

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
W side of Wesley Chapel Road; 90 feet	*	DEPUTY ZONING
N of the c/l of Shepperd Road		
10 th Election District	*	COMMISSIONER
3 rd Councilmanic District		
(16620 Wesley Chapel Road)	*	FOR BALTIMORE COUNTY
William and Grace Harris	*	
<i>Legal Owners</i>		
New Cingular Wireless PCS, LLC		
<i>Contract Lessee</i>	*	Case No. 2010-0225-X

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by William and Grace Harris, legal owners of the subject property, and New Cingular Wireless PCS, LLC (d/b/a AT&T Mobility, LLC), the contract lessee of a portion of the property (collectively referred to as “Petitioners” or where appropriate “AT&T”). Petitioners are requesting a Special Exception pursuant to Section 426.5.D of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve the construction of a new 123 foot high telecommunications monopole with a 50 foot by 50 foot wooden fenced compound on a portion of the Harris Property located at 16620 Wesley Chapel Road. The subject property and requested relief are more fully described on the seven page zoning drawings that were marked and accepted into evidence, respectively, as Petitioner’s Exhibits 2A through 2G.

Appearing at the requisite public hearing in support of the requested special exception use were the property owners, William and Grace Harris. Also appearing were Bryan Cline, Steven Kinly and Jordan Cohen with ACO Property Advisors, Linda Liebermann with Bechtel Corporation, and Shashikanth Sena, a Radio Frequency (“RF”) Engineer with LCC International,

Inc. -- all consultants for New Cingular Wireless PCS, LLC. Appearing as counsel for Petitioners was Gregory Rapisarda, Esquire. Also appearing in support of the requested relief was David Richardson, an architect with BC Architects Engineers, PLC, the firm that prepared the zoning drawings. The nature of the case and the relief requested generated significant interest in the community and several citizens from the Monkton area attended the hearing. Eric vanden Beemt of 16616 Remare Road, just west of the subject site, appeared in support of the requested special exception use. Appearing in opposition were Therese DeGraw of 16844 Wesley Chapel Road, Wendy Pace of 16825 Wesley Chapel Road, and Peter Oetker of 16803 Wesley Chapel Road. The Sparks-Glencoe Community Planning Council also submitted a letter detailing its position with regard to the request, which will be expounded on later in this Order.

Testimony and evidence presented revealed that the subject property is irregular in shape and is comprised of three parcels located northwest of the intersection of Shepperd Road and Wesley Chapel Road in the Historic Monkton area of northern Baltimore County. Parcel 9, located at the northern end of the property, is the largest parcel at approximately 24.83 acres, and contains most of the property's improvements, including Petitioners' driveway leading from Wesley Chapel Road, their existing two-story dwelling, and accessory structures. Parcel 1, located at the southeast corner of the property, consists of approximately 10.23 acres and appears to be unimproved. Parcel 35, located at the southern portion of the property, is the subject of the instant request for special exception use and consists of approximately 10.50 acres, for a total of 45.56 acres. The property as a whole is zoned R.C.2.

As indicated in the Deed and property tax records that were collectively marked and accepted into evidence as Petitioners' Exhibit 3, Petitioners have owned the subject property

since 1985. The principle dwelling on Parcel 9 was built in 1852.¹ In his opening remarks, Mr. Rapisarda indicated that AT&T's federal license requires it to provide coverage for wireless services in and around Baltimore County. As shown in the Radio Frequency ("RF") Propagation Map of existing coverage that was marked and accepted into evidence as Petitioners' Exhibit 4, AT&T identified a coverage gap in the Monkton area (as delineated in white on the Map) and is mandated by their licensing requirements to rectify this deficiency. According to Mr. Rapisarda, after a thorough review of the area, the subject site was identified as the most suitable location, taking into account coverage needs, the possibility for co-location opportunities, and the potential impact of a proposed telecommunications tower on this historic area.

In support of the requested special exception use at the subject site, Mr. Rapisarda called as his first witness Bryan C. Cline. Mr. Cline is employed as a Site Acquisition and Zoning Manager for ACO Property Advisors, consultants to AT&T. His resume was marked and accepted into evidence as Petitioners' Exhibit 1. As his resume indicates, he has been a telecommunications infrastructure design specialist since 2006, with specialty in site acquisition, government compliance, and site development. He was offered and accepted as an expert in telecommunications facility project management and siting for wireless communications networks.

