



MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MEMORANDUM

DATE: June 17, 2011

TO: Montgomery County Board of Appeals

VIA: Callum Murray, Team Leader, Area 3 (301-495-4733)

FROM: Leslie Saville, Senior Planner (301-495-2194)

SUBJECT: Special Exception No. S-2805
19100 Wasche Road, Dickerson; RDT zone
T-Mobile Northeast LLC and John D. Ammerman, applicants, request special exception approval to permit the establishment of an unmanned telecommunication facility consisting of six antennas inside of a 155-foot tall concealment pole and the associated equipment area

MASTER PLANS: Preservation of Agriculture and Rural Open Space (1980)
Rustic Roads Functional Master Plan (1996)

FILING DATE: March 29, 2011

PUBLIC HEARING: June 24, 2011

STAFF RECOMMENDATION: DENIAL.

The proposed telecommunications facility does not meet the setback requirements from the property line or the required finding for a reduction in this setback. In addition, there are negative impacts to the non-inherent characteristics of the site.

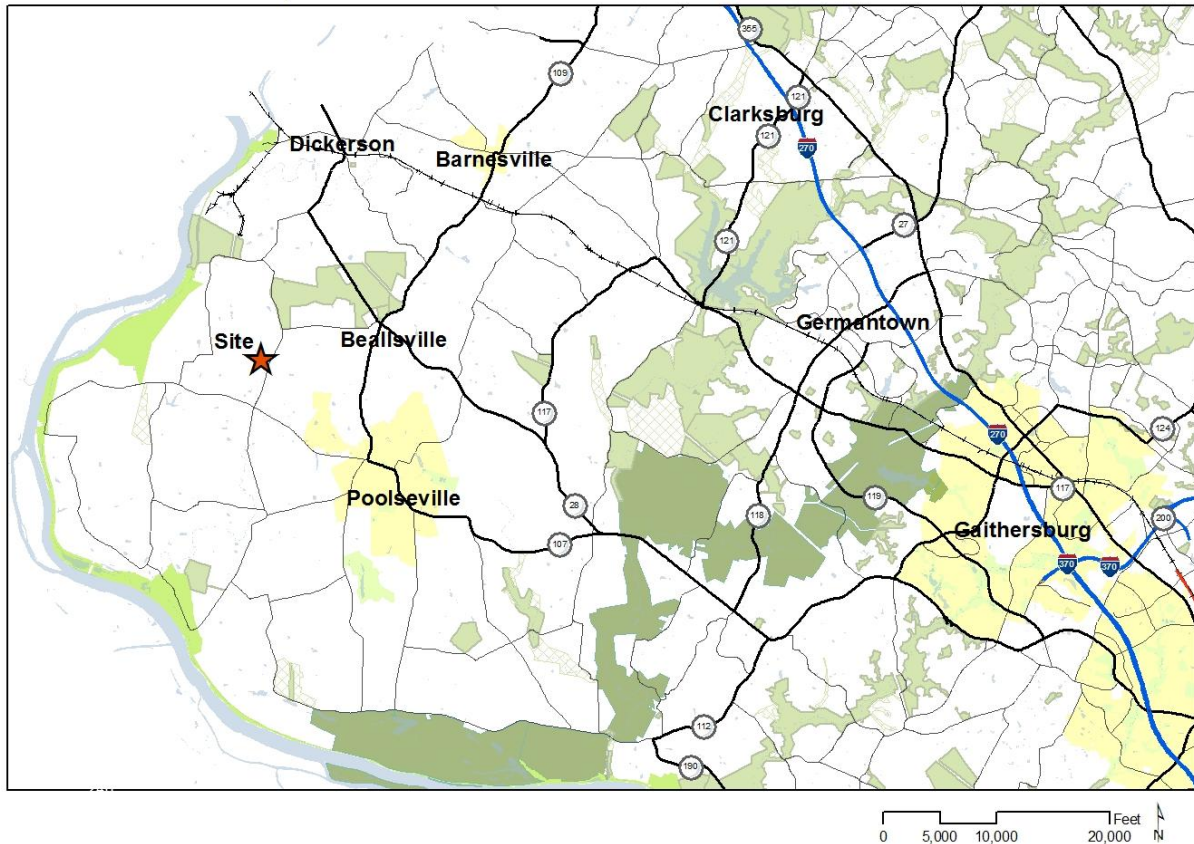
PROJECT SUMMARY

The applicants, T-Mobile Northeast LLC and John D. Ammerman, are requesting special exception approval to install an unmanned wireless telecommunications facility at 19100 Wasche Road in Dickerson. The proposed facility will consist of a 155-foot concealment pole with six antennas mounted inside, and an associated 50-foot by 50-foot equipment compound surrounded by an eight-foot tall wooden board-on-board fence.

The Property

The property is a 10.0-acre parcel, P423, owned by John D. Ammerman. It is located on Wasche Road between Whites Ferry Road and West Hunter Road, west of Poolesville and Beallsville. The parcel is in the Rural Density Transfer (RDT) zone.

S2805 Location Map



This is a rectangular parcel, with the long sides along the north and south. Wasche Road, a stream and a forested section are on the eastern end, a gravel area with three metal structures is in the center, and two pastures with scattered trees are on the west end. There are about two acres of stream buffer, 4.5 acres of forest, 2.6 acres of pasture, 1.3 acres of gravel and 4.5 acres of prime farm soils. Three metal buildings are in the center of the site; the main building in the center is quite large (see aerial and site photos below and attached).

The application does not describe the current operations on the property, but unconfirmed reports indicate that the Ammermans build horse jumps here. Site visits have found

miscellaneous equipment and objects stored outside on the property including pickup trucks, work trucks, semi truck cabs, horse trailers, camper caps, trailers with roll-off dumpsters, tractors, boats, travel trailers, wood chippers, log splitters, hoists, barrels, and professional-sized grills or smokers. Three picnic tables are located on the edge of the forest with a sign that reads Camp Wasche. It appears that someone may be living in a mobile home on the property.

The adjacent property, P479, that wraps along the south and west sides, is also owned by Mr. Ammerman; the pasture on the subject property is part of the small horse and cattle operation on P479.

S2805 Aerial Photo 2010



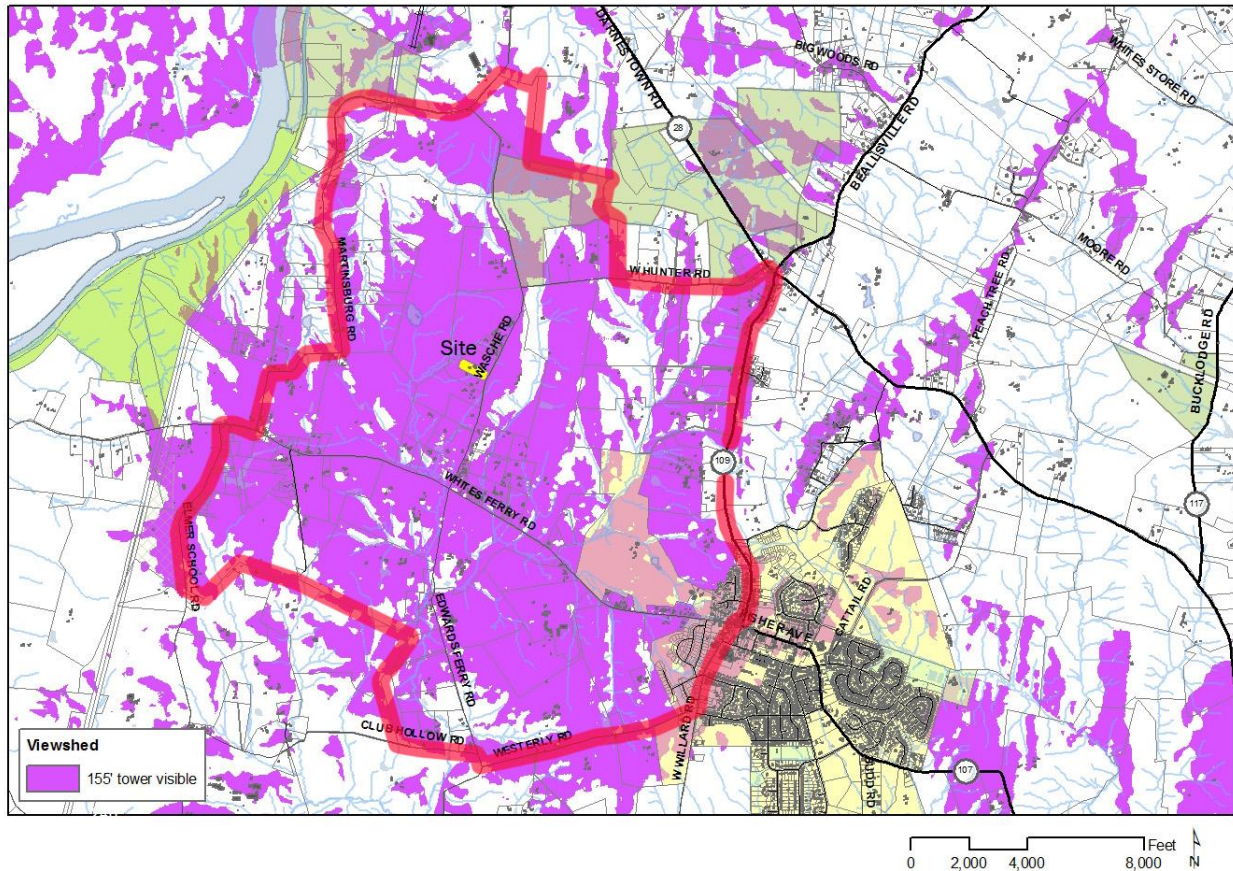


Buildings currently on property (three photos)

