

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
W/S Falls Road (MD Rt. 25), 1,019' S of		
Brick Store Road	*	ZONING COMMISSIONER
(18132 Falls Road)		
5 th Election District	*	OF
3 rd Council District		
	*	BALTIMORE COUNTY
Marion A. Martin, et ux, <i>Legal Owners</i>		
Cellco Partnership d/b/a Verizon Wireless,	*	
<i>Lessee</i>		
Petitioners	*	Case No. 2010-0284-X

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by Petitioner, Cellco Partnership d/b/a Verizon Wireless (Verizon), through its real estate manager, Brian Stover, and its attorneys David H. Karceski, Esquire and Arnold Jablon, Esquire with Venable LLP. The Petition was also signed by Marion A. and Janet L. Martin, property owners. Petitioners, pursuant to Sections 1A01.2.C.28, 426 and 502 of the Baltimore County Zoning Regulations (B.C.Z.R.), request a special exception to permit a wireless telecommunications tower with a height of 160 feet and related facilities to be erected on a portion of the subject property, which is zoned R.C.2 in its entirety. The subject special exception area and requested relief are more particularly described on the two-paged redlined site plan and elevation drawings submitted which were accepted into evidence and marked as Petitioners' Exhibit 1A through 1B.

Appearing at the requisite public hearing in support of the request were the following individuals: Jose Espino, a Verizon Wireless Radio Frequency (RF) Engineer; Michael McGarity, Director of Wireless Services for Daft McCune Walker Inc. (DMW), the engineering firm responsible for preparation of the site plan for this property; Mitchell Kellman, Director of

Zoning Services for DMW; Charles Ryan with SCE Engineering, tower development consultants for Verizon Wireless; and Jason Los, an environmental scientist with EBI Consulting. It is further noted that four (4) letters were received in support of the petition. Petitioners submitted a letter of support signed by Hazel Smith, trustee for the immediate property to the north of the site (18210 Falls Road), a letter signed by Douglas Brown, owner of 18222 Falls Road located adjacent to and north of 18210 Falls Road, a letter signed by Douglas and Terry Martin, owners of 18130 Falls Road located adjacent to and between the subject site and Falls Road, and a letter signed by Marion and Janet Martin, who own not only the subject property but two (2) additional properties, one of which is located adjacent to and between the subject site (18200 Falls Road) and Falls Road and another located adjacent to and west of the site. The Smith, Brown and Douglas and Terry Martin properties and one of the Marion and Janet Martin properties are improved with single-family residential dwellings all in close proximity to the proposed tower.

The requested approval for the tower was contested by James and Barbara Hairfield, owners of 19408 Grave Run Road located approximately 4 miles north of the site. No other interested neighbors attended the public hearing. Additionally, Teresa Moore with The Valleys Planning Council (VPC) attended and participated at the hearing but did not testify because the VPC had not given authority for her to do so.

INTRODUCTION

The proposed project consists of a request to construct a 160-foot tall unlighted wireless telecommunications facility with a “stealth” monopine tree design, featuring branch extensions. The proposal also includes a fenced equipment compound. The facility is proposed to be constructed on a 12.65 acre parcel located west of and adjacent to Falls Road and north of Gunpowder Road in northern Baltimore County. The site is bordered on one side by a scenic

route so designated by the 2010 Master Plan, which is Falls Road. Specifically, the monopine is proposed to be located interiorly approximately 653 feet west of Md. Rt. 25 (Falls Road).

The majority of the subject property is undeveloped woodlands. *See* Petitioners' Exhibit 6 (Aerial Photograph prepared by DMW). The Martins also operate a Christmas tree farm on the property and use certain 1-story structures to support this operation, labeled "EX. 1 STORY SHED," "EX. 1 STORY GARAGE" and "EX. 1 STORY SHOP" on Petitioners' Exhibit 1A. There is a significant rise in grade from Falls Road on the subject property's side of Falls Road followed by an equal drop in grade to the location proposed for the monopine. A review of County aerial photograph / zoning maps (Petitioners' Exhibits 5A-5B) and Petitioners' Exhibit 6 indicates that the proposed tower will be located in an already cleared area on the property that is encapsulated by the site's existing mature trees. The tower would be accessed by an existing drive, labeled "EX. GRAVEL DRIVE," now used to reach the on-site shed, garage and shop structures. This access drive will connect the tower location to Falls Road utilizing an existing point of ingress/egress onto Falls Road. Verizon seeks to improve network coverage for its cellular services, due to customer complaints, dropped calls, and company studies and data confirming that Verizon's services are unreliable in this area. *See* Petitioners' Exhibits 9 and 15. The County's Tower Review Committee (TRC) confirmed the need for service. *See* Petitioners' Exhibit 10 (TRC's Recommendation).