As shown on the RF Propagation Map of existing coverage (Petitioners' Exhibit 4), AT&T has a coverage gap in the Monkton area. Specifically, Mr. Cline stated his office received a Site Acquisition Request Form in 2006, outlining the need to improve the coverage along Monkton Road and other local roads in the Monkton area. As a result, he

¹ According to the Zoning Advisory Committee ("ZAC") comment from the Office of Planning dated April 20, 2010, the property is known as "Valley Brook Farm," Final Landmark #91 and is listed on the Maryland Inventory of Historic Properties, MHIP #BA-620.

undertook an investigation into potential suitable sites that would alleviate the coverage gap. Mr. Cline testified that AT&T's standard business practice for site identification and acquisition is consistent with the County's legislative policies -- namely, to co-locate antennas on an existing structure whenever possible. This approach fits within the spirit and intent of the Zoning Regulations and is generally easier and more cost effective than acquiring and developing a new site. Mr. Cline explained that the only existing structure within the search area that was potentially viable was the 45 foot tall steeple on the Monkton United Methodist Church at 1930 Monkton Road; however, this was ruled out by AT&T's RF Engineers due to the ground elevation and the steeple's height. With no other co-location opportunities present, a search was then made of potential large commercial properties in the area to develop a new tower. There was only one commercial property (zoned B.L.-C.R.) identified, as shown on the aerial photograph that was marked and accepted into evidence as Petitioners' Exhibit 6, but this was ruled out due to space limitations. Next, a search was made of any large agricultural or residential properties. Several possible sites were identified based on their location in the coverage ring, their size, and the potential for natural screening. The Harris's were contacted and their property information was submitted to the RF Engineers for evaluation as a viable site. When a match was found and the Harris's expressed an interest, AT&T pursued this site for a new telecommunications tower.

Moving forward in the process, Mr. Cline indicated that AT&T submitted its application for a new tower at the subject location to the Baltimore County Tower Review Committee ("TRC") on September 30, 2009. Following their review of the application, the TRC issued an advisory report dated December 17, 2009. In their report, the TRC found there were no other co-location opportunities in the area, the proposed monopole tower would have availability for a

minimum of two other wireless service providers, and recommended conditional approval of the 125 foot tower at the subject site, pending a visibility study that would show the potential impact of the tower and the ability of AT&T to minimize the tower's visibility.

Thereafter, a visibility "balloon test" was conducted on December 14, 2009 by ACER Associates, LLC ("ACER"), AT&T's telecommunications consultant, and a Visual Impact Assessment Report dated January 14, 2010 was prepared. The report, which was marked and accepted into evidence as Petitioners' Exhibit 8, described the project overview and the area of potential effects associated with the project -- particularly the My Lady's Manor Historic District -- as well as the physical setting of the subject property, which was described as a wooded area with gentle to moderate slopes. The balloon test consisted of a six foot diameter red balloon that was raised to 123 feet above ground level with a guyed line to keep the balloon in place. Observations made in the field confirmed that the proposed monopole would not be visible from any of the 17 contributing historic structures within My Lady's Historic District. These findings were documented in photographs that were attached to the report as an Appendix. ACER also submitted a federally mandated NEPA Survey dated February 17, 2010 that was marked and accepted into evidence as Petitioners' Exhibit 9, which found there would be no adverse effects from the proposed tower.²

² The National Environmental Policy Act of 1969 ("NEPA") requires all federal agencies to implement procedures to make environmental considerations a necessary part of an agency's decision making process. In this case, the Federal Communications Commission ("FCC") requires a licensee, AT&T, to consider the environmental impact of a new telecommunications facility. The level of impacts from a proposed tower dictates the level of reporting that would be required. The initial analysis was conducted under Section 106 of the National Historic Preservation Act ("NHPA"). A Section 106 review requires notice to and communication with federal, state, and tribal officials about the proposed tower and its potential impact on nearby properties listed in or eligible for inclusion in the National Register of Historic Places. If after consultation with these agencies, a finding of "no adverse effects" is found, then there are no additional requirements on AT&T. In the event "adverse effects" are found, AT&T would have additional statutory, regulatory and reporting requirements. In this case, there was a finding of "no adverse effects," meaning the NEPA Survey entered into evidence is the final report required under NEPA and NHPA.

