirements do not apply.

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

Conclusion: The preponderance of the evidence supports a conclusion that the proposed use would have no discernible effect on the safety of vehicular or pedestrian traffic.

- (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 record substantiates a finding that the Petitioner has met the burden of proof and persuasion.

V. RECOMMENDATIONS

Accordingly, based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-2582, which requests a special exception under the RDT Zone for a telecommunication facility, to be built in the form of a flagpole on the property of Damascus Grace Fellowship, a Seventh Day Adventist Church located at 8425 Damascus Road in Damascus, known as Parcel N173 on Tax Map GX12, be **granted** with the following conditions:

1. The Petitioner shall be bound by all of its testimony and exhibits of record, including the Site Survey, Exhibit 6(b), and the Landscape Plan, Exhibit 51(b), and by the testimony of its witnesses and representations of counsel identified in this report.
2. The support structure for the telecommunication facility must be removed at the cost of the owner of the telecommunication facility when the facility is no longer in use by any telecommunications carrier for more than 12 months.
3. The flagpole must follow approved federal regulations governing the flying of the United States flag.
4. The telecommunication facility must display a contact information sign, no larger than two square feet, affixed to the support structure or to the outside of the equipment compound. This sign must identify the owner and the maintenance service provide of the support structure 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.
5. Each owner of the telecommunication facility is responsible for maintaining the facility in a safe condition.
6. The Board may, after a duly advertised and conducted hearing convened at its own initiative or at the request of any interested party, prohibit the flag from being flown at night on the flagpole support structure upon a finding that the non-inherent adverse effect of nighttime illumination of the flag will be detrimental per any subsection of Section 59-G-1.21.⁴

Dated: March 18, 2004

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner

⁴ This condition is recommended pursuant to Code §59-G-1.22, which authorizes the Board to supplement the specific requirements of Article 59 with “any other requirements necessary to protect nearby properties and the general neighborhood.”