

**IN RE: PETITIONS FOR SPECIAL HEARING,  
SPECIAL EXCEPTION & VARIANCE**  
SE side of Eastern Avenue; 304.3 feet SW  
of Oliver Beach Road  
15<sup>th</sup> Election District  
6<sup>th</sup> Councilmanic District  
(12935 Eastern Avenue Extended)

**Terri L. Stowars**  
*Legal Owner*  
**New Cingular Wireless PCS, LLC**  
Contract Lessee

\* BEFORE THE  
\* DEPUTY ZONING  
\* COMMISSIONER  
\* FOR BALTIMORE COUNTY  
\*  
\* **Case No. 2010-0127-SPHXA**

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Exception, Special Hearing, and Variance, filed by the legal owner of the subject property, Terri L. Stowars, and the contract lessee of a portion of the property, New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, LLC (“AT&T”) (collectively referred to as “Petitioners”). Special Exception use is requested pursuant to Section 426 of the Baltimore County Zoning Regulations (“B.C.Z.R.”), to construct a new telecommunications facility in a D.R.2 zoning district. Special Hearing relief is requested pursuant to Section 500.7 of the B.C.Z.R. to confirm that, under Section 102.2 of the B.C.Z.R., the proposed telecommunications facility will not share any yard space with the existing community building, and to confirm that the community building is a nonconforming use under Section 104 of the B.C.Z.R. Additionally, Petitioners seek Variance relief under Sections 426.6.A.1 and 426.9.C.2 of the B.C.Z.R. to allow the telecommunications facility with a northern setback of 149 feet, a southern setback of 185 feet,

and an eastern setback of 106 feet, all in lieu of the required 200 foot setbacks,<sup>1</sup> and to allow the telecommunications facility on a lot of 2.49 acres in lieu of the required 3 acres. The subject property and requested relief are more fully described in the five page site plan prepared by KCI Technologies that was collectively marked and accepted into evidence as Petitioners' Exhibit 3.

Appearing at the requisite public hearing in support of the requested special exception, special hearing, and variance petitions were Linda Liebermann, Site Acquisition Coordinator with Bechtel Communications Inc., Shashikanth Sena, Radio Frequency ("RF") Engineer with LCC International, Inc., and Bruce Weston, a professional engineer with Bechtel Communications Inc., all consultants to AT&T, and Terri L. Stowars, the property owner. Appearing as counsel to Petitioners was Gregory E. Rapisarda, Esquire. There were no Protestants or other interested persons at the hearing.

Testimony and evidence offered revealed that the subject property is a square-shaped property consisting of approximately 2.49 acres, more or less, zoned D.R.2. The property is located on the southeast side of Eastern Avenue, just south of Oliver Beach Road, in the Chase/Oliver Beach area of eastern Baltimore County, and is improved with an existing one-story block and frame structure and several small accessory structures. The property is home to the Bengie's-Chase Democratic Club, a "community building" that operates primarily as a social club that holds special events such as fundraisers, crab feasts, and the like. It is surrounded by parcels that are zoned D.R.2 and D.R.5.5 and abuts an existing wooded area and vacant lot to the north, a wooded

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<sup>1</sup> The 2 foot difference between the setbacks requested and the setbacks shown on the drawings is the difference between the setback to the center of the tower, as shown on the drawings, and the setback to the tower's edge closest to the property line. For example, a 151' setback from the northern property line is actually a 149' setback from that property line to the tower's edge.

area and residential properties to the east, a residential lot to the south, and Eastern Avenue Extended to the west.

Petitioners established that AT&T's federal license requires it to provide coverage for wireless services in and around Baltimore County. Mr. Sena, AT&T's RF Engineer, testified that AT&T identified a coverage gap in the Middle River area through an analysis of dropped call data and the use of computer software designed to analyze AT&T's wireless network. In addition, Mr. Sena noted receipt of customer complaints due to dropped calls in the area. Mr. Sena's extensive education and professional experience were detailed in his resume, which was marked and accepted into evidence as Petitioners' Exhibit 10, and he was accepted as an expert in radio frequency engineering and wireless network design, management, and coverage.