Also referenced during Mr. Cline's testimony was a Phase 1 Environmental Site Assessment dated October 8, 2009 that was marked and accepted into evidence as Petitioners' Exhibit 10. This report, also prepared by ACER, appears to be a comprehensive study intended to identify recognized environmental conditions at the subject site that might affect the proposed telecommunications facility. The assessment concludes there was no evidence of potential environmental conditions in connection with the proposed tower compound location and access easement that would affect the proposed activities at the site.³

Next to testify was Shashikanth Sena, a Radio Frequency Engineer with LCC International, Inc., AT&T's radio frequency and wireless coverage consultant. Mr. Sena's resume was marked and accepted into evidence as Petitioners' Exhibit 14 and indicates that he earned a Bachelor's Degree in Engineering from the University of Madras in Chennai, India in 2000. He also earned a Master's Degree in Electrical Engineering from the University of Texas at Arlington. Mr. Sena has extensive experience in the wireless telecommunications industry, and specifically radio frequency engineering as it pertains to wireless network design, management, and coverage. He was offered and accepted as an expert in the radio frequency field.

Mr. Sena described the deficient coverage in the Monkton area and how, using specifically designed software, AT&T's engineers created a "search ring" that identified a finite area where AT&T could place antennas to rectify the coverage gap. He testified that the area

³ The Phase 1 Environmental Site Assessment was conducted pursuant to federal requirements within the scope of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"). The Phase 1 focuses on the actual archeological and environmental condition of the land at the proposed site, specifically, whether there are any hazardous materials or archaeological artifacts in the specific area that is to be used for AT&T's project (i.e. - the compound, the access easement, and surrounding vicinity). As shown in Section 8.0 of the assessment, the Phase 1 revealed no evidence of potential environmental conditions that would affect the proposed activities. Consequently, there are no additional studies or assessments required. In the event that either environmental or archeological conditions had been identified, AT&T would have been required to conduct a Phase 2 or even Phase 3 Assessment, each of which has its own requirements and guidelines.

within the search ring is unique because it contains the limited number of properties from which AT&T's antennas could be situated to meet optimum coverage objectives. Mr. Sena also created the Radio Frequency Propagation Map illustrating AT&T's lack of coverage around the area of the subject property (Petitioners' Exhibit 4), and combined with his expert testimony, detailed AT&T's need for coverage in the area.⁴ He also prepared two additional Propagation Maps that detailed anticipated wireless coverage with the proposed monopole tower. The first Map, which was marked and accepted into evidence as Petitioners' Exhibit 15, illustrates the breadth of AT&T's coverage with a 115 foot tower on the subject site. It shows much more extensive coverage than the Propagation Map of existing coverage (Petitioners' Exhibit 4). The second Map, which was marked and accepted into evidence as Petitioners' Exhibit 17, illustrates coverage with a 95 foot tower. According to Mr. Sena's testimony, it shows that a tower of this height would not meet AT&T's coverage objectives.

This was further bolstered by the Drive Test Report dated August 5, 2009 prepared by AT&T's consultant, Bechtel Communications, Inc., which was marked and accepted into evidence as Petitioners' Exhibit 16. As explained by Mr. Sena and Petitioners' counsel, Mr. Rapisarda, a drive test identifies real coverage and coverage gaps that can be obtained by antennas at various heights, and is different from the RF Propagation Maps, which use reliable computer models to predict coverage based on various factors that are built into the modeling program (i.e. - topography, buildings, etc.). AT&T believes the Maps are very reliable, and is the typical tool used to identify coverage gaps and predict coverage from new antennas at

⁴ Several of the Protestants disputed this contention, stating that their wireless service on other carriers such as Verizon is sufficient, or that persons who choose to live and travel in this area should "know what to expect" in terms of possible dropped calls or inconsistent service; however, AT&T emphasized that it is required by the Federal Communications Commission to ensure that its network is adequate to serve its customers and meet its licensing requirements.