The Neighborhood

The neighborhood is bounded on the west and north by Elmer School and Martinsburg Roads, then follows property lines to the southeast to West Hunter Road, Darnestown Road (MD 28), Beallsville Road (MD 109), Fisher Avenue and West Willard Road on the east, Westerly and Club Hollow Roads on the south, and following property lines westerly to return to Elmer School Road. This is a simplified description of the area that will experience the greatest visual impact from the tower, according to a viewshed analysis done by staff using GIS.

S2805 Neighborhood



This area encompasses about 285 properties, of which the largest by acreage are farms (about 65 are included), but with the majority of properties being residential. On the eastern side, a portion of the Town of Poolesville is included. In addition to agricultural and residential uses, there are a small number of retail uses, industrial uses, offices, churches, parkland and a County pool. There are about 20 historic sites, districts or cemeteries within the neighborhood; five sites and one district are named in the Master Plan for Historic Preservation. Nine rustic or

exceptional rustic roads are included within the area, including Wasche Road, on which the facility is proposed to be located.

Project Description

T-Mobile proposes to construct a telecommunications facility consisting of:

- a 155-foot tall concealment pole with six antennas mounted within two bays centered at 152.5 feet and 142.5 feet; the pole will be painted gray or other unobtrusive color and will be unlighted
- a graveled equipment compound (50' X 50') surrounded by an eight-foot tall board-on-board fence
- two equipment cabinets (63" H X 51" W X 37" D) on a concrete equipment pad (20' X 10')
- related ancillary equipment for electrical and telephonic connections, including a Mesa cabinet and 10' utility backboard
- outside of the compound a transformer and evergreen landscaping (around two sides of the compound and part of the third side) is proposed
- a sign no greater than two square feet will identify the owner and maintenance service provider, and will include contact information

The facility is proposed to be near the northern property line, 856 feet from Wasche Road, 64 feet from the north side property line, 241 feet from the rear property line, and 330 feet from the south side property line. From the three onsite structures, the facility is proposed to be 176 feet, 261 feet and 352 feet distant. The nearest residence is 755 feet away and is also owned by Mr. Ammerman, the co-applicant. Underground power will be supplied by Allegheny Power. There is adequate room within the concealment pole and the compound for two additional carriers. If the facility ceases to be used for a continuous period of one year, it shall be removed at the owner's expense.

ANALYSIS

Master Plans and Community Compatibility

The proposal is covered by two master plans, the Functional Master Plan for the Preservation of Agriculture and Rural Open Space in Montgomery County and the Rustic Roads Functional Master Plan.

Functional Master Plan for the Preservation of Agriculture and Rural Open Space in Montgomery County (AROS, 1980)

The AROS Master Plan provides the following guidance:

- “This Plan focuses on the preservation of farmland but it also tries to establish a policy framework that will contribute to the continuation of farming in the County.”¹
- The Plan confirms that “a critical mass of active farmland exists in an area defined as the Agricultural Preservation Study Area”.... And recommends the “[p]reservation of critical masses of farmland and rural open space.”²
- “The critical land use issue in this Plan is the loss of productive farmland.”³
- “A significant farm ownership trend that should not be overlooked or underestimated in Montgomery County is the number of part-time farmers that depend, in part, upon non-farm sources of income.”⁴
- “Montgomery County still has a large amount of highly productive farmland. Overall, the County has a considerable amount of prime soils... These prime soils, Soil Types I and II, are productive with a minimum amount of land management....Soil Types III and IV, which have more agricultural production problems, are well suited to particular types of agriculture.... Farmland and open space are irreplaceable and valuable natural resources, and should be protected.”⁵
- “It is in the public interest to preserve farmland.”⁶
- “The one important fact concerning agriculture in this area is that, whatever is currently produced and whatever the ownership pattern now is, the land itself still exists; very little of it has been taken over by non-farm residential uses and thus lost forever as

¹ AROS, Foreword, p. i, emphasis original

² Ibid., Summary of Findings and Recommendations, p. iv

³ Ibid., General Objectives of the Functional Plan, p. 8

⁴ Ibid., The Agricultural Community, p. 24

⁵ Ibid., The Agricultural Community, pp. 24-25

⁶ Ibid., Farmland Preservation as a Public Purpose, Overview, p. 27

farmland. Although the soil is not considered the very best for crop purposes, compared with other parts of the County, it has supported a great amount of farming over the years, proving that non-prime soils can be productive and valuable especially when accompanied by good land management techniques and new methods of land tillage.”⁷

The provision of reliable cell phone and broadband service supports farming in the Agricultural Reserve. By the nature of the job, farmers spend large amounts of their time outdoors, so the availability of cell service while in the field is a matter of both efficiency and safety. In addition, a recent trend is the selling of farm products online, so making broadband service available in an area not currently served by Comcast or other large providers is desirable for both farmers and others living in the area.

There is a small amount of pasture on the property associated with the livestock next door, but it is not evident whether the balance of the current operation is agricultural or whether this telecommunications facility would support it in some way.

This property has a higher proportion of prime soils than many in the Western Sector (4.5 acres on the 10.0 acre parcel). Much of that has been topped with gravel in the past, and this proposal would add more gravel and a 20' X 10' concrete pad on top of the prime farm soils.

The AROS plan notes the loss of productive farmland as the critical land use issue of the area. On this property, the prime farm soils are already topped with three buildings and a great deal of gravel. Concrete trucks and large cranes working on the property will further compact the soil structure, and the construction of the footings for the pole, the 20' X 10' concrete pad and the trenching for the power lines will be especially damaging to the soils and their future agricultural use. Limiting additional damage to prime farm soils is strongly recommended.

To be consistent with the AROS plan, staff recommends locating the proposed structure nearest the most-disturbed portion of the site, beside or between the existing buildings, as this will reduce further damage to the soils and to future farming operations to the greatest extent possible.

⁷ Ibid., Western Sector Justifications, p. 56

Rustic Roads Functional Master Plan (RRFMP, 1996)

This property is located on Wasche Road, a rustic road (RRFMP excerpts attached). The road dates to c1865, and was named for the Wasche family who then owned Kilmain II, a c1810-1815 house directly opposite the Ammerman property.

The Plan describes Wasche Road as having “historic value and outstanding rural views.”⁸ The map of the road shows scenic views north of this property,⁹ and the Driving Experience describes a view of the Kilmain farmstead surrounded by open fields.¹⁰ The identification of views is not intended to restrict development along rustic roads, but to recommend placement of buildings, if practical.¹¹ The Significant Features of Wasche Road, side banks and stone walls, are not located on this property.

One of the most significant negative impacts of telecommunication facilities is their visual impact. In order to protect the rural views along Wasche Road, the applicant proposes a concealment pole; this style is generally preferred by the Rustic Roads Advisory Committee as it reduces impacts on views. For this site, staff concurs. Because of the specific location selected within the site, on axis with the driveway rather than behind the forested part of the property, this concealment pole will be more visible from the road than it might be if placed elsewhere on the property. This location is covered below with the discussion on the standards and requirements for telecommunications facilities, Sec. 59-G-2.58 (a).

Staff finds that the use of the concealment pole helps to protect the “outstanding rural views” from Wasche Road, but the location of the pole increases the negative impacts. In order to be consistent with the Rustic Roads Functional Master Plan, staff recommends that the facility be moved within the site, as described below.

⁸ RRFMP, p. 164

⁹ Ibid., p. 165

¹⁰ Ibid., p. 164

¹¹ Ibid., p. 36

Subdivision

Based upon Sec. 50-9, Exceptions to Platting Requirements, no subdivision plan is required for the proposed telecommunications tower on this parcel, P 423:

Recording of a subdivision plat under this Chapter is not required for:

.... (g) Telecommunications tower/antennas, including associated accessory structures, unless or until development of the land which requires a subdivision plan.

Transportation

The proposed installation of an unmanned wireless telecommunication facility will not increase the number of weekday peak period trips generated by the site. Therefore, no Local Area Transportation Review/Policy Area Mobility Review is required. Staff finds that the proposed installation of the telecommunication facility under the subject special exception application will have no adverse effect on area roadway conditions.

