

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

(240) 777-6600

Case No. S-2708

PETITION OF T-MOBILE NORTHEAST LLC

OPINION OF THE BOARD

(Opinion Adopted February 25, 2009)
(Effective Date of Opinion: March 5, 2009)

Case No. S-2708 is an application for a special exception under Section 59-G-2.58 of the Montgomery County Zoning Ordinance for a telecommunication facility. The Hearing Examiner for Montgomery County held a hearing on the application on April 28, 2008, closed the record in the case on July 14, 2008, and on July 24, 2008, issued a Report and Recommendation for approval of the special exception.

The subject property is located at 2100 Spencerville Road, Spencerville, Maryland, 20868, in the RE-1 Zone.

The Board of Appeals first considered the Hearing Examiner's Report and Recommendation at its Worksession on September 10, 2008. By Resolution dated October 27, 2008, the Board remanded the application to the Hearing Examiner, requesting further additional factual information in response to the following three questions:

1. Is the property next door to the special exception listed on the State Historic Register?
2. If the property is so listed, is there a requirement for separate notice to the Historic Preservation Commission of the special exception application, and an opportunity to comment on the application?
3. If the property is listed on the State Historic Register, would the Hearing Examiner change her analysis of the inherent and non-inherent adverse effects?

In a Supplemental Report and Recommendation, dated February 8, 2009, the Hearing Examiner answered the first two questions in the negative. In response to the third question she states that adjacency to a historic property could be considered a non-inherent characteristic of a telecommunication facility, but that, in the instant case, the flagpole design of the proposed facility, together with fencing at its base, and screening by existing tall trees, prevent the proposed installation from having an adverse impact on the adjacent historic property or the general neighborhood sufficient to warrant denial of the application. She reaffirms her earlier recommendation of approval of the special exception.

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

The Board of Appeals again considered the Hearing Examiner's Report and Recommendation dated July 24, 2008, together with the Supplemental Report and Recommendation dated February 8, 2009, at its Worksession on February 25, 2009. After careful consideration and review of the record in the case, the Board adopts both reports and grants the special exception subject to the following conditions:

1. Petitioners shall be bound by all of the testimony of their witnesses and exhibits of record, including the Site Plan and detail sheets, Exhibits 24(c), (e) and (g), and by the representations of counsel identified in this report and in the opinion of the Board.
2. T-Mobile must enter into an agreement with the Spencerville Free Methodist Church and its successors and assigns that will permit it to preserve, maintain and replace as necessary, perpetually until the proposed tower is removed from the site, all existing trees that are within 50 feet of the equipment compound or within 75 feet of the northern, eastern or western property lines.
3. The subject facility must not have any exterior lighting or signage, with the exception of the warning sign required under Section 59-G-2.58(a)(8).
4. The Board of Appeals reserves jurisdiction to impose additional conditions in the future related to landscaping if justified by future evidence, such as evidence of an actual, good faith, immediate intent to build a residence within 300 feet of the subject property's northern property line.
5. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits or a use-and-occupancy permit, necessary to implement the special exception as

granted herein. Petitioners shall at all times ensure that the special exception use and facility 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 Stanley B. Boyd, seconded by David K. Perdue, Vice-Chair, with Walter S. Booth, Carolyn J. Shawaker and Catherine G. Titus, Chair, in agreement, the Board adopted the following Resolution:

Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 5th day of March, 2009.

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.