various heights and locations; however, the drive tests contain real time data that come from actual antennas. As shown in the photographs on pages 6 and 16-20 of the report, a drive test is conducted by attaching antennas to a crane that is raised to various heights. In this case, the antennas were raised to heights of 95 feet, 115 feet, 125 feet, and 145 feet at the appropriate and necessary angles (known as “azimuths”). Once the antennas are attached and raised, the RF Engineer uses equipment in his car that reads the antenna’s actual signal strength as he literally drives the surrounding area. The equipment in the RF Engineer's vehicle registers the signal strength throughout the drive and shows the various fluctuations due to topography, distance, etc. The signal strength is shown on pages 8-14 of the report and the colored dots indicate the exact signal strength at each point along the RF Engineer's route. The drive test, because it is real time data, provides an exact picture of the coverage that AT&T can achieve at various height levels.

The results indicate that at a 95 foot test height, there was not sufficient signal quality, but as the height increased, the signal was improved. The signal was of good quality at 115 feet and even better at 125 feet and 145 feet, but Mr. Sena testified that the coverage needs could be adequately addressed at 115 feet, especially when weighed against the visual impact of a taller tower and AT&T’s determination that a 115 foot tower would allow it to meet its minimum coverage objective without impacting the surrounding area. In concluding his testimony, Mr. Sena offered his expert opinion that a tower with a height of 123 feet (118 foot tower to provide room for two additional carriers and 5 feet for a lightning rod) was the minimum height where AT&T could meet its federally mandated coverage objectives.

The final witness to testify in support of the requested special exception use was David Richardson, a registered architect with BC Architects Engineers, PLC. Mr. Richardson indicated that he has 28 years of architectural experience, including land planning and site design, and has

worked with and under the supervision of a professional engineer. For the last seven years, his experience has been in the area of architectural and civil design and project management of wireless telecommunications projects in the mid-Atlantic region. He was offered and accepted as an expert in this field, and his resume was marked and accepted into evidence as Petitioners' Exhibit 18.

Mr. Richardson indicated he is familiar with the B.C.Z.R., particularly Sections 426 and 502.7 concerning wireless telecommunications towers, and the special exception criteria set forth in Section 502.1 of the B.C.Z.R. He offered his expert testimony that the proposed telecommunications tower and equipment compound would comply with all of the provisions and limitations, including location and height restrictions and setback requirements, set forth in Section 426 of the B.C.Z.R., and particularly the legislative policy provisions set forth in Section 426.2. He also opined that the proposed telecommunications facility on the subject property would not be detrimental to the health, safety or general welfare of the locality, nor would it have any detrimental effects on the enumerated special exception criteria set forth in Section 502.1 of the B.C.Z.R. Specifically, the facility would not tend to create congestion in roads, streets or alleys, create a potential hazard from fire, panic or other danger, or tend to overcrowd land and cause undue concentration of population. The tower would be confined to a 50 foot by 50 foot area in the approximate center of the property, and in a wooded area scarcely visible from other properties. It would not interfere with public services or other public requirements, conveniences or improvements, would not interfere with adequate light and air, would not be inconsistent with the purposes of the property's zoning classification nor in any other way be inconsistent with the spirit and intent of the Zoning Regulations, and would not be inconsistent with the impermeable surface and vegetative retention provisions of the Zoning Regulations, nor

be detrimental to the environmental and natural resources of the site and vicinity. In sum, Mr. Richardson indicated that the telecommunications facility would have virtually no visibility and would be well screened by the existing treeline and the natural buffers inherent on a 45 acre wooded, rural property.

As indicated earlier, the case garnered interest from the community and several citizens living near the location of the proposed tower attended the hearing and provided testimony expressing their opposition to the proposed tower. Ms. DeGraw, Ms. Pace, and Mr. Oetker each reside on Wesley Chapel Road, just north of the subject Harris property. In summary, their testimony indicated that they are very concerned about the potential impact of the proposed tower on this historic and rural community. Each indicated that they purchased their respective properties in this area for the scenic views and natural beauty of the region and believes the introduction of a telecommunications tower would decay and chip away at the historic character of the area. They also believe their particular properties would be impacted because, notwithstanding the evidence submitted by Petitioners as to the lack of visibility of the tower, they feel that the tower will be seen quite clearly from their properties.