Environment

Environmental Buffers

A simplified Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) 42011088E was approved by Environmental Planning staff on December 14, 2010. There is an existing stream and associated environmental buffer on the site running perpendicular to the existing driveway approximately 330 feet from the roadway.

The project site is located within the Broad Run watershed which is classified as a Use Class I. The Countywide Stream Protection Strategy (CSPS) rates the tributaries in this watershed as fair.

Forest Conservation

A forest conservation plan exemption (42011088E) was confirmed for this site by Environmental Planning staff on December 14, 2010 under 22A-5(t) of the County Forest Conservation Law. The application is for a modification to an existing developed property that will not require approval of a new subdivision plan, will not result in the clearing of greater than 5,000 square feet of forest, or affect any forest in a Stream Valley Buffer (SVB). All activities including any associated utilities must be within the approved Limits of Disturbance. The approved exemption is only valid for what is shown on the approved plans; any changes will require a new exemption to be approved.

Right-of-Way Agreement

On August 23, 2010, the property owner signed an agreement granting a ten-foot easement to The Potomac Edison Company (dba Allegheny Power) for the installation of underground power for the proposed T-Mobile facility at 30 inches and 38 inches underground (attached). This agreement was recorded on February 7, 2011. The easement runs from Wasche Road to the T-Mobile compound, with the specific location within the property being unspecified. The agreement reads, in part:

The Company shall have the right to install, maintain, operate and replace its underground and overhead facilities without responsibility for any damage caused thereby to trees, shrubs, flowers, or any other obstruction grown, constructed or placed on said right-of-way and shall at all times have the right to clear and keep clear the right-of-way and to control, cut down, trim and remove trees, limbs and brush under and alongside of said facilities sufficiently for the safe and proper operation and maintenance thereof...

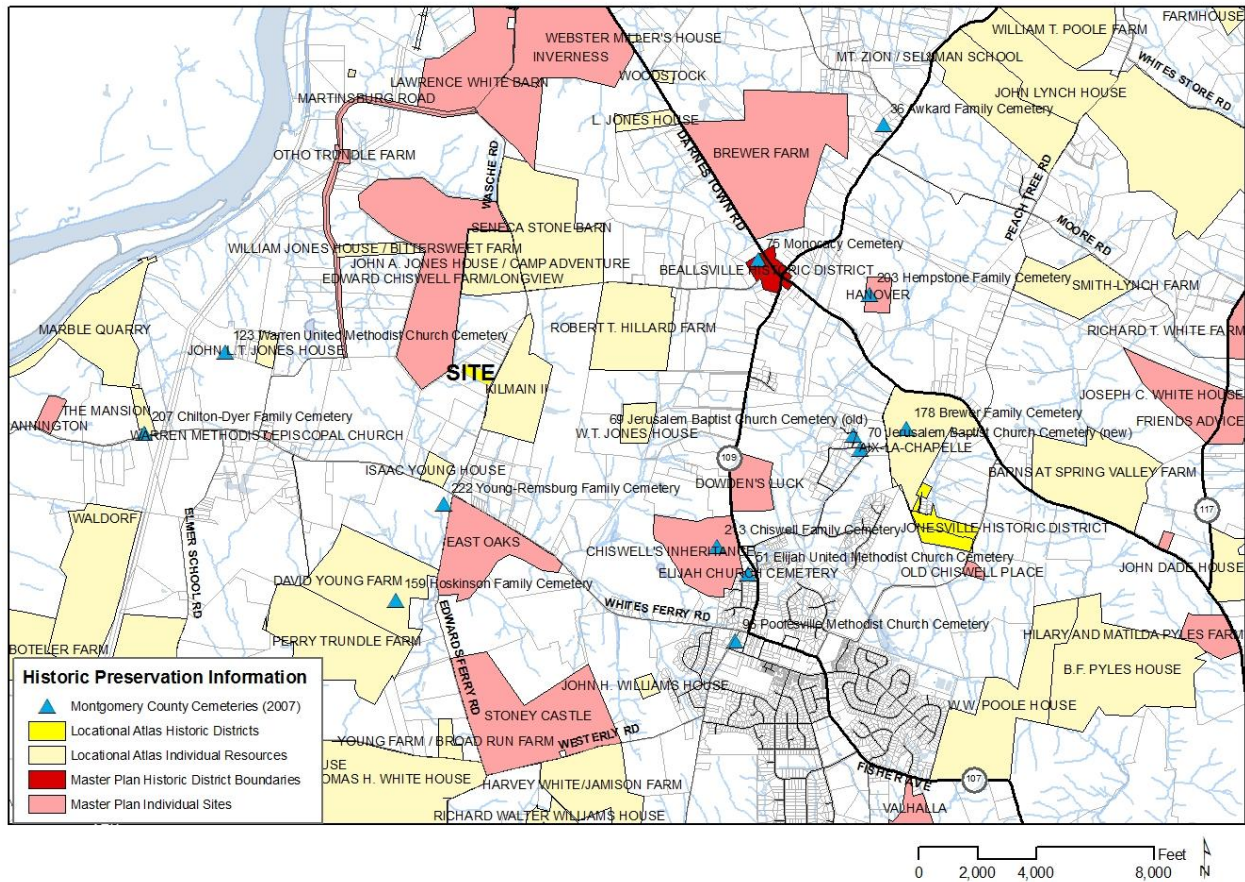
As noted above, to conform to the forest conservation exemption, the right-of-way must be located within the limits of disturbance shown on the approved plan, 42011088E. Because the right-of-way will cross the stream on the property, the trenching and backfilling referenced on the drawing should be limited to areas outside of the stream buffer; to minimize disturbance,

directional drilling shall be used within the buffer unless another method is approved by the Maryland Department of Natural Resources.¹²

Historic Preservation

As noted above and shown in the map below, the neighborhood includes a large number of historic resources.

S2805 Historic Preservation Information



The proposed telecommunications facility is not located on a property identified in the Locational Atlas and Index of Historic Sites in Montgomery County, Maryland or designated in the Master Plan for Historic Preservation. Therefore it is not subject to historic preservation review under section 24A of the County Code.

¹² DNR's Wetlands permits/regulations contact: Gary Setzer, 410-537-3744

The proposed facility is located across from Kilmain II (#17/23) located at 19015 Wasche Road, which is a historic site listed in the Locational Atlas and Index of Historic Sites. The proposed facility would be visible from the historic site.

Historic Preservation staff's opinion is that the proposed facility is proposed to be located directly in line with the historic farmhouse and would have a negative visual impact on Kilmain II. Historic Preservation staff also notes that Wasche Road is a rustic road as designated by the Rustic Roads Functional Master Plan.

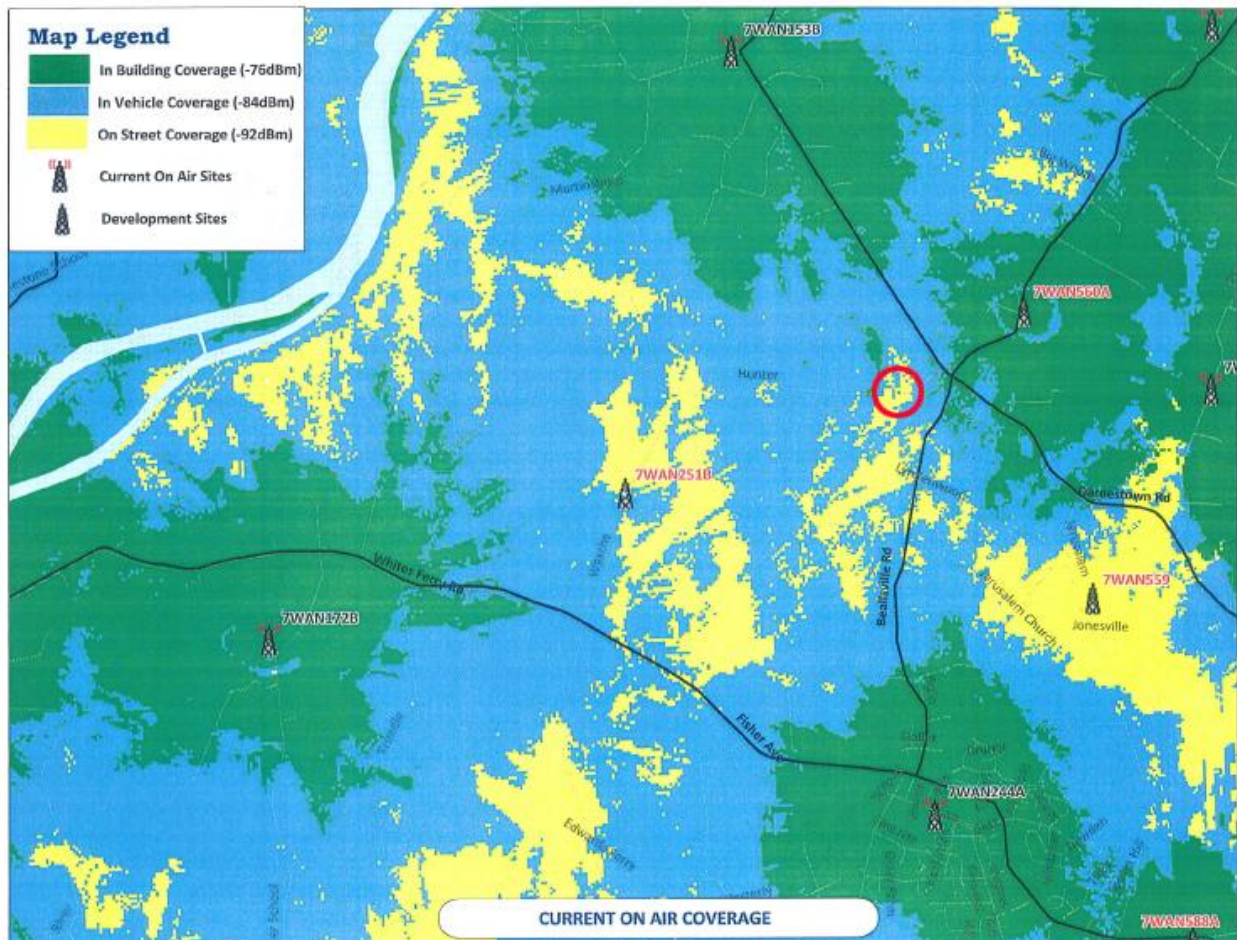
If communications requirements cannot be met through the co-location of this facility on an existing installation, the Historic Preservation section recommends that the facility should be moved further off the property line and the proposed concealment pole with internal antennas should be painted a neutral color such as brown or grey to mitigate any impact on historic sites and resources and their broader setting.