THE PROPERTY AND PROPOSAL

This public hearing proceeded by way of a combination of testimony by Petitioners expert witnesses, which is outlined below, and a proffer by Petitioners counsel. Petitioners presented a redlined site plan (Petitioners' Exhibit 1) at the public hearing for the sole purpose of reducing the area of the special exception under consideration from 5.0 acres to 0.5 acres of the

overall 12.65 acre tract of land owned by the Martins. The Martin property is subject to an agricultural preservation easement, which reserves the identical 0.5 acre area for development of a tower in the same configuration and location shown on the redlined site plan. *See* Petitioners' Exhibit 3. This reduction in size was made at the request of Wally Lippincott Jr. for the Department of Environmental Protection and Resource Management (DEPRM), for the purpose of ensuring that the tower and related improvements are confined to the 0.5 acre area identified by the easement. The B.C.Z.R. and, more specifically, the Wireless Telecommunications Facilities Regulations contained in Section 426 do not include a requirement that the special exception area surrounding a tower be of a certain minimum size. A minimum lot size of 5.0 acres is required but nothing more. Therefore, the reduction in the special exception area to 0.5 acres, as requested by DEPRM, is entirely consistent with the B.C.Z.R and requires no zoning relief to be granted by this Commission.

The property, as illustrated on Petitioners' Exhibits 1 and 6, is irregular in shape and located on the west side of Falls Road and north of Gunpowder Road. The base of the tower within the equipment compound will be, as noted above, positioned 653 feet west of Falls Road at a ground level of between 680 and 684 feet, which is approximately 22 feet below the highest point of elevation that exists between the proposed tower location and Falls Road. The monopine will feature platform-mounted antennas for Petitioners at an antenna centerline of 150 feet, and Petitioners' Exhibit 1B shows that the tower will also be able to accommodate at least three (3) other cellular providers who may desire to locate on the tower at antenna locations of approximately 120, 130, and 140 feet.

The undersigned is generally familiar with the operations of Verizon Wireless and other wireless communications providers by virtue of the many cases that have come before me under

similar requests. Suffice it to say, wireless telecommunications technology has exploded on the public scene and consciousness. Nearly everyone has mobile phone services to provide communications and provide access to online data bases and Internet applications. Many phones are now equipped with complex broadband micro processors capable of all types of applications and functions, not just sending and receiving text messages, e-mails, etc. This communications system would not be possible without the installation of a series of towers throughout the geographic area to be served.

Through the testimony of its RF engineer Jose Espino, Verizon explained that a “hole” exists in its communication network in northern Baltimore County, which expert testimony was not disputed. *See* Petitioners’ Exhibit 15 (Propagation Maps). Studies and investigations were undertaken to determine where a tower could be located for the placement of the company’s antennas to fill this “hole” and to provide seamless service in the area. As explained by Mr. Espino and Charles Ryan, Petitioners tower development consultant, Verizon conducted a thorough search within the area of need, according to the requirements of B.C.Z.R. Section 426, and chose the subject location. Mr. Espino testified in his expert opinion that this location fills the outstanding “hole,” and he also testified that he did consider the site’s physical characteristics, which make it the preferred location for a tower in this area of the County. From Verizon’s perspective, this site was advantageous, not only in terms of its location within the area of need, but also because of on-site grade changes and site coverage by mature vegetation. It is these and other existing site features, including the depth of the property from Falls Road, the percentage of the site in mature tree cover, the ability to use an existing cleared area encapsulated by this tree cover, and the ability to use an existing point of ingress/egress onto Falls Road and an existing access drive to the tower location, which will allow for the monopine

to be constructed without having a detrimental impact on the surrounding locale that might result from a tower at another location along Falls Road. Mr. Espino closed his testimony by providing his expert opinion that the monopine's proposed height of 160 feet is the minimum height necessary to fill the "hole" in Verizon's communications network.