Mr. Sena described the deficient coverage in the Middle River 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 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. A copy of the search ring map and a more detailed aerial photograph were marked and accepted into evidence as Petitioners' Exhibits 6A and 6B, respectively. Mr. Sena created a radio frequency coverage propagation map that illustrates AT&T's lack of coverage around the area of the subject property. Mr. Sena's expert testimony and the "existing coverage" propagation map clearly detailed AT&T's need for coverage in the area, and the map was marked and accepted into evidence as Petitioners' Exhibit 5. After AT&T identified the coverage gap and created a search ring, it identified and evaluated potentially suitable antenna locations within the search ring.

Ms. Liebermann testified about her twelve years of experience in the telecommunications industry and in particular, her site acquisition and project management work. Ms. Liebermann's resume was marked and accepted into evidence as Petitioners' Exhibit 1, and she was accepted as an expert in project management related to identifying and evaluating potential site locations and building new wireless telecommunications infrastructure. Ms. Liebermann 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. Ms. Liebermann testified that the only existing structures within the search area were nearby Amtrak catenary line poles. Ms. Liebermann testified that co-location on Amtrak poles created site access problems relating to safety and security but that, nonetheless, AT&T submitted the coordinates and height of the Amtrak poles to Mr. Sena for an analysis of potential coverage resulting from a co-location. Mr. Sena testified that he evaluated the data and determined that co-location was not viable because the 70 foot poles were too low and would not allow AT&T to meet its minimum coverage objectives. The Baltimore County Tower Review Committee ("TRC") and Columbia Telecommunications Corporation, the County's technical consultant, visited the site and surrounding area and evaluated AT&T's data relating to the Amtrak poles. As stated in the Baltimore County Inter-Office Correspondence dated July 28, 2009 that was marked and accepted into evidence as Petitioners' Exhibit 7, the TRC concluded that the Amtrak poles were not viable and that "no other accessible co-location opportunities exist at or near this location that would suffice in providing their requested coverage of the intended area. Ultimately, the TRC unanimously recommended approval of AT&T's proposed telecommunications facility at the subject property because it would allow AT&T to meet its "targeted coverage objectives, as well all of the requirements of Section 426, while allowing needed emergency and non-emergency communications for the citizens of the area."

With no co-location opportunities, AT&T determined and the TRC agreed that a new tower was necessary to resolve the need for coverage. AT&T identified and evaluated two small commercially zoned parcels in the search area as potential sites for a new tower: the Harewood Food Market at 6924 Harewood Road, and the Oliver Beach Inn at 12948 Eastern Avenue Extended, which are both zoned B.L. The Harewood Food Market is a grocery store and a residence, and the Oliver Beach Inn is a restaurant. Ms. Liebermann testified that both properties are very small, but were evaluated because they were identified in a B.L. zoning district. Ms. Liebermann further testified that both parcels were ruled out because they were in fact too small to accommodate a telecommunications facility and also because of landowner disinterest. AT&T also looked at large residential or agricultural properties in the search area and identified two nearby churches and a school on large parcels that were zoned residential. Neither the church's nor the school's owners were interested in leasing space to AT&T for a new facility. Ms. Liebermann's testimony established that AT&T prioritized potential sites according to the B.C.Z.R. and that there were no viable parcels within the search ring that were 3 acres or larger. AT&T's exhaustive search led to identifying the largest viable residentially zoned parcel in the search ring -- the subject property.

When the subject property was identified and the landowner expressed interest in leasing the space, Mr. Sena created a radio frequency coverage propagation map to evaluate potential coverage from the proposed location. Mr. Sena's testimony and the "proposed coverage" propagation map showed that AT&T would meet its coverage objectives with a new tower at this location. The "proposed coverage" propagation map was marked and accepted into evidence as Petitioners' Exhibit 11. Mr. Sena also testified that AT&T needed its antennas at 120 feet in height to meet its coverage objectives and that a 122 foot stealth slimline tower was the minimum

height to provide AT&T the necessary coverage and provide space for at least two future carriers as required.