Tower Committee

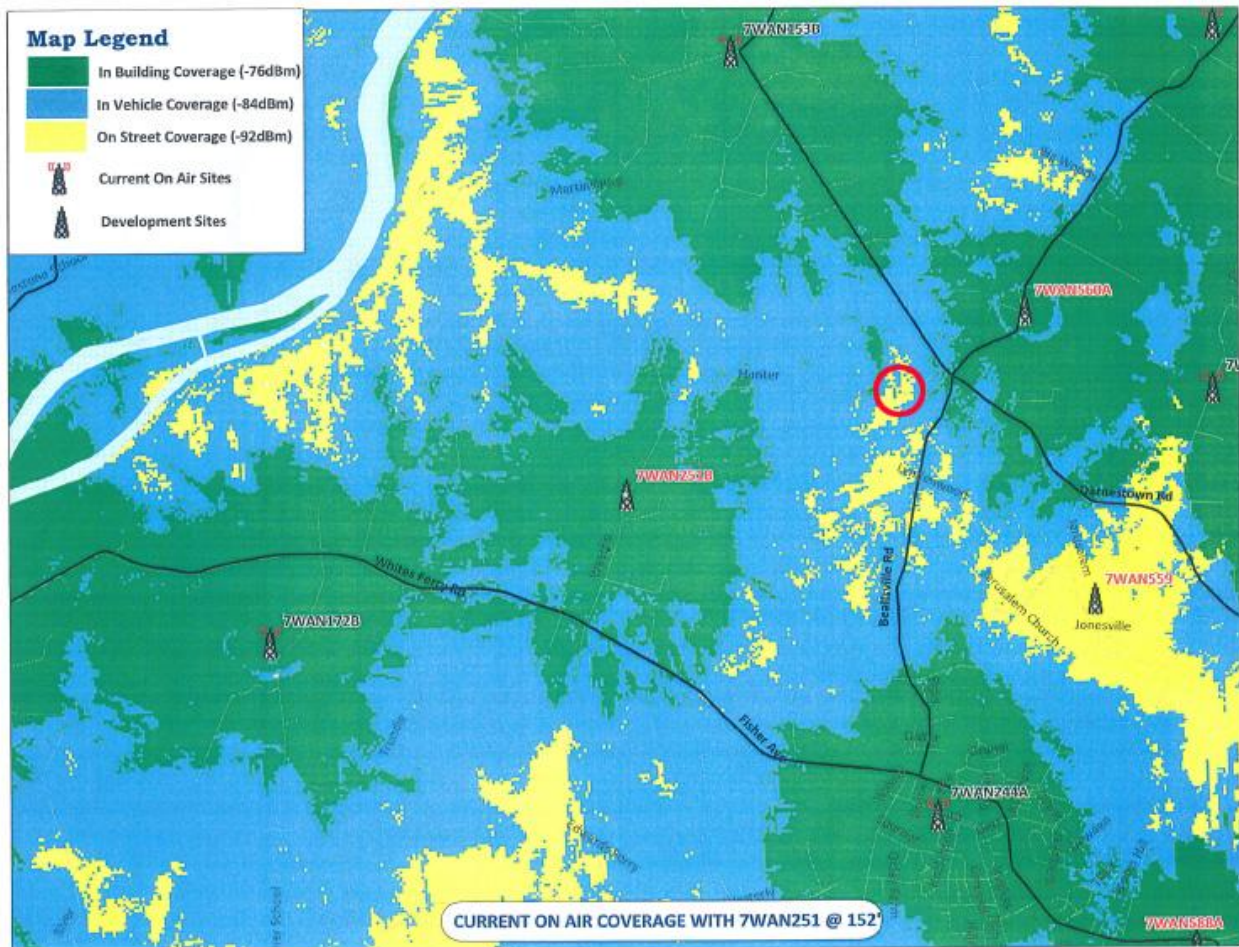
The Telecommunications Transmission Facility Coordinating Group (the TFCG or the Tower Committee) reviewed a proposed facility about 20 feet north of this proposal on March 2, 2011. For that proposal, the group recommended the facility, conditional on the approval of a Special Exception by the Board of Appeals. The Tower Coordinator Recommendations report includes the following additional information:

- In 2010, the Tower Committee reviewed a proposal for a 150-foot monopole 150 feet from Wasche Road. That proposal was in a stream buffer but met setbacks.
- Coverage maps were provided with the 2010 submission but not with the 2011. The Coordinator expected that signal levels would shift with the tower being moved 700 feet; new coverage levels were expected to be below target levels on a portion of West Hunter Road. [The current coverage maps show the expected gap in in-vehicle coverage along West Hunter Road.]

- An aerial photo and a photo of the site showing a comparison of the two locations is included in the report (attached). The report observes that “[i]t appears that the new location may be less obtrusive because the monopole will be farther away, which can diminish the profile of the structure on the horizon.”
- The 2011 proposal changed the traditional monopole design with large triangular platforms to a unipole design as requested by the Rustic Roads Advisory Committee, with four bays to hold antennas. T-Mobile proposes to use six antennas in two bays, rather than the original nine antennas. This leaves two bays for two additional carriers.
- The height increased from 150 feet to 155 feet to allow three carriers in the unipole design and to compensate for the lower elevation of the new location.



Existing coverage map. Proposed site shown in center. Proposed coverage area on West Hunter Road highlighted (right side).



Proposed coverage map. Proposed site shown in center. Proposed coverage area on West Hunter Road highlighted (right side)

Rustic Roads Advisory Committee

In October 2009, T-Mobile representative, Ms. Hillorie Morrison briefed the Rustic Roads Advisory Committee (RRAC) on five proposed facilities, including the original 150-foot monopole proposal at the front of this property reviewed by the Tower Committee in 2010. The RRAC’s comments read, in part:

In general, we believe all the sites are located too close to the road and may have a negative impact on the surrounding scenery...In all cases we prefer the use of a monopole with internal antennae and an unobtrusive color.¹³

¹³ RRAC letter, February 3, 2010, attached

At the RRAC's May 2011 meeting, the RRAC reviewed the amended T-Mobile proposal, which at that time, showed the pole 44 feet from the north property line (20 feet from the current location). They offered thanks for addressing their previous concerns with the changed pole design and setback from the road, but the committee did not support the reduction in setback:

[W]e do not support a waiver to allow the tower to be located closer to the property line (44 feet rather than the required 155 feet). Based upon site visits, aerial photos and photos taken during the balloon test, it appears that the pole will be more visible when looking from the road down the driveway, so we cannot recommend the proposed site which would require a waiver.¹⁴

Community Outreach and Comments

In addition to working with the Rustic Roads Advisory Committee, T-Mobile provided the date and time of the balloon test to community representatives; at least two representatives, one neighboring family and staff observed the test.