Mr. Ryan testified that, in accordance with B.C.Z.R. Section 426.2.A and 2.B, the proposed monopine would be constructed to accommodate a total of at least three (3) providers, that no available medium or high-intensity commercial zoning exists in the area for placement of the tower, and that no existing structures or towers exist in the area that would allow Petitioners to fill the "hole" that now exists in its communication network. Mr. Ryan further testified regarding Petitioners decision to use stealth technology to reduce any visual impacts from the tower on adjoining properties and from Falls Road. First, he explained that the tower and equipment compound were sited to take advantage of the site's natural screening by positioning them behind and within a mature forest and the on-site ridge line. As indicated earlier by Mr. Espino, the tower itself has been kept to the minimum height necessary to provide seamless coverage and signal strength for both emergency and non-emergency communications as part of its wireless network in Baltimore County, and, as required, by Verizon's Federal Communication Commission (FCC) license. The tower, itself, is proposed to be 160 feet in height. *See* Petitioners' Exhibit 1B.

To confirm the efforts taken by Verizon to disguise the tower and reduce its visual impact, Mr. Ryan submitted into evidence as Petitioners' Exhibit 8, balloon test photographs and photographic simulations of the tower taken from various points near or along Falls Road and at the intersection of Falls Road with Gunpowder Road and Falls Road with Brick Store Road. This survey indicated a minimal visual impact, and it was Mr. Ryan's opinion that the monopine

was very well sited on a portion of the property covered by mature trees and would not have any detrimental effect on the health, safety or general welfare of the surrounding area.

In further support of the proposal, Verizon next called Mitchell Kellman, Petitioners zoning specialist. Mr. Kellman, like Mr. Ryan before him, submitted his resume (Petitioners' Exhibit 11) and discussed his familiarity with the project and personal knowledge of the site from prior visits. As Mr. Ryan did, Mr. Kellman reviewed the character of the surrounding land uses, including agricultural operations and scattered single-family residential dwellings, the tower's distance to Falls Road, and the changes in elevation from the base of the tower site to the edge of paving of Falls Road.

As Mr. Kellman explained, the closest adjacent residential property to the subject site is 216 feet to the east, which is in excess of the 200-foot setback requirement for a tower from any other residential property line. It is for this reason and by virtue of this proposal meeting all other applicable setback regulations of the B.C.Z.R. that Petitioners are able to propose a variance-free site plan for this Commission's consideration.

Next, Mr. Kellman examined the proposal in the context of B.C.Z.R. Sections 1A01.2.C, 426, 502.1 and 502.7, the various sections of the Zoning Regulations that govern the approval and construction of wireless communications facilities. In summary, Mr. Kellman testified that the tower and associated equipment compound will not have a negative impact on the primary agricultural uses in the vicinity, a required finding for this special exception use in the R.C.2 zone. He then testified that, with respect to each required finding under Section 502.1, the proposed special exception use, at this particular location, will not result in any of the adverse impacts listed and that at this location, particularly given its location within existing mature trees, the existing topography between the tower location and Falls Road, and use of an existing access

drive through the mature trees and the percentage of on-site tree cover, the monopine would actually be less impactful than at other locations elsewhere in the zone and, more specifically, other locations on either side of Falls Road in the vicinity of the subject property.

