

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850

www.montgomerycountymd.gov/content/council/boa/index.asp

(240) 777-6600

Case No. S-2809

PETITION OF T-MOBILE NORTHEAST, LLC AND ERP OPERATING, LIMITED

OPINION OF THE BOARD

(Opinion Adopted October 26, 2011)

(Effective Date of Opinion: December 1, 2011)

Case No. S-2809 is an application for a special exception, pursuant to Section 59-G-2.58 of the Zoning Ordinance, to construct and operate an unmanned wireless telecommunications facility and an associated equipment area. The Applicants also request a reduction in the setback requirements, pursuant to Section 59-G-2.58(a)(1)(D), to allow the facility to be erected 75 feet from the western property line. The subject property is located at 14001 Grey Eagle Court, Germantown, Maryland, 20874, in the PD-9 Zone

The Hearing Examiner for Montgomery County held a hearing on the application on July 11, 2011, closed the record in the case on August 15, 2011, and on October 6, 2011, issued a Report and Recommendation for approval of the special exception.

Decision of the Board: Special Exception **Granted** Subject to
The Conditions Enumerated Below.

The Board of Appeals considered the Report and Recommendation at its Worksession on October 26, 2011. After careful consideration and review of the record in the case, the Board adopts the Report and Recommendation and grants the special exception, including the reduction in the setback from the western property line, subject to the following conditions:

1. The Petitioners shall be bound by all of the exhibits of record, and by the testimony of their witnesses and the representations of counsel to the extent that such testimony and evidence are

- identified in the Hearing Examiner's Report and Recommendation, and in this opinion.
2. Approval by the District Council of an amendment to the development plan for the subject property to accommodate the use in accordance with this special exception petition.
 3. Approval by the Planning Board of a site plan (in accordance with §59-D-3 of the Zoning Ordinance).
 4. 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 Petitioners 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.
 5. The telecommunication facility must display a contact information sign, no larger than two square feet, affixed to the outside of the equipment enclosure. This sign must identify the owner and the maintenance service provider and provide the telephone number of a person to contact regarding the installation. The sign must be updated and the Board of Appeals notified within 10 days of any change in ownership.
 6. There must be no antenna lights or stroboscopic lights unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.
 7. There must be no outdoor storage of equipment, except equipment specified in the Site Plan.
 8. Each owner of the telecommunications facility is responsible for maintaining the facility in a safe condition.
 9. The facility shall be available for collocation of up to three carriers.
 10. The telecommunications facility must be removed at the cost of the owner of the telecommunications facility when the facility is no longer in use by any telecommunications carrier for more than 12 months.
 11. Petitioners must obtain a Hazmat Use Permit for the subject site before commencing operations.
 12. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception

premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and the entire premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

On a motion by David K. Perdue, Vice-Chair, seconded by Carolyn J. Shawaker, with Walter S. Booth, Stanley B. Boyd, and Catherine G. Titus, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 1st day of December, 2011.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their

respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four months' period within which the special exception granted by the Board must be exercised.

MEMORANDUM

May 11, 2011

TO: Martin Grossman, Director
Office of Zoning and Administrative Hearings

FROM: Katherine Freeman, Executive Director
Board of Appeals

SUBJECT: Case No. S-2809
Petition of ERP Operating Limited Partnership and T-Mobile
Northeast, LLC

The case record for the captioned special exception petition is hereby transmitted to you. A public hearing on the petition is scheduled for July 11, 2011. The application was completed, according to the requirements of Sections 59-A-4.22 and 59-G-2.58, as of May 3, 2011.

CASE NO: S-2809

**PETITION OF ERP OPERATING LIMITED PARTNERSHIP AND
T-MOBILE NORTHEAST, LLC.**

EXHIBIT LIST

1. (a) Application form
(b) Certificate of Limited Partnership Authority, re: ERP Operating Partnership
2. List of adjoining/confronting property owners
3. Petitioner's statement
4. (a)- (b) Site plan
5. (a)-(b) Master Plans
6. M-NCPPC Forest Conservation Exemption dated 12/09/10
7. TFCG Recommendation dated 02/02/11
8. Lease
9. Antenna and cabinet specifications
10. (a)-(o) Photo simulations
11. Zoning vicinity map
- 12 (a) Envelope showing date notice mailed
(b) Notice of hearing scheduled for July 11, 2011
13. _____
14. _____
15. _____
16. _____
17. _____
18. _____
19. _____

20.