Perhaps most importantly, the Protestants also do not believe a compelling case has been made as to the need for the proposed tower. They testified that there is no anecdotal evidence from the community (i.e. - complaints of poor cell phone service) suggesting a coverage gap as alleged by AT&T. On the contrary, they indicated that their cell phone coverage -- at least with Verizon or other carriers -- is more than adequate. Moreover, even if there are occasions of "dropped calls" or variable service in the area, especially when in a car or outside versus inside a home, they believe this is an understood consequence of choosing to live in this historically preserved area. Obviously, Protestants are not against progress, per se, but believe the proposed

tower, without enough of a foundation established as to its need, is an unnecessary intrusion into the community and should not be permitted.

Testifying in support of the proposed telecommunications tower was another interested neighbor, Eric vanden Beemt, who lives on Remare Road just west of the subject property and north of Monkton Road. Mr. vanden Beemt explained that he was initially against the proposed cell tower for much the same reasons as the Protestants, particularly in terms of the intrusion into this historic area; however, he also related his frustrations with the lack of adequate cell phone service in the area. In short, once aware of the specifics regarding AT&T's plans and that the proposed tower on the Harris property would be virtually unseen from the surrounding area, he became a supporter of the plan. In addition, the Sparks-Glencoe Community Planning Council expressed that it had no opposition to the tower at the subject location in their letter dated April 20, 2010, which was marked and accepted into evidence as Petitioners' Exhibit 12. Kirsten Burger, President of the Planning Council, stated that cell towers in general can greatly detract from the rural and historic character of an area, but that the tower proposed on Wesley Chapel Road is to be situated so as to not be visible from most of the surrounding area, and will not have a significant impact on the character of the area. Because the lack of visibility of the tower is due in large part to it being surrounded by large trees, they request that any approval be conditioned upon the continued maintenance of the wooded area.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated April 20, 2010 which indicates that the Office does not object to the requested special exception. A balloon test was conducted on April 7, 2010 at 10:00 AM with Planning and Preservation

Services Staff present.⁵ After the balloon was raised, staff evaluated the impact and visibility of the proposed cell tower upon the Landmark Structure, “Valley Brook Farm” Final Landmark # 91. The property is also listed on the Maryland Inventory of Historic Properties and is known as MIHP #BA-620, located on the property. After extensive driving along the scenic routes (Wesley Chapel Road, Sheperd Road) and the North Central Railroad (“NCR”) Trail and around the community, as well as a walk along the NCR Trail, it was apparent that the new proposed monopole would only be visible on the subject property and would not impact the surrounding properties, the scenic roads, the rural legacy area, or the properties that are in agricultural easement. Staff concurs with the findings of the Maryland Historical Trust that there are no adverse impacts to National Register properties within the area of potential effect.

Planning staff also conducted site visits to “Valley Brook Farm” Final Landmark # 91, and various locations within the Monkton County Historic District, not previously evaluated by the Maryland Historical Trust. The proposed monopole was not visible from the Monkton County Historic District, but was visible from the Landmark Structure. As such, the Planning Office believes the structure would not be detrimental to the health, safety, or general welfare of the surrounding community if: (1) the monopole was limited to a maximum height of 100 feet including all antennas, and (2) the monopole was stealth in nature, such as a tree and painted in a dark color in order to further camouflage it from the Landmark structure.

In response to the first condition, Mr. Rapisarda explained -- and was confirmed by Mr. Sena -- that a tower at 100 feet would not provide the signal strength necessary to meet AT&T’s coverage needs, and would not allow for the required co-location of at least two other carriers on the proposed tower. This was also verified in the Drive Test Report (Petitioners’ Exhibit 16) and

⁵ This was a second balloon test conducted by AT&T’s consultants, following the initial balloon test conducted on December 14, 2009 and the subsequent Visual Impact Assessment Report.

the RF Propagation Map showing deficient coverage in the area at a tower height of 95 feet (Petitioners' Exhibit 17). As to the second condition, Mr. Rapisarda indicated that AT&T could certainly attempt to camouflage the tower if necessary with a dark color or a tree-like structure, but did not believe a stealth tree would mitigate the visibility of the tower on the property. Nonetheless, AT&T would abide by conditions imposed toward that effort.

