

proposed a concealment pole with antennas mounted on the inside but in response to comments from the community changed the design to a silo, reduced the height, and moved the location of the compound to an area further back from the road to enable the facility to further blend with its surroundings.

The Telecommunications Transmission Facilities Coordination Group (“TFCG”) reviewed and recommended the application at its March 3, 2010 meeting (Application #200907-11). The report documents that T-Mobile does not have sufficient coverage in this area for its customers and that there are no existing facilities on which to locate antennas to meet its customers’ needs.

The facility will be in operation twenty four (24) hours a day, 365 days a year, but will be unmanned and will generate no more than occasional trips for maintenance purposes, typically less than one visit per month. It will not generate traffic or affect on-street parking as there is sufficient room to park on-site for the occasional visitor. There will be no material noise, dust, fumes or odors.

Compliance with Preservation of Agriculture & Rural Open Space Plan

The Functional Master Plan for the Preservation of Agriculture and Rural Open Space applies to the subject parcel. The plan, adopted in 1980, recommends that an “outer tier” of the County, adjacent to the Virginia, Frederick County and Howard County boundaries be preserved as agricultural and rural open space. The purpose of the plan is to avoid the continuing loss of farm acreage to development and to protect stream impact areas. The subject parcel is within the Agricultural Reserve. The Comprehensive Plan is implemented by the zoning ordinance and zoning maps. The parcel is zoned RDT. A telecommunications facility is permitted by special exception in an RDT zone. The facility is sited to as not to interfere with the existing agricultural use of the parcel and designed to blend in appropriately via the silo design.

Compliance with Rustic Road Functional Master Plan

The subject parcel is located off Mt. Ephraim Road which is a designated Rustic Road (see page 49 of the Rustic Road Functional Master Plan). The County’s Rustic Road Functional Master Plan was adopted in 1996. The purpose of Rustic Roads designation is to assure that rustic roads, while being maintained for safety purposes, are treated with “special care” on a case-by case basis so that their rural quality is maintained (see page 35). The program is intended to support and enhance the agricultural community and agricultural activities. The program is implemented by the Montgomery County Department of Public Works and Transportation. Rustic road designation is *not* intended to affect the use of adjoining land except in the design of access to subdivision (see page 5).

The telecommunication facility is designed as a silo to help it to blend in with its rural setting. It will be accessed by an existing driveway. No additional curb cut will be required. The stealth design will enable the facility to blend with its surroundings while providing valuable, important and necessary enhanced wireless coverage for those travelling, living, working and visiting the area.

Compliance with General Special Exception Criteria

The County Board of Appeals may hear and decide the following matters as provided in Section 2-112:

- (a) Petitions for special exceptions, subject to articles 59-G-1 and 59-G-2.

In granting a special exception, the Board of Appeals must take into account the following criteria as set out in Article 59-G-1 and 59-G-2:

Compliance with Special Exception Criteria Article 59-G-1

- (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. This requirement is met. The site is located in the Rural Density Transfer (RDT) zone. Telecommunications Facilities are permitted by special exception in the Rural Density Transfer zone, subject to standards set forth below in provisions of Article 59-G of the Montgomery County Zoning Ordinance.

(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. This requirement is met and is consistent and in some instances surpasses provisions of 59-G as set forth in detail in 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 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. This requirement is met as noted above in the Compliance with Master Plan section.