**BOARD OF APPEALS
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Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850

Phone:(240) 777-6660; Fax (240) 777-6665`

CASE NO. S-2809

**PETITION OF ERP OPERATING LIMITED PARTNERSHIP AND
T-MOBILE NORTHEAST, LLC.**

NOTICE OF HEARING

Please take notice that the Office of Zoning and Administrative Hearings for Montgomery County, Maryland, will hold a public hearing in the Stella B. Werner Council Office Building, Second Floor Davidson Memorial Hearing Room, at 100 Maryland Avenue, Rockville, Maryland, **on Monday, the 11th day of July, 2011, at 9:30 a.m.**, or as soon thereafter as this matter can be heard, on the above-captioned application for a special exception pursuant to Section 59-G-2.58 (*Telecommunications Facility*) of the Zoning Ordinance to permit:

- 1) A telecommunication concealment monopole with a height of 95 feet, with antennas mounted inside the monopole.
- 2) A screened 25-foot by 30-foot equipment compound.
- 3) Two equipment cabinets placed on a concrete pad within the proposed compound. The equipment cabinets measure approximately 69 ½ inches high, 52 inches wide and 28 inches deep and will sit atop the equipment pad measuring approximately 20 feet in length and 10 feet in width. Coaxial cables to be connected to the cabinets and to the antennas.
- 4) The equipment cabinets will be secured by a 7-foot tall chain link fence with 1 foot barbed wire and additional plantings.
- 5) Hours of operation: 24 hours a day, seven days a week
- 6) Facility to be unmanned with visits to the site only for emergency repairs or regular, scheduled maintenance visit once per month.

- 7) A reduction of 20 feet from the required 95-foot setback from the west of the property line, bordering the CSX railroad, resulting in a 75-foot setback to locate the support structure in a less visible location

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The subject property is located at 14001 Grey Eagle Court, Germantown, Maryland, 20874, in the PD-9 Zone (Tax Account Number 02369851)

Notices forwarded this 11th day of May, 2011, to:

Steve Merchant – ERP Operating Limited Partnership
Paul D. Ellington – T-Mobile Northeast, LLC
Gregory E. Rapisorda, Esquire
Malcolm Spicer, Jr., Esquire, Assistant County Attorney
Jennifer Hughes, Acting Director Department of Permitting Services
Mark Pfefferle,- M-NCPPC, Division Chief DARC
Washington Suburban Sanitary Commission
State Highway Administration
County Board of Education
Adjoining and Confronting Property Owners
Local Civic Associations

County Board of Appeals

by: _____
Katherine Freeman
Executive Director

NOTE: Any submissions regarding this matter should be sent directly to the Office of Zoning and Administrative Hearings, which will maintain the official administrative file until a hearing is conducted and a Report and Recommendation issued. Submissions should not be made to the Board of Appeals or to the individual Hearing Examiner assigned to the case. Submissions cannot be placed in the official file until received by the Office of Zoning and Administrative Hearings.

All parties who make submissions, after an initial filing, in Special Exception, Variance and Administrative Appeals cases, must furnish copies of the submission to all other parties in the case. For the purpose of this requirement, a party includes: (1) Counsel of record who have formally entered their appearance; (2) Any person to whom the Board of Appeals has granted Intervener status; and (3) The Applicant, Petitioner or Appellant in the case.

Submissions must be accompanied by a written statement certifying that copies have been sent to all parties. Failure to supply such written certification will result in refusal of the submission.

In addition to all other requirements, any party represented by counsel must submit electronic copies of their final plans, photographs, statements of operations, pre-hearing statements, and expert reports ten days before the hearing, unless they demonstrate that this requirement would create practical difficulties. Amended electronic copies must also be submitted of any plans, photographs, statements of operations or expert reports that are modified during or after the hearing. Electronic copies must be submitted on compact discs, in Microsoft WORD format for text documents, in PDF format for plans and other non-text documents, and in JPG or PDF format for photographs