Comments were also received from the Department of Environmental Protection and Resource Management dated April 12, 2010 which indicates that development of the property must comply with the Forest Conservation Regulations. Based on the plans attached to the Petition, tree clearing is proposed for the compound area. A Single Lot Declaration of Intent exemption may be invoked to satisfy the Forest Conservation Regulations.

Perhaps the most important determination to be made in this case is whether AT&T has demonstrated a need for the proposed telecommunications facility at the subject site. In a sense, this is a threshold issue that, on the one hand, purportedly drives Petitioners' need to place a 123 foot tower and compound on the subject property and necessitates their request for a special exception use, while on the other hand, is also one of the main areas of contention and opposition from the Protestants. AT&T maintains that it is required by its federal license to provide coverage for wireless services in and around Baltimore County, and that it has identified a coverage gap in the Monkton area that must be addressed. Conversely, the Protestants do not believe the tower proposed by Petitioners is needed -- nor wanted -- in this rural, historic area. They believe AT&T's assertions to the contrary are specious at best.

In considering this issue, I have certainly taken into account the testimony presented during the hearing by both the Petitioners' witnesses and the Protestants. Their positions are abundantly clear. But what I believe favors AT&T on this issue is the documentary evidence,

accompanied by expert testimony, as to the need for a telecommunications facility at the subject site. Petitioners submitted the report from the Tower Review Committee (Petitioners' Exhibit 7), conditionally recommending approval of the proposed tower; the Radio Frequency Propagation Maps (Petitioners' Exhibits 4, 15, and 17) prepared by AT&T's RF Engineer, showing the computer-generated coverage gaps and the filling in of those gaps with the proposed tower; and the Drive Test Report (Petitioners' Exhibit 16) that identifies coverage and coverage gaps from real time data that comes from actual antennas set up at the subject site and analyzed by the RF Engineers. Based on this evidence, combined with the uncontroverted expert testimony of Mr. Sena, the RF Engineer, I am persuaded that Petitioners have demonstrated the need for the proposed telecommunications facility at the subject site.

Although wireless telecommunications towers are permitted in the R.C.2 Zone by special exception pursuant to Section 1A01.2.C.28 of the B.C.Z.R., before such use can be approved, I must first find that AT&T has demonstrated compliance with Section 1A01.2.C of the B.C.Z.R., 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 that the tower and its compound would occupy, the placement of the facility in the center of a 45 acre property and in close proximity to an existing tree line, and the fact that the tower is unmanned and will not impede farming in the area, I easily find that the tower would have no negative impact on the primary agricultural uses in the vicinity.

AT&T must also comply with the requirements of Section 426 of the B.C.Z.R. that specifically regulates wireless telecommunications antennas and towers in Baltimore County. In particular, AT&T 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. AT&T

must also demonstrate that the tower will be constructed to accommodate at least three wireless providers and, in doing so, show that it has kept the height of the tower to the minimum required to meet the coverage needs. Based on the evidence and testimony presented, I find that AT&T has demonstrated that the new tower is warranted and that it will accommodate three providers at the lowest height possible -- findings which are supported by the concurrence of the Tower Review Committee (Petitioners' Exhibit 7).

Because the R.C. Zone is considered a "residential" zone, AT&T must also demonstrate that no medium or high intensity commercial 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. Cline, I find that an appropriate search was conducted and any commercial sites were eliminated as a possibility before this location was chosen. AT&T also demonstrated compliance with the requirement that the tower be located on a lot of at least 5 acres as shown on the zoning drawings (Petitioners' Exhibits 2A through 2G).

Next, AT&T must show that the proposed use would not be detrimental to the special exception criteria set forth in Section 502.1 of the B.C.Z.R. Having considered the expert testimony of Petitioners' architect, Mr. Richardson, on this issue, I find that the proposal does, in fact, meet the requirements of Section 502.1; that is, the proposed cell tower and related equipment would have no material impact on any of the conditions outlined in Section 502.1. The Protestants testified that the tower would generally have negative aesthetic effects on the historic Monkton area and would specifically be visible from their nearby properties; thus it could be argued this results in a detrimental effect on the health, safety, and general welfare of the community. But having considered this testimony, I do not agree that this is a basis on which I can or should deny the requested Petition. *See, AT&T Wireless Services v. Mayor and City*

Council of Baltimore, 123 Md.App. 681 (1998) (holding that the alleged adverse aesthetic effects of an antenna did not justify denial of a permit).

