

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

Case No. S-2639

**PETITION OF KOREAN COMMUNICATIONS SENIOR HOUSING/
OMNIPOINT COMMUNICATIONS CAP OPERATIONS, LLC**

Case No. S-1424

**PETITION OF KOREAN COMMUNITY
SENIOR HOUSING OF MARYLAND, INC.**

OPINION OF THE BOARD

(Opinion Adopted July 27, 2005)

(Effective Date of Opinion: August 31 2005)

Case No. S-2639 is an application for a special exception, pursuant to Section 59-G-2.43 of the Zoning Ordinance to permit the construction of an unmanned, wireless telecommunication facility on the rooftop of an existing, multi-family building. The facility will consist of antennas, equipment and shelters. The building which is the proposed location for the special exception use is itself a separate special exception, Case No. S-1424, for housing and related facilities for elderly persons.

By letter dated March 3, 2005, Thomas J. Carroll, Esquire, requests an administrative modification of Case No. S-1424 to locate the antennas in Case No. S-2639 at the subject property. The Board of Appeals granted Case No. S-1424 to the Korean Community Service Center of Greater Washington, Inc., on July 28, 1987, to permit elderly housing. The Board transferred the special exception to Korean Community Senior Housing Corporation of Maryland, Inc., on September 27, 1990.

The Hearing Examiner for Montgomery County held a hearing on the application in Case No. S-2639 on June 10, 2005. The record in the case remained open until June 20, 2005, and on July 20, 2005, the Hearing Examiner issued a Report and Recommendation for approval of the special exception.

The subject property is Lot P 11, Block 2, located at 440 East University Boulevard, Silver Spring, Maryland 20901, in the R-60 Zone.

Decision of the Board: Special exception Case No. S-2639 **granted** subject to the conditions enumerated below.

Administrative modification in Case No. S-1424 Petition of Korean Community Senior Housing Corporation of Maryland, Inc. **granted**.

The Board of Appeals considered the Hearing Examiner's Report and Recommendation at its Worksession on July 27, 2005. The Board also had before it Mr. Carroll's letter, dated March 3, 2005, requesting administrative modification of Case No. S-1424, to permit the location of the antennas in Case No. S-2639 at the subject special exception property.

Section 59-G-1.3(c)(1) of the Montgomery County Zoning Ordinance provides, pertaining to modification of special exceptions:

If the proposed modification is such that the terms or conditions could be modified without substantially changing the nature, character or intensity of the use and without substantially changing the effect on traffic or on the immediate neighborhood, the Board, without convening a public hearing to consider the proposed change, may modify the term or condition.

The Board finds that installation of the requested antennas on the building in Case No. S-1424 will not change the nature, character or intensity of the use or its effect on traffic or on the immediate neighborhood. The Board therefore **grants** the requested administrative modification.

After careful consideration and review, the Board adopts the Hearing Examiner's Report and Recommendation, and **grants** the special exception in Case No. S-2639, 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 identified in the Hearing Examiner's report and in the Board's opinion.
2. The telecommunication facility must be removed at the cost of the owner of the telecommunication facility when the facility is no longer in use by any telecommunications carrier for more than 12 months.

3. 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.
4. Each owner of the telecommunication facility is responsible for maintaining the facility in a safe condition.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Wendell M. Holloway and Allison Ishihara Fultz, 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.

Donna L. Barron
Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 31st day of August, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Re: Case No. S-1424

Any party may, within fifteen (15) days of the date of the Board's Resolution, request a public hearing on the particular action taken by the Board. Such request shall be in writing, and shall specify the reasons for the request and the

nature of the objections and/or relief desired. In the event that such request is received, the Board shall suspend its decision and conduct a public hearing to consider the action taken.

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.

Re: Case No. S-2639:

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.

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