Comments were received on this application from a coalition comprising Montgomery Countryside Alliance, Sugarloaf Citizens' Association, Audubon Naturalist Society, Sugarloaf Regional Trails, Sierra Club Montgomery and Conservation Montgomery. Concerns include the placement of the tower in the viewshed of the rustic road and the neighboring historic properties. They do not find that moving the tower 20 feet to the south, as has been done with the latest submission which followed the balloon test, is sufficient; they recommend moving the tower near the existing buildings and trees to minimize the view from the neighboring properties and road.

A phone call was also received from a resident who pointed out that the area is already overly burdened with the incinerator at Dickerson (the smokestacks are visible from just north of this property) and the County's Compost Facility, plus the "threat" that the County will construct a landfill on property on Martinsburg Road which was purchased some years ago for that purpose.

¹⁴ RRAC letter, May 25, 2011, attached

ZONING ORDINANCE

Conditions for Granting

Following is the Standard for Evaluation provided by Sec. 59-G-1.2.1:

A special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

The inherent physical and operational characteristics of a telecommunications facility include:

- Antennas installed on or within a support structure with a significant height;
- A technical equipment area that may or may not be enclosed by a fence;
- Visual impacts associated with the height of the support structure;
- Radio frequency emissions; and
- A small number of monthly vehicular trips for maintenance.

The non-inherent characteristics include:

- The location of the facility along a rustic road and a Maryland Scenic Byway;
- The location of the facility in the viewsheds of properties identified in the Master Plan for Historic Preservation and the Locational Atlas & Index of Historic Sites in Montgomery County Maryland; and
- The existence and location of prime farm soils on the property.

To reduce the adverse effects of the facility, the applicant proposes to construct a 155-foot tall concealment pole with internal antennas. An eight-foot tall board-on-board fence partially surrounded by evergreen trees is proposed to screen the lower part of the pole and the facilities within the compound.

The property is forested along Wasche Road, a rustic road and a Maryland Scenic Byway, and this forest could provide excellent screening. Because of the proposed location of the facility on the site near the northern property line and along the axis of the driveway, the forest will provide less screening from the road and the historic structures on the confronting property than if the facility were placed near the center of the site in proximity to the existing buildings, which are screened on two sides by forest. This location also serves to protect the prime farm soils to the greatest extent possible, as described previously.

Staff recommends the use of a concealment pole, as proposed, to help mitigate the non-inherent impacts of the proposed facility. Staff further recommends moving the facility closer to the center of the site to meet required setbacks and to mitigate impacts to the rustic road, the Maryland Scenic Byway, the historic structures, and the prime farm soils.

Compliance with General Conditions

Following are the General Conditions, Sec. 59-G-1.21.

- (a) A special exception may be granted when the Board or the Hearing Examiner finds from a preponderance of the evidence of record that the proposed use:
 - (1) Is a permissible special exception in the zone.

A telecommunications facility is a permissible special exception use in the RDT zone.¹⁵

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

With the exception of one setback requirement, the proposed use complies with the specific regulations set forth in Sec. 59-G-2.58 for a telecommunications facility, as described below.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation

¹⁵ Sec. 59-C-9.3 (f) Land uses

in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The property is subject to the provisions of the 1980 Functional Master Plan for the Preservation of Agriculture and Rural Open Space and the 1996 Rustic Roads Functional Master Plan. Neither Plan addresses telecommunications facilities. The proposal should meet Master Plan recommendations for the preservation of farmland and the significant features along rustic roads. Recommendations for certain changes to assure that the proposal be consistent with both of these Master Plans appear above.

- (4) Will be in harmony with the general character of the neighborhood, considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.

The neighborhood is characterized by a mix of residential and agricultural uses, with many historic properties and features. The 856-foot setback from Wasche Road and the concealment pole design are provided to address the matters of design, scale and bulk. The intensity and character of activity, traffic, and parking will be in harmony with the neighborhood. The number of similar uses should be minimized, which is addressed by the extra bays for antennas and room in the compound, which allows for two additional carriers on this facility.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed facility will have a visual impact on the surrounding properties which the applicant has sought to mitigate with the setback and use of a concealment pole design. Recommended ways of further reducing the visual impact are described elsewhere in this report.

There is no evidence that the facility will otherwise have a detrimental impact on the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

As presented, the use will not cause objectionable noise, vibrations, fumes, orders, dust, illumination, glare, or physical activity. No lights are proposed. Any lighting would likely be visible from long distances, so if the other items of concern in this report are addressed, this exclusion should be included as a condition of approval.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master plan do not alter the nature of an area.

Neighboring areas contain both one-family residential and agricultural uses. One neighbor has observed that this area is excessively burdened with the Mirant power plant, the County's Resource Recovery Facility (a waste-to-energy plant), the County's Compost Facility, and vacant County property purchased for a future landfill (this use is no longer proposed, but the County retains ownership of the land). These facilities are concentrated and do have a negative impact on this area. Because the currently proposed use does not generate the truck and train traffic, or produce the noise, smoke, and odors associated with the other uses in this area, the type of impact is different. The visual impact of the smokestacks plus the towers is far greater here than in other parts of the County. To mitigate the impacts, the applicant proposes a concealment pole, and staff recommends locating the pole in the least visually obtrusive location possible.

- (8) Will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

There is no evidence that the proposed use will adversely affect the health, safety, security, morals or general welfare of the community.

- (9) Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.
 - (A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.
 - (B) If the special exception:
 - (i) does not require approval of a new preliminary plan of subdivision; and
 - (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact; then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.
 - (C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

This proposal will not require approval of a preliminary plan of subdivision. There will be no increase in the number of weekday peak period trips generated by the site, so no LATR/PAMR is required. The facility will have no impact upon schools, police and fire protection, water and sewer, public roads, storm drainage, or other public facilities.

A well is indicated on the approved NRI/FSD just east of the main building, and plumbing vents are seen on the roof of the structure. The well and septic system should be shown on the drawings to confirm that they will not be negatively impacted by the construction or operation of the proposed facility. The Department of Permitting Services may have additional recommendations.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of

any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

No finding is necessary.

- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

The applicant writes, “Applicant asserts that it has and/or will meet all applicable general and specific standards under this Article. Applicant will further work with the Board to comply with any additional requirements if applicable as the Board reviews the special exception application.”

Compliance with General Development Standards

This application meets Sec. 59-G-1.23, General development standards, as follows:

- (a) Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

RDT Development Standards	Required/Permitted	Proposed
Density	1 DU/25 acres	None
Minimum net lot area	40,000 square feet	10.0 acres
Minimum lot width: Along front building line Along front street line	25 feet 125 feet	400 feet 400 feet
Yard requirements for a main building*: Minimum setback Minimum side yard - One side - Sum of both sides - Abutting a public street Minimum rear yard	50 feet 20 feet 40 feet 50 feet 35 feet	509 feet* 54 and 269 feet* 323 feet* n/a 505 feet*
Yard requirements for an accessory building or structure**: - From the front lot line - From the side lot line of an interior lot	50 feet*** 15 feet	829 feet 22 and 332 feet

RDT Development Standards	Required/Permitted	Proposed
- From a rear lot line	10 feet	224 feet
Maximum lot coverage	10 percent	Less than 2 percent
Maximum building height (none for agricultural buildings)	50 feet	24 feet****
<p>*No new buildings are proposed—existing main building measurements shown. **The proposed eight-foot fence is considered an accessory structure by DPS. If the fence height is reduced to 6.5 feet, these standards do not apply. ***This setback must consist of any scenic setback indicated on an approved and adopted master plan or 50 feet, whichever is greater. No scenic setback is indicated for this site. ****Height of existing building shown. The proposed 155-foot tower is discussed below.</p>		

The proposal meets the RDT development standards as shown in the table above. As noted, the proposed eight-foot fence is considered an accessory structure because of its height.

- (b) Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.

An unmanned facility is proposed, with maintenance visits estimated at less than one per month. The existing gravel area is sufficient for the occasionally parking of a maintenance vehicle.

- (c) Minimum frontage. In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:

- (1) Rifle, pistol and skeet-shooting range, outdoor.
- (2) Sand, gravel or clay pits, rock or stone quarries.
- (3) Sawmill.
- (4) Cemetery, animal.
- (5) Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.
- (6) Equestrian facility.
- (7) Heliport and helistop.

No finding is necessary.

- (d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

As noted above, a forest conservation plan exemption, 42011088E, was approved on December 14, 2010.

- (e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

No preliminary water quality plan has been approved.

- (f) Signs. The display of a sign must comply with Article 59-F.

The applicant will supply a sign as described in and required by Sec. 59-G-2.58(a)(8)

- (g) Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

No building is proposed.

- (h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety.

- (1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

- (2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

No lighting is proposed.