It should also be noted that by the very nature of this “conditional use,” it is to be expected that special exception uses may result in some impact on surrounding properties. *See, People’s Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54 (2008); and *Schultz v. Pritts*, 291 Md. 1 (1981). However, an administrative agency such as this Commission 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, other than the alleged aesthetic impacts, which I believe would be similar regardless of where the tower were located within the neighborhood or locality. In fact, the evidence in this case clearly demonstrates that AT&T’s proposal for a tower at the subject site will have the least visual impact than if it were placed at another location in the area.

Lastly, AT&T must demonstrate pursuant to Section 502.7.B.1 of the B.C.Z.R. that the “proposed tower will not interfere with or be detrimental to the scenic viewshed elements.” Section 502.7.B.2 requires that such determination be made by comparing the scenic viewshed “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.” On this issue, the

testimony and evidence indicates that, but for its visual impact on the subject property, which is itself a Landmark Structure, the proposed tower will be significantly obscured by existing trees and foliage and will not be visible from any scenic viewshed elements. This is confirmed by the Visual Impact Survey (Petitioners' Exhibit 8). In addition, AT&T submitted a NEPA Survey (Petitioners' Exhibit 9) indicating there would be no adverse effects from the proposed tower on nearby properties listed in or eligible for inclusion in the National Register of Historic Places, and a Phase 1 Environmental Site Assessment (Petitioners' Exhibit 10) revealing no evidence of potential environmental conditions in connection with the proposed tower and compound that would affect the proposed activities at the site. The proposed tower location at the subject site is also supported by the Office of Planning (Petitioners' Exhibit 11) and is not opposed by the Sparks-Glencoe Community Planning Council (Petitioners' Exhibit 12), an organization dedicated to preserving the historic, rural character of northern Baltimore County -- and one that is traditionally very critical of cell towers proposed for these areas. Hence, based on the totality of the evidence and testimony presented, in my judgment, the proposed tower will not interfere with or be a detrimental to the scenic viewshed.

In conclusion, it is an understatement to say that the technology in the telecommunications industry is continuing to evolve and, to a great extent, expand. Wireless services have exploded over the last decade and at the present time, those wireless signals are transmitted along telecommunications towers placed every few miles in virtually all regions. While the industry does progress, and while the full capabilities of these networks are determined going forward, the impact -- and thus the appropriateness of where these towers are placed -- is reviewed on a case-by-case basis. In the instant matter, AT&T has demonstrated a need for coverage in the Monkton area. It has met its legal burden with respect to the limitations

and requirements of the Zoning Regulations and has developed a proposal that will meet its coverage needs. But most importantly, it has done so in a manner that the evidence indicates will have virtually no impact on the surrounding historical and agricultural area known as My Lady's Manor Historic District, and will allow this valuable connection with the past to be preserved.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the parties, I find that Petitioner's request for special exception use should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 3rd day of June, 2010 that Petitioners' request for a Special Exception for the construction of a new 123 foot high telecommunications monopole with a 50 foot by 50 foot wooden fenced compound on a portion of the Harris Property located at 16620 Wesley Chapel Road be and is hereby **GRANTED**, subject to the following which are conditions precedent to the relief granted:

1. Petitioners may apply for their necessary building or use permits, as applicable, and be granted same upon receipt this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from 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.
2. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).
3. Based on the plans attached to the Petition, tree clearing is proposed for the compound area. A Single Lot Declaration of Intent exemption may be invoked to satisfy the Forest Conservation Regulations.
4. The monopole shall be painted a dark brown or dark green color in order to further camouflage or lessen the potential visibility of the tower from the subject property and the surrounding area.

5. A basis of the determination that the proposed tower would not interfere with or be detrimental to the scenic viewshed elements was predicated on the proximity of the tower to an existing treeline and densely wooded area. Hence, this existing forested area shall be preserved and maintained by Petitioners.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

SIGNED
THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz