

BEFORE THE BOARD OF APPEALS FOR WASHINGTON COUNTY, MARYLAND

LIBERTY TOWERS
Appellant

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Appeal No. AP2009-045

OPINION

This action is a request for a special exception to erect a 199' self-supporting communication tower (to include a 4' lightning rod) and for a variance from the required 199' setback to 135' from the northeast leased boundary and property line. The subject property is located at 15322 Fairview Road, Clear Spring, Maryland, is owned by Olivia Shank, and is zoned Agricultural (Rural).

A public hearing was held before the Board on October 28, 2009. No opposition was presented to this 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 of a 199' self-supporting communication tower on the subject property.
2. 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.
3. The subject property is an attractive site for the tower because its location allows Appellant to meet its coverage goals, has natural vegetative screening, and is adjacent to agricultural land.
4. The tower will be designed to allow for the co-location of up to six carriers.
5. Because of the topography of the property, the setback distance cannot be met without losing 40–50' in height, thus adversely impacting Appellant's coverage goals.

6. The tower will not be lighted, and it will not create odors, dust, noise, vibrations, smoke, or fumes.
7. The proposed tower will not have an adverse impact on any historic sites.
8. 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).

As to the variance request, the Board has authority to grant a variance upon a showing by the Appellant of practical difficulty or undue hardship. Sections 25.2(c) and 25.56, Zoning Ordinance for Washington County, Maryland. "Practical Difficulty" may be found by the Board when: (1) strict compliance would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome; and (2) denying the variances would do substantial injustice to the applicant and a lesser relaxation than that applied for would not give substantial relief; and (3) granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. Section 25.56(a). Here, the variance is necessitated by the size and shape of the property and its topography. To meet its coverage goals, the Appellant must place the tower as proposed to reach the necessary height. Denying the requested relief would not advance the public safety and welfare nor would it advance any purposes of the Ordinance.

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.

BOARD OF APPEALS

By: Bert Iseminger, Chair

Date Issued: November 25, 2009