Specific Telecommunications Facility Requirements

Following are the Telecommunications facility findings, Sec. 59-G-2.58:

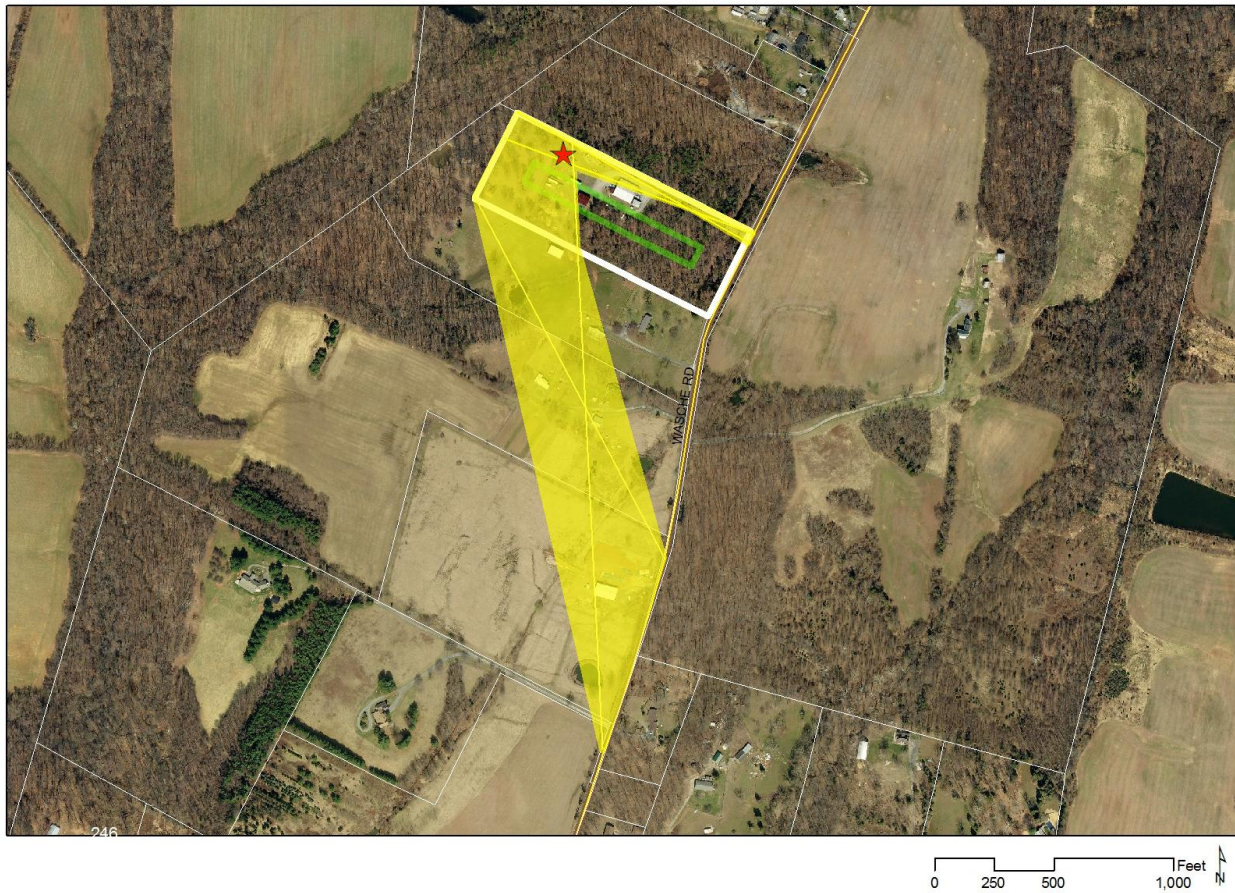
- (a) Any telecommunications facility must satisfy the following standards:
 - (1) A support structure must be set back from the property line as follows:
 - (A) In agricultural and residential zones, a distance of one foot from the property line for every foot of height of the support structure.
 - (B) In commercial and industrial zones, a distance of one-half foot from the property line from a property line separating the subject site from commercial or industrial zoned properties, and one foot for every foot of height of the support structure from residential or agricultural zoned properties.
 - (C) The setback from a property line is measured from the base of the support structure to the perimeter property line.
 - (D) The Board of Appeals may reduce the setback requirement to not less than the building setback of the applicable zone if:
 - (i) the applicant requests a reduction; and
 - (ii) evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.

S2805 Setbacks for 155-foot Facility



0 100 200 400 Feet N

Wasche Road Visible Areas and 155' Setbacks



Aerial photo showing areas of greatest visibility from Wasche Road

This setback requirement is not met. A 155-foot tower requires a 155-foot setback in the RDT zone. The setbacks shown on the submitted drawings, measured from the base of the support structure, are 856 feet to the front property line, 64 and 330 feet to the side property lines, and 241 feet to the rear property line. The applicant requests a setback reduction of 91 feet from the north property line.

The request for a reduction is based upon the following¹⁶:

- Placing the tower close to the treeline allows minimal forest disturbance to minimize visibility and reduce environmental impacts
- The location takes into account development/uses on the property and an earlier balloon test for a location closer to the road

¹⁶ Summary of applicant's revised Statement of Justification, June 7, 2011, p. 6.

- The location is further from the road and uses a unipole structure
- The setback waiver is not for the road; that setback is 856 feet
- This located the structure closer to existing tall, mature trees on the north side of the parcel
- It locates the structure farther from existing, developed residences on the opposite side of the road
- It screens the lower part of the pole with a large, existing building on the property
- It results in less visibility from the nearby residences and roadway users
- The parcel to the south with a residence is also owned by the co-applicant/landowner.

Staff considered the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street, as follows:

- The height of the structure is 155 feet, which exceeds the height of both the buildings and the trees on the property. The tallest structure is approximately 24 feet to the ridgeline, and the trees are up to 75 feet tall¹⁷; the proposed structure will rise 70 or more feet above the trees and structures on the site.
- The topography of the site is lowest on the west side of the property and highest in the east, along Wasche Road. Spot elevations are not given, but are estimated at slightly less than 380 feet at the low point and about 405 feet at the highest point. The tower elevation is proposed at 390 feet. If the tower were moved to a higher elevation, i.e., closer to the center of the site, its height might be reduced to the original 150 feet.
- The existing vegetation on the site consists of a mixed deciduous and evergreen forest up to 75 feet tall, as noted above. The forest can be used to screen the tower to the largest extent that will be possible on this site, if the tower is located between the existing buildings and the forest; this has not been done.

¹⁷ Measurements taken from 2008 oblique aerial photos in Pictometry.



Photo of trees along north (right) and west (center and left) of property

- The closest adjoining and nearby residential properties are located to the south and across Wasche Road. The closest house is owned by the co-applicant; it appears that the facility will be well-screened by the forest when viewed from inside that dwelling. The next neighbor to the south will have the base of the tower screened by a small farm structure, but no other screening. The neighbor across Wasche Road will have a clear view from their historic house down the applicant's driveway to the pole. It appears that, in the current location, the neighbors will be more negatively impacted by the view than the property owner will be.



Kilmain II, the confronting property, as seen from the driveway



*Balloon test photo (cropped)
taken from the residence
south of the co-applicant's
residence. Submitted by C.
Taylor, Montgomery
Countryside Alliance*

- The visibility from the street was determined by a balloon test on the previously proposed location 20 feet from the current location, conducted by the applicant on February 7, 2011, which staff and at least two residents attended.

The facility will be clearly visible when viewed down the driveway, and will also be visible from the south on Wasche Road for some distance, about one-quarter to one-half mile away. The pole will be visible but much less obtrusive from some parts of Whites Ferry Road, Edwards Ferry Road and West Hunter Road. The shortest and most obtrusive view is down the driveway. If the tower were to meet setback requirements, it



would not be visible from this location.

However, if the tower were placed west of the forested area, it would become slightly more obtrusive when viewed from the south. The least visually obtrusive location to place the pole on the site is in the center.

Photo taken during balloon test, looking down driveway. Proposed tower has been moved 20 feet to the south (left in photo) since this photo was taken; no balloon test was done for the currently proposed location. Submitted by C. Taylor, Montgomery Countryside Alliance

Staff does not find the proposed location, 64 feet from the north property line, to be less visually obtrusive than other locations that meet the setbacks. If the pole cannot be placed so as to satisfy the setback requirements, staff would find the area shown on the map below to be less visually obtrusive; if requested, staff would support a reduction in setback in those areas.

