

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

VISTA PCS LLC
11274 Gehr Road
Big Pool, MD 21711
Appellant

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Appeal No. AP2008-009

OPINION

This action is a request for a special exception to erect a 199' self-supporting monopole commercial communication tower. The subject property is located at 11274 Gehr Road, Big Pool, Maryland, is owned by Ralph Gehr, and is zoned Environmental Conservation.

A public hearing was held before the Board on March 12, 2008. The Appellant offered evidence and testimony in support of the appeal. Opponents offered evidence and testimony against the appeal.

FINDINGS OF FACT

The following findings of fact are made by the Board, based upon the testimony given and all data and other evidence presented, and upon a study of the specific property involved, as well as the neighborhood:

1. Appellant seeks permission to erect a 199' monopole communication tower on the subject property.
2. A gap in coverage exists in the area of the subject property. No other site or structure is available for antenna location that would obviate the need for this tower and meet coverage requirements.
3. The tower will be designed to allow for the co-location of 5 other carriers.
4. The tower will fill a gap in coverage in the area, particularly for motorists on I-70.
5. The interstate is about 300' from the tower.
6. Visual impact will be minimized because the area is sparsely populated.

7. The tower is approximately 0.88 miles from Fort Frederick and is not visible from the Fort.
8. An existing forest further screens the tower from the Fort and the Fort Frederick Park.
9. A monopole will be less visible than would be a lattice tower.
10. The tower will not be illuminated.
11. The tower will have no impact on real estate sale prices in the neighborhood.
12. The proposed tower conforms to the Comprehensive Plan and is compatible with the surrounding neighborhood.
13. Opponents testified in opposition to the appeal. They testified that they were opposed to any alteration of, or intrusion of modernity into, the viewshed of Fort Frederick and its surrounding state park, citing the remote and pristine nature of the area and its proximity to the C&O Canal Park. They also raised concerns about the tower's potential impact on tourism in the area.

RATIONALE

The Board has authority to grant a special exception pursuant to Section 25.2(b) of the Zoning Ordinance for Washington County, Maryland. A special exception is defined as "a grant of a specific use that would not be appropriate generally or without restriction; and shall be based upon a finding that the use conforms to the plan and is compatible with the existing neighborhood." § 28.62. The Ordinance specifically acknowledges the need for wireless towers while seeking to minimize their obtrusive visual impact. "It is the intent of these regulations to minimize the visual impact of towers and equipment, to minimize the number of towers through shared use and co-location, to encourage utilization of technological designs that will either eliminate or reduce the need for new towers to support equipment and to ensure that all towers and equipment are compatible with surrounding land uses while assuring wireless communications service to the citizens of Washington County." § 4.22. "In order to protect the natural skyline, towers should be sited within areas of mature vegetation and should be located down slope from ridge lines, and toward the interior of the parcel whenever possible. Placement should only be considered

elsewhere on the property when valid technical data supplied by the applicant indicates that there is no other suitable location.” § 4.22.A.10.

Modern life is such that wireless cellular communication is a technology that is integral to the functioning of this community. It serves individuals, businesses, and governments with data and voice capabilities. It promotes public safety and facilitates emergency response. Its growing dispersion is similar to the growth of the electrical power grid in the early 20th century. While utility poles are not the most attractive structures in the human environment, they are necessary. So too are communication towers, and they are a permitted special exception use in this district.

The need for this tower is clearly established by the evidence. Failures, or gaps, in cellular coverage are costly, inconvenient, and dangerous. They disrupt the provision of voice and data services that have become an expectation and need of modern society, and are often used to promote public safety. Reasonable efforts have been made by the Appellant to first find a co-location opportunity and then to select a site that is least intrusive to the neighborhood and the surrounding viewshed. Appellant has exhausted all feasible alternatives to constructing this tower.

The Appellant’s proposed tower is compatible with and not adverse to the character and integrity of surrounding properties. The tower will be screened from existing historical and natural resources by virtue of its distance from historical sites and by existing, mature vegetative buffers, namely a forest. Examination of the photo simulations reveal that the tower will not be visible from Fort Frederick, and its visibility from other sites in the area, save Interstate 70, are limited at best. It is located in a sparsely-populated and rural environment, thus further limiting its aesthetic impact on residents and tourists. Furthermore, it is designed to offer collocation opportunities so as to obviate the need for future additional towers. The tower would create minimal traffic, as maintenance at the site would occur approximately once per month.

While we share opponents’ concerns regarding any change in the viewshed that might affect the scenic beauty of the area, there is no other location in this area of the County that would be less impacted by erection of a tower. Its visibility from established historical sites is nil. In short, the placement of the tower at the proposed site will have no greater “adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” *Schultz v. Pritts*, 291 Md. 1, 15 (1981).

In conclusion, no evidence was presented that the proposed use was incompatible with the neighborhood; disruptive of neighbors' quiet enjoyment of their properties; detrimental to surrounding property values; generative of excessive odors, dust, gas, smoke, fumes, vibrations, or glare; generative of traffic that would exceed the capacity of existing infrastructure; or that the proposal was an inappropriate use of land or structure. Moreover, the operation of the site would not create excessive noise, dust, vibrations, smoke, or fumes, and the tower would not be lighted.

Based upon all of the testimony and evidence presented, this Board finds that the subject request does not adversely affect the public health, safety, security, morals, or general welfare, nor does it result in dangerous traffic conditions, or jeopardize the life and property of neighborhood residents. Accordingly, for the reasons set forth herein, this appeal is hereby GRANTED this 11th day of April, 2008.

BOARD OF APPEALS

By: Bert Iseminger, Chair