With regard to the requirement of B.C.Z.R. Section 502.7.B, that the proposed tower not interfere with or be detrimental to the scenic viewshed elements if located within a scenic viewshed, Mr. Kellman confirmed that although Falls Road is a scenic route, he was not able to determine from Map 37 of the *Master Plan 2010* (Petitioners' Exhibit 13), the Baltimore County Code (Petitioners' Exhibit 12), or the Comprehensive Manual of Development Policies (C.M.D.P.) that the tower would, in fact, impact any documented scenic viewshed "elements." However, with the efforts made by Verizon in locating the tower and its use of stealth technology, Mr. Kellman indicated that, in his professional opinion, Petitioners had nevertheless complied with the spirit, intent, and legislative purpose as set out in the relevant B.C.Z.R. sections and that there would be no impact on the County's scenic resources. As further support, the Office of Planning submitted a Zoning Advisory Committee (ZAC) comment to this Commission making a similar finding that the proposed monopine will not impact Falls Road as a scenic route. Additionally, the County's TRC made a recommendation to the Department of Permits and Development Management (DPDM) that the monopine at the location proposed will minimize its visual impact from surrounding residential zones.

The Hairfields testified in opposition to the requested relief although they did not question Petitioners testimony and evidence that a tower at the proposed location is necessary to fill the gap in coverage that exists in this area of the County. The focus of their testimony was a concern that driver's increased use of cellular telephones on the roads in the vicinity of the property would result in an increase in traffic accidents. Additionally, the Hairfields were

concerned that the monopine would negatively impact the view of traffic traveling on Falls Road.

OPINION

After having considered all of the testimony and numerous exhibits received in this case, I find that Verizon has met its burden of proof with regard to all applicable requirements of the B.C.Z.R., including those contained in Sections 1A01.2.C, 426, 502.1, and 502.7 as well as satisfying this Commission that the proposed monopine cell tower will not be detrimental to Falls Road as a scenic route or the scenic viewshed, pursuant to the C.M.D.P.

In order for me to approve the proposed wireless telecommunications tower, I must first find that Verizon has demonstrated compliance with B.C.Z.R. Section 1A01.2.C, which requires a finding that the proposed special exception use would not be detrimental to the primary agricultural uses in the vicinity. Given the limited footprint (0.5 acres) that the tower and related ground-based equipment will occupy as shown on Petitioners' Exhibit 1, which is consistent with the agricultural preservation easement, the placement of the facility within an existing cleared area encapsulated by mature tree cover, and the fact that the tower is unmanned and will, therefore, not impede any farming activities in the area, I easily find that the tower will have no negative impact on the primary agricultural uses in the vicinity.

Moving to the specific required findings under B.C.Z.R. Section 426, for a new tower, Verizon is required to demonstrate that it has made a diligent attempt to locate antennas on an existing tower or structure or, if not possible, why the new tower is warranted. Verizon must also demonstrate that the tower will be constructed to accommodate at least two (2) other providers in addition to Petitioner and, in doing so, that it kept the height of the tower to the minimum height required. Based on the evidence and testimony presented before me by Mr.

Ryan and Mr. Espino, I find that Verizon has demonstrated that the new tower is warranted and that it will accommodate three (3) other providers in addition to the Petitioners location on the tower, at the lowest height possible. It is important to note that the TRC also made a recommendation to DPDM confirming that Verizon's proposed monopine at a height of 160 feet satisfies all of the requirements of B.C.Z.R. Section 426.2. *See* Petitioners' Exhibit 10.

Because R.C. zones are considered "residential" zones, Verizon must also demonstrate that no medium or high intensity commercially-zoned sites were available or that locating the tower at the proposed location is more consistent with legislative policy due to topographical or other unique features. Based on the testimony of Mr. Ryan and Mr. Espino, I find that an appropriate search was conducted and that there are no commercial sites on which the proposed monopine could be located. Verizon's proposed special exception area of 0.5 acres is also permissible under the B.C.Z.R. and, taking into account the existence of the agricultural preservation easement and DEPRM's request that the special exception area be restricted to that size, the proposed special exception area is appropriate.

Next, Verizon must demonstrate that the general requirements of B.C.Z.R. Section 502.1 for all special exceptions have been met by the proposal. Having considered the expert testimony and opinions of Mr. Ryan and Mr. Kellman on this issue, I find that the proposed monopine does, in fact, meet all of the requirements of Section 502.1. The proposed cell tower and related equipment will have little or no impact on any of the conditions outlined in Section 502.1. It is to be expected that special exception uses may result in some impact on surrounding properties. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54 (2008); *Schultz v. Pritts*, 291 Md. 1 (1981). However, an administrative agency may only deny such a use:

“where there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.”