There was significant testimony about the existing special circumstances and conditions in support of the requested relief. Mr. Sena testified that the subject property is unique because it is the largest available, viable location. Ms. Liebermann testified that the subject property is also unique from all other residential lots because of its large size -- 2.49 acres -- and because it is home to a commercial use. The subject property is also surrounded on two sides by a thick strand of trees and it abuts a lot to the north that is vacant and used for equipment storage. Photos of the adjacent and vacant lot were marked and accepted into evidence as Petitioners' Exhibit 4.

Ms. Liebermann next testified about AT&T's visual impact survey and balloon test. On September 16, 2008, an AT&T representative inflated a 4-5 foot red weather balloon with helium and flew the balloon at a height of 122 feet from the location of the proposed tower. Once the balloon was raised, a photographer drove throughout the surrounding area to analyze visibility and take photographs from various locations where the balloon was visible. KCI Technologies, AT&T's engineering firm, used the photographs showing the balloon's visibility to create photosimulations in which a scaled 122 foot stealth slimline tower was digitally superimposed onto the pictures in place of the balloon and rope. The photosimulations indicate that the tower, or some portion thereof, would be visible from five out of the eight photograph locations, and that, generally, the visibility dissipates as one moves further from the site. AT&T submitted a visual impact survey package that included a map showing the eight photo locations surrounding the site, eight photographs, and five photosimulations showing the proposed tower's visibility. The visual impact survey package was marked and accepted into evidence as Petitioners' Exhibit 8.

Ms. Liebermann then testified that AT&T's community outreach included obtaining contact information from the Baltimore County Zoning Office for four area homeowner's associations. AT&T sent a letter and preliminary zoning drawings to the Essex Middle River Chamber of Commerce, the Essex Middle River Civic Council, the Harewood Park Community League, and the Windlass Run Improvement Association. The outreach letter explained AT&T's proposal and offered to meet with each group to answer questions or address concerns. Even though no group specifically requested a meeting, AT&T held a community meeting at the Bengies-Chase Democratic Club on the subject property on March 20, 2009. Approximately fifty people attended AT&T's presentation. After the presentation, AT&T held a question and answer session and there was a general consensus that everyone at the meeting was in support of the proposal. One area resident who was unable to attend the zoning hearing, Ms. Karen Dunne of 13237 East Greenbank Road, wrote a letter of support which was marked and accepted into evidence as Petitioners' Exhibit 9.

Next to testify was Bruce S. Weston, a licensed professional engineer with extensive experience in tower design and siting, who was accepted as an expert in civil engineering, in particular relating to new tower construction and site development. His resume was marked and accepted into evidence as Petitioners' Exhibit 12. Mr. Weston testified that he is familiar with the subject property, the relevant provisions of the B.C.Z.R., including site data and landscaping requirements, and that he had supervised the preparation of the site plan that was accepted into evidence as Petitioners' Exhibit 3. Mr. Weston's testimony and the site plan reveals that the proposed tower and equipment compound would comply with each of the requirements set forth in Sections 426 (Wireless Telecommunications Tower Regulations) and 502.1 (Special Exception criteria) of the B.C.Z.R., and that the compound would be screened and visually improved with landscaping. Mr. Weston further testified that the proposed tower would not trigger any lighting

requirements from the Federal Aviation Administration (“FAA”), and this was confirmed in a FAA Summary Report that was marked and accepted into evidence as Petitioners’ Exhibit 14. Mr. Weston also pointed out in the drawing that the proposed use is completely separate from the existing use and that no space from either use would overlap.