Wasche Road Visible Areas and 155' Setbacks

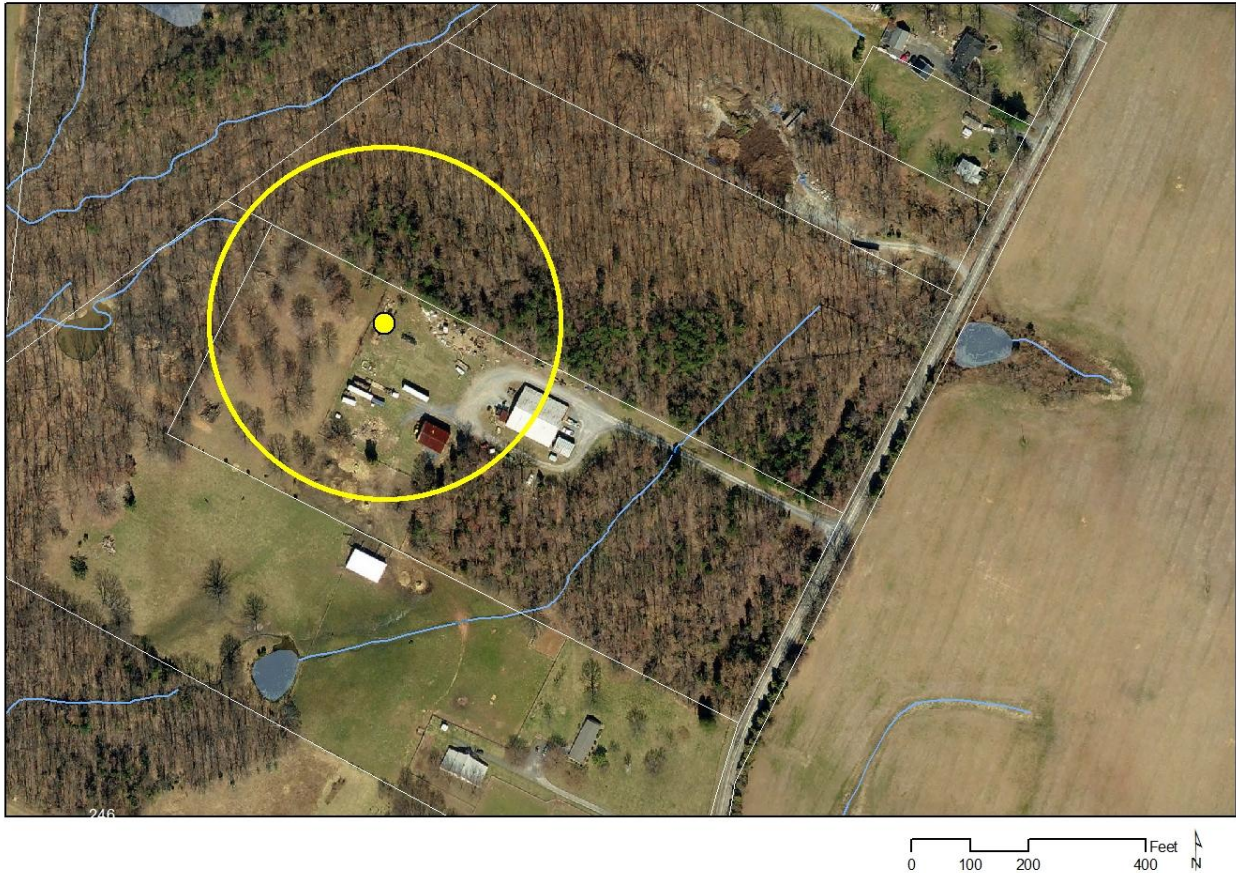


In the aerial photo above, the setbacks are shown in green, the most open views from Wasche Road and adjacent residences are shown in yellow, and the area most screened by trees (and thus less visually obtrusive) is shown in blue.

- (2) A support structure must be set back from any off-site dwelling as follows:
 - (A) In agricultural and residential zones, a distance of 300 feet.
 - (B) In all other zones, one foot for every foot in height.
 - (C) The setback is measured from the base of the support structure to the base of the nearest off-site dwelling.
 - (D) The Board of Appeals may reduce the setback requirement in the agricultural and residential zones to a distance of one foot from an off-site residential building for every foot of height of the support structure if:
 - (i) the applicant requests a reduction; and
 - (ii) evidence indicates that a support structure can be located in a less visually obtrusive location after considering the height of the

structure, topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street.

S2805 300-foot Setback



A distance of 300 feet from the proposed facility impacts two adjacent properties—the one to the south, owned by the co-applicant, and one to the north, a vacant ten-acre parcel owned by John and Anne Lee of Maricopa, Arizona. The 300-foot diameter setback extends 236 feet into the Lee’s property. Given the stream on the eastern portion of both properties, this area might be the most likely location for a house and septic on the property, if a house were desired.

The Lees are listed by the applicants as adjoining and confronting property owners for notification purposes, so are presumably aware of this application. They have not been in contact with this office in support or opposition to this proposal.

- (3) The support structure and antenna must not exceed 155 feet in height, unless it can be demonstrated that additional height up to 199 feet is needed for service, collocation, or public safety communication purposes. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection pursuant to the building permit, the applicant must certify

to the Department of Permitting Services that the height and location of the support structure is in conformance with the height and location of the support structure as authorized in the building permit.

The proposed concealment pole will be 155 feet in height.

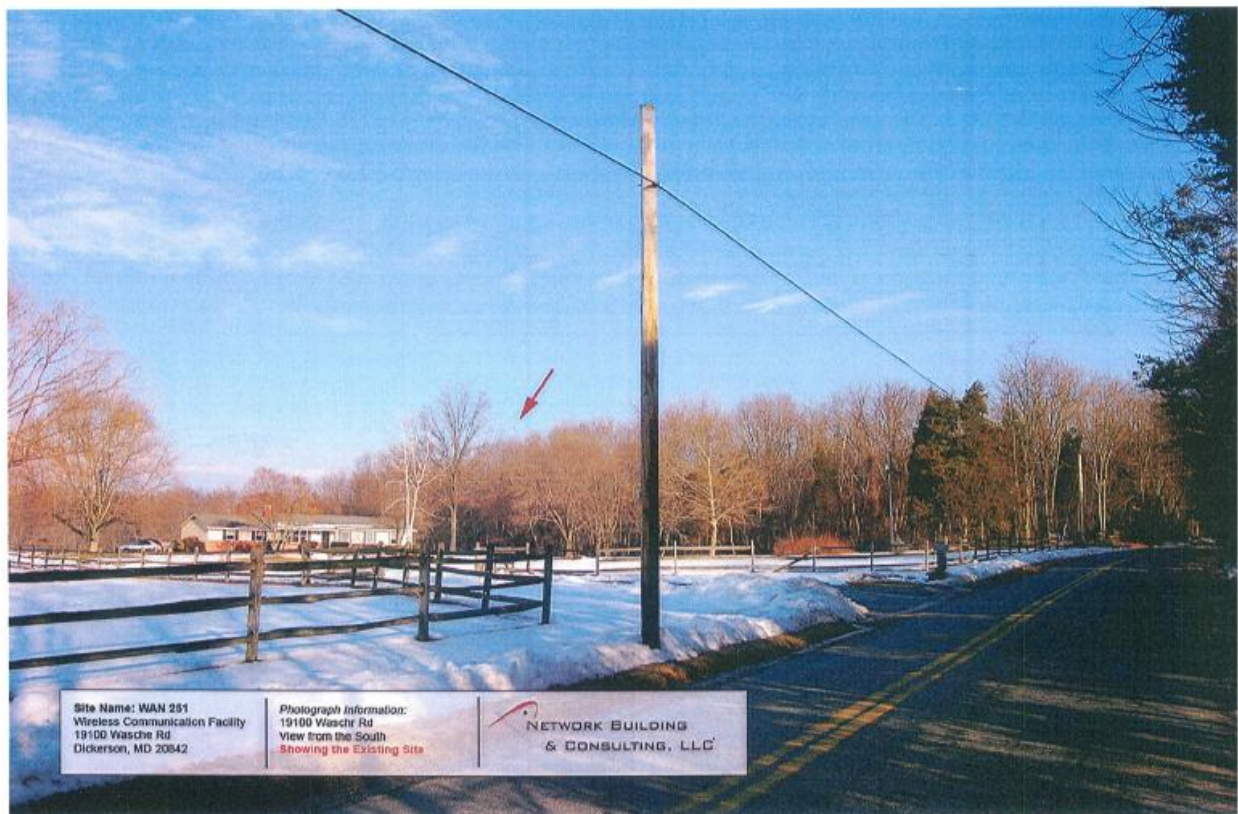
- (4) The support structure must be sited to minimize its visual impact. The Board may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and adjoining and nearby residential properties. The support structure and any related equipment buildings or cabinets must be surrounded by landscaping or other screening options that provide a screen of at least 6 feet in height.

