

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

Shentel/Shenandoah Mobile Co. PCS
Appellant

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Appeal No. AP2008-69

OPINION

This action is a request for a special exception to erect a 190' self-supporting monopole commercial communication tower. The subject property is located at 9000 Jordan Road, Fairplay, Maryland, is owned by Downey Farms, Inc., and is zoned Agricultural (Rural).

A public hearing was held before the Board on February 4, 2009. The Appellant offered evidence and testimony in support of the appeal. Opponents testified 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 proposes erection and operation of a 190' self-supporting monopole commercial communication tower on the subject property.
2. This tower is needed to provide coverage in the Downsville/Spielman Road area.
3. Co-location on an existing tower or placement of the antenna on an existing structure is not feasible because existing facilities will not allow Appellant to meet its coverage goals.
4. The subject property is an attractive site for the tower because its location allows Appellant to meet its coverage goals, is a large parcel with existing access to the proposed site, and has adequate area to meet the applicable setback requirements.
5. The tower will be designed to allow for the co-location of four (or more, depending on antenna size) other carriers.

6. The tower will be a tapered steel pole whose base and accessory structures will be located within a fenced compound.

7. The subject property is part of a farm, and placement of the tower will not adversely affect ongoing agricultural operations.

8. The tower site is to the interior of the farm property, amongst existing vegetation.

9. The proposed tower is designed to minimize its visibility and impact upon the viewshed.

10. The tower will not be lighted, and it will not create odors, dust, noise, vibrations, smoke, or fumes.

11. The Appellant conducted an environmental site assessment, a NEPA Survey, and a visual analysis, the results of which convince this Board that the proposed tower is compatible with and not creative of an adverse impact upon the character and integrity of surrounding properties.

12. The proposed tower will not have an adverse impact on any historic sites, and the Historic District Commission has no objection to this proposal.

13. Opponents to the appeal testified about their concerns regarding the proposed tower's visibility and height, the need for the tower in the area given existing coverage, and speculation about environmental impact.

14. In rebuttal, the Appellant noted that: (1) the Environmental Site Assessment resulted in no findings of concern, and (2) that the proposed height was necessary to meet its coverage goals.

15. The Board finds that the proposed use conforms to the Comprehensive Plan and is compatible with the existing neighborhood.

RATIONALE

The Board has authority to grant a special exception pursuant to § 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. The 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 any historical sites and by its placement amongst existing, mature vegetation. It will be located in a rural environment, thus further limiting its aesthetic impact on the general public. 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 not occur frequently.

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. 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).

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 by a 5-0 vote.

BOARD OF APPEALS

By: Bert Iseminger, Chair

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