Mr. Weston provided additional testimony in support of the four variances being requested. In particular, Mr. Weston showed that the requested 106 foot northern setback touches the vacant lot and that there is a distance of 206 feet to the nearest property line with a residence. Mr. Weston explained that the requested setback of 149 feet to the west represents the distance to Eastern Avenue Extended, and that the nearest residential property line to the west is 179 feet and on the other side of Eastern Avenue Extended. Mr. Weston also pointed out that the nearest residences are 234 feet to the north and 247.5 feet to the west.

Finally, and perhaps most importantly, Mr. Weston provided detailed testimony about the tower’s engineering standards and its maximum load capacities. The testimony addressed a tower’s “fall zone” which is the area around a tower that could be potentially affected in the unlikely event that the maximum loads are exceeded and the tower fails. Mr. Weston testified that setbacks typically provide physical protection to adjacent properties from a tower’s “fall zone” and he pointed out that no adjacent property would be within 122’ feet of the tower. More importantly, however, was the testimony that the proposed tower would adhere to enhanced engineering standards that would limit its “fall zone” to a maximum of 50 feet.

The Zoning Advisory Committee (ZAC) comments were received and are contained within the case file. Comments from the Department of Environmental Protection and Resource Management dated December 11, 2009 indicate that Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

I have thoroughly reviewed the substantial evidence provided by AT&T, including its need for coverage, its site identification practices and efforts in this case, and its analysis of alternative site candidates. I am satisfied that a new telecommunications facility, including a 122 foot stealth slimline monopole within a 33 foot 10 inch by 30 foot fenced compound at the subject property is warranted and appropriate. The weight of the evidence firmly establishes that the proposed telecommunications facility meets each of the relevant and applicable provisions of the B.C.Z.R., including but not limited to, Sections 102.2, 307.1, 426, and 502.1.

Furthermore, I find that AT&T's proposal meets the County's requirements for a new tower and will provide benefits to the surrounding community. Therefore, I am persuaded to grant the Petition for Special Exception use, pursuant to Section 426 of the B.C.Z.R., to construct a new telecommunications facility in a D.R. 2 zoning district. I am also persuaded to grant the requested Petition for Special Hearing and I find that, pursuant to Section 500.7 of the B.C.Z.R., the proposal complies with Section 102.2 of the B.C.Z.R. because the proposed telecommunications facility will not share any yard space with the existing community building, and I find that the existing community building is a nonconforming use under Section 104 of the B.C.Z.R. Finally, I am persuaded to grant the Variance relief from Sections 426.6.A.1 and 426.9.C.2 of the B.C.Z.R. and allow the telecommunications facility with a northern setback of 149 feet, a southern setback of 185 feet, and an eastern setback of 106 feet in lieu of the required 200 foot setbacks, and to allow the telecommunications facility on a 2.49 acre lot in lieu of the required 3 acres.

Pursuant to the advertising and posting of the Property, and public hearing held thereon, and based on the evidence presented and for the reasons set forth above, the Petitions for Special Exception, Special Hearing, and for Variance shall be granted.

THEREFORE, IT IS ORDERED this 1<sup>st</sup> day of March, 2009 by the Deputy Zoning Commissioner that Petitioners' request for Special Exception use pursuant to Section 426 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to construct a new telecommunications facility in a D.R.2 zoning district be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioner's request for Special Hearing relief pursuant to Section 500.7 of the B.C.Z.R. to confirm that, under Section 102.2 of the B.C.Z.R., the proposed telecommunications facility will not share any yard space with the existing community building, and to confirm that the community building is a nonconforming use under Section 104 of the B.C.Z.R, be and are hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioners' requests for Variance from Sections 426.6.A.1 and 426.9.C.2 of the B.C.Z.R. to allow the telecommunications facility with a northern setback of 149 feet, a southern setback of 185 feet, and an eastern setback of 106 feet, all in lieu of the required 200 foot setbacks, and to allow the telecommunications facility on a lot of 2.49 acres in lieu of the required 3 acre, be and are hereby **GRANTED**.

The relief granted herein shall be subject to the following conditions:

1. Petitioners may apply for their permit and be granted same upon receipt of 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).

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