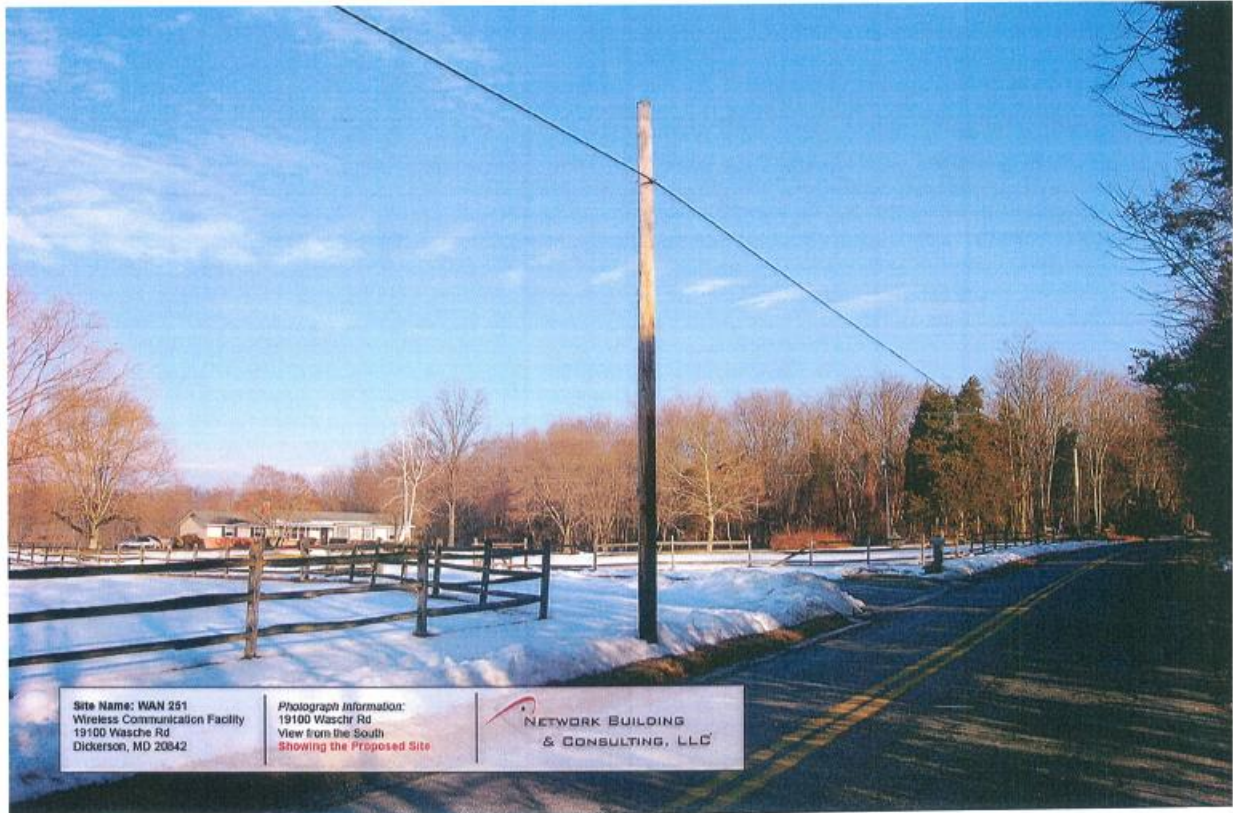
To mitigate the visual impact, a concealment pole is proposed, and it is set back 856 feet from the road. As noted above, the pole has not been sited to minimize its visual impact. It has been located on the driveway which creates a break in the forest between this and the neighboring property.





Balloon test (top) and photosimulation(above) take from Wasche Road, south of the property.(Yellow area in maps, above)





Balloon test photo (top) and photosimulation (above) from closer to property. (Screening from trees creates the gap in yellow in the maps above)

- (5) The property owner must be an applicant for the special exception for each support structure. A modification of a telecommunications facility special exception is not required for a change to any use within the special exception area not directly related to the special exception grant. A support structure must be constructed to hold no less than 3 telecommunications carriers. The Board may approve a support structure holding less than 3 telecommunications carriers if:
 - (A) requested by the applicant and a determination is made that collocation at the site is not essential to the public interest; and
 - (B) the Board decides that construction of a lower support structure with fewer telecommunications carriers will promote community compatibility. The equipment compound must have sufficient area to accommodate equipment sheds or cabinets associated with the telecommunications facility for all the carriers.

The property owner is an applicant for the special exception. The proposed facility will have sufficient space on the tower and within the compound for up to three carriers.

- (6) No signs or illumination are permitted on the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.

The structure will be identified with a sign no larger than two square feet as required by item (8) below, and fixed to the support structure or equipment shelter. No illumination is proposed.

- (7) Every freestanding support structure must be removed at the cost of the owner of the telecommunications facility when the telecommunications facility is no longer in use by any telecommunications carrier for more than 12 months.

The applicant agrees to this provision.

- (8) All support structures must be identified by a sign no larger than 2 square feet affixed to the support structure or any equipment building. The sign must identify the owner and the maintenance service provider of the support structure or any attached antenna and provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Board of Appeals notified within 10 days of any change in ownership.

The applicant will supply such a sign and agrees to this provision.

- (9) Outdoor storage of equipment or other items is prohibited.

The current operation includes outdoor storage of equipment and other items. The Statement of Justification reads: "Applicant shall comply with this requirement as the proposed site has a 50' X 50' fenced equipment compound."¹⁸

- (10) Each owner of the telecommunications facility is responsible for maintaining the telecommunications facility in a safe condition.

The applicant agrees to this provision.

- (11) The applicants for the special exception must file with the Board of Appeals a recommendation from the Transmission Facility Coordinating Group regarding the telecommunications facility. The recommendation must be no more than 90 days old, except that a recommendation issued within one year before June 22, 2010, must be accepted for one year from the date of issuance. The recommendation of the Transmission Facility Coordinating Group must be submitted to the Board at least 5 days before the date set for the public hearing.

The Tower Committee reviewed a facility proposal on this property on March 2, 2011. The proposal has been amended by moving the facility about 20 feet south, as described above.

¹⁸ Ibid., p. 8

- (12) The Board must make a separate, independent finding as to need and location of the facility. The applicant must submit evidence sufficient to demonstrate the need for the proposed facility.

The stated purpose of the facility is to “provide in-vehicle coverage along Wasche Road and West Hunter Road. While the area is largely rural, in-building/home coverage will also be improved in the area closest to the facility.”¹⁹ As noted by the Tower Committee report,²⁰ when the tower was moved to the back of the property, an in-vehicle gap in coverage appeared along West Hunter Road. In moving the facility to meet setbacks or the requirements for reducing setbacks, staff recommends closing this gap.

Propagation maps have been submitted by the applicant and are included with the Tower Committee discussion above.

- (b) Any telecommunications facility special exception application for which a public hearing was held before November 18, 2002 must be decided based on the standards in effect when the application was filed.

This provision is not applicable to this application.

- (c) Any telecommunications facility constructed as of November 18, 2002 may continue as a conforming use.

This provision is not applicable to this application.

CONCLUSION

Telecommunication facilities that provide local cell phone and internet service benefit communities and support farming, but the facilities can also disturb existing and future farm operations. Because of their height, these facilities also have a significant visual impact. Every effort should be made to mitigate these negative effects.

The proposed facility requires a 155-foot setback, but provides only 64 feet on the north side, resulting in a request for reduction of setback of 91 feet. Staff does not find that the proposal

¹⁹ Ibid., p. 8

²⁰ Tower Coordinator Recommendation, January 28, 2011, second page

meets the requirements for such a reduction. In addition, staff finds negative impacts to several non-inherent characteristics of the site including impacts to Wasche Road, a rustic road and a Maryland Scenic Byway, Kilmain II, a Locational Atlas & Index of Historic Sites identified property, and the existence and location of prime farm soils on this property. Based on the failure to meet the requirements for a reduction in setbacks, and the negative impacts to the non-inherent characteristics of the site, staff recommends denial.

If the applicant wishes to amend this proposal to meet setbacks or to meet the requirements for a reduction of setbacks, staff offers the following items for consideration:

- To preserve farmland and farming, and to protect prime farm soils, the structure should be located off the prime farm soils. Given the other site constraints, locating it near the existing structures on the site, and away from the existing pasture may be sufficient.
- To preserve the views along Wasche Road, the facility should be screened by the mature trees on the site to the maximum extent possible.
- To reduce the visual impacts to residential neighbors, including those in the historic Kilmain II house directly across the street from this site, the facility should be moved toward the center of the site and where it will be screened by the existing mature trees.
- The existing well and septic should be shown on the submission, and other requirements should be verified with the Department of Permitting Services.
- The stated coverage objectives should be met by closing the coverage gap on West Hunter Road.

Attachments:

- Attachment A: Aerial photos of site
- Attachment B: Site photos
- Attachment C: Rustic Roads Functional Master Plan excerpt for Wasche Road (description and map), pp. 164-165
- Attachment D: Right-of-Way Agreement between John D. Ammerman and The Potomac Edison Company (dba Allegheny Power)
- Attachment E: Letter from the Rustic Roads Advisory Committee to Ms. Hillorie Morrison dated May 25, 2011
- Attachment F: Community correspondence
- Attachment G: Tower Coordinator Recommendation dated January 28, 2011