(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 Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted. This requirement is met as noted in the introductory of the Statement of Justification and fact that no material

use of public facilities are needed for the proposed passively used and unmanned 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 facility meets these criteria as noted above and in the application for this unmanned and passive use facility. It will improve wireless coverage in the surrounding area with minimal visual impact on surrounding properties or general neighborhood close-by property owners due to its design as a concealment pole.***
- (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. **The facility will be unmanned and will generate no more than occasional trips for maintenance purposes, typically less than one visit per month. It will cause no objectionable noise, vibration, fumes, odors, dust illumination glare of physical activity. Radio-frequency emissions will be in compliance with federal standards. No lights are expected to be required by FAA per their guidelines at the proposed height.***
- (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. **This requirement is met as noted in the introductory statements and above in the Compliance with Master Plan compliance section.***
- (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. **The facility will be unmanned and will generate no more than occasional trips for maintenance purposes, typically less than one visit per month. It will cause no objectionable noise, vibration, fumes, odors, dust illumination glare of physical activity. Radio-frequency emissions will be in compliance with federal standards. No lights are expected to be required by FAA per their guidelines at the proposed height.***
- (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. **This requirement is met as it will be unmanned and will generate no material impacts on 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. **Not Applicable.***

(B) *If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board 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. **Not Applicable and/or this requirement is met as no material use of public facilities is required for this unmanned facility.***

(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. **Not applicable and/or this requirement is met as no material use of public facilities is required, as the facility will be unmanned and typically requires less than one (1) vehicular trip per month for a general maintenance check up. In fact, it will increase public safety by improving wireless coverage for emergency calls and wireless internet connectivity.***

(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. **Applicant understands and will comply with this requirement.***

(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. **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 Special Exception Criteria Sec. 59-G-2.58. Telecommunications Facility.

The telecommunications facility is consistent with the master plan and compatible to the existing neighborhood. In granting a special exception, The Board of Appeals must take into account the following criteria:

(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. **This requirement is met from all property lines as noted in submitted drawings.***

- b. *In commercial and industrial zones, a distance of one-half foot from property line for every foot of height of the support structure 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. **Not Applicable.***
 - c. *The setback from a property line is measured from the base of the support structure to the perimeter property line. **This requirement is met.***
 - 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. **Not applicable.***
- (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. **This requirement is met as noted in submitted drawings.***
 - b. *In all other zones, one foot for every foot in height. **Not Applicable.***
 - c. *The setback is measured from the base of the support structure to the base of the nearest off-site dwelling. **This requirement is met.***
 - 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 (i) if 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. **Not Applicable.***
- (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 facility does not exceed 155' in height; it will be 127 high.***

(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. **The proposed facility will involve a silo. It will be screened by an eight-foot-high board-on-board fence and vegetation and set back significantly from the public roads.**

(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 telecommunication facility for all the carriers. **The property owners are an applicant for the special exception. The 127' high silo can accommodate at least two other carriers. There is also sufficient ground area to accommodate future 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. **Applicant shall comply with this requirement.***

(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. **Applicant shall comply with this requirement.***

(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. **Applicant shall comply with this requirement.***

(9) *Outdoor storage of equipment or other items is prohibited. **Applicant shall comply with this requirement.***

(10) *Each owner of the telecommunications facility is responsible for maintaining the telecommunications facility, in a safe condition. **Applicant shall comply with this requirement.***

(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 one year 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. **Applicant has obtained a recommendation from the TFCG dated March 3, 2010 which is included in this Application.**

(12) *The Board must make a separate, independent finding as to need and location of the facility. The applicant must submit evidence sufficient to determine the need for the proposed facility. Propagation maps showing existing coverage and coverage with the facility are enclosed. The purpose of the site is to provide enhanced wireless coverage to the Mullinex Road area and beyond. Currently, there are coverage gaps throughout the area and there is minimal unreliable to no in-building/home coverage. The proposed facility will provide in-vehicle coverage to Mount Ephraim, Harris and Barnesville Roads as well as improving overall on-air coverage. While the area is largely rural, in-building/home coverage will also be improved in the areas close to the facility.*

(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. **Not Applicable.***

(c) *Any telecommunications facility constructed as of November 18, 2002 may continue as a conforming use. **Not Applicable.***

Conclusion

Applicant submits to the Board that the proposed telecommunications facility meets and exceeds criteria for a Special Exception, as enumerated in Article 59-G. Applicant respectfully requests that the Board to approve the application.