Loyola, 406 Md. at 102 (quoting *Schultz*, 291 Md. at 22-23). Further, the Court of Appeals in *Loyola* recently confirmed that the analysis of an individual case must be focused on the particular locality or “neighborhood” around the proposed site. *Id.* at 101-102. I find no credible evidence that any such adverse impacts would result from the proposed tower and I also find that any potential aesthetic impacts have been minimized to the maximum extent possible and would, in fact, be greater if the tower were located at other locations in the neighborhood or locality. In fact, if the tower were located at other points along Falls Road that do not benefit from the amount of tree cover on the subject property or the site’s grade changes, the impact would be worse aesthetically, than the proposed location. *See* Petitioners’ Exhibit 5.

Lastly, Verizon must demonstrate that the “proposed tower will not interfere with or be detrimental to the scenic viewshed elements.” B.C.Z.R. Section 502.7.B.1. Section 502.7.B.2 requires that such determination be made by comparing the “elements” to the proposed tower location and, thus, determining whether “the proposed tower blocks any scenic viewshed elements or is not visually in harmony with any scenic viewshed elements when the elements and the tower can be seen simultaneously.” Verizon argues that such a comparison cannot be made without the Baltimore County Planning Board first identifying the particular “visual elements of a scenic viewshed which are of a quality, character, rarity and nature to cause a viewshed to be designated in the Baltimore County Master Plan by the Baltimore County Planning Board.” B.C.Z.R. Section 426.1, Scenic Viewshed, Subsection A. It would appear, based on the testimony and evidence presented before me, that the Planning Board did not, in fact, identify or catalogue any such elements from which a comparison can now be made. As

Verizon contends, without such identification, there is no evidence, much less “substantial evidence,” upon which I can determine that the proposed tower would interfere with or be detrimental to the scenic viewshed elements.

Even without such elements having been identified, Mr. Kellman’s knowledgeable opinion was that the location proposed for the monopine, taking into account its distance from Falls Road, the topography and on-site grade changes in combination with significant, on-site mature tree cover between the tower and the roadway, and the implementation of stealth technology, minimized or eliminated any resulting impact on the scenic viewshed. In support of this opinion, Verizon submitted photo simulations, designed to give an indication of the ultimate appearance of the tower from surrounding roadways and properties. *See* Petitioners’ Exhibit 8. While these photo simulations are not exact, they give a general idea of just how visible the tower will be when constructed. Without delving too deeply into the legitimacy of the scenic viewshed elements argument, it is my opinion, based on the totality of the evidence and testimony presented, that the proposed tower will not interfere with or be a detriment to the scenic viewshed.

CONCLUSION

Based on the testimony and evidence presented, I am inclined to grant the special exception for a wireless communications tower on this property. However, in granting the requested relief, I will exercise the authority granted to this Commission, both by B.C.Z.R. Section 426.9.C.3 and Section 502.2, and impose a condition on the approval of the special exception. Specifically, Section 426.9.C.3 provides me the ability to require “...that the tower be disguised as a structure or natural formation, such as a flagpole, steeple or tree, which is found, or likely to be found, in the area of the tower unless the Commissioner finds that the

requirement is not reasonable or advisable for the protection of properties surrounding the tower.” I will require that the proposed tower be in the form of a monopine tree.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 12th day of July 2010 that the Petition for Special Exception to approve a wireless telecommunications tower and related facilities, on the subject property, zoned R.C.2, pursuant to Sections 1A01.2.C.28, 426, and 502 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioners’ Exhibit 1A-1B, be and is hereby GRANTED, subject to the following conditions:

1. The height of the proposed telecommunications tower shall not exceed 160 feet and must be disguised and maintained from time-to-time to insure harmony with the viewshed.
2. Petitioners may apply for any required permits and be granted same upon receipt of this Order; however, the Petitioners are made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return and be responsible for returning, said property to its original condition.

Any appeal of this decision must be taken in accordance with Section 32-3-401 of the Baltimore County Code.

WJW:dlw

SIGNED
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County