

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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

(240) 777-6600

Case No. S-2770

**PETITION OF KAY HARDING AND WILLIAM WHITE
AND T-MOBILE NORTHEAST, LLC**

OPINION OF THE BOARD

(Opinion Adopted January 19, 2011

(Effective Date of Opinion: February 2, 2011)

Case No. S-2770, Petition of T-Mobile Northeast, LLC and Kay Harding White, is an application, under Section 59-G-2.58 of the Zoning Ordinance, for a special exception for a telecommunications facility consisting of a 140-foot high “stealth” design unipole located in a 50-foot by f0-foot compound. The Hearing Examiner for Montgomery County held a hearing on the application on November 19, 2010, closed the record in the case on November 26, 2010, and on January 7, 2010, issued a Report and Recommendation for approval of the special exception subject to conditions.

The subject property is Parcel N300, Outlot A, White’s Farm Subdivision, located at 22525 Wildcat Road, Germantown, Maryland 20876 in the RDT Zone.

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

The Board of Appeals considered the Hearing Examiner’s Report and the record in the case at its Worksession on January 12, 2010. After careful consideration and review, the Board adopts the Hearing Examiner’s Report and grants the special exception subject to the following conditions:

1. The Petitioner shall be bound by all of the testimony and exhibits of record, and by the testimony of its witnesses and its representations as identified in the Hearing Examiner’s Report and in this Opinion.
2. No signs or illumination shall be placed on the unipole.

3. The applicants must obtain Planning Board approval of a Subdivision Regulation Waiver to permit issuance of a building permit for the proposed telecommunications facility on existing Outlot A.
4. All RBS cabinets and batteries installed at the site must comply with all national and international safety and code requirements for those items and meet the same standard specifications and features set forth in Exhibit 52 (FACT SHEET, Ericsson Radio Base Station Cabinet Chemical Safety Information) and Exhibit 53 (Material Safety Data Sheet, Lead Acid Batteries).
5. The unipole shall be painted a neutral color.
6. All batteries installed must be registered with Montgomery County pursuant to Executive Regulation 1703.
7. The owner of Lot 1, White's Farm Subdivision, 22601 Wildcat Road, and the applicant must comply with all provisions of the existing forest conservation plan on their respective properties.
8. The applicants must remove all existing structures from the special exception area if the structures are not used for a period of twelve (12) months.
9. The sign required by Section 59-G-2.58(a)(8) must be installed on the compound fence prior to operation of the facility.
10. T-Mobile or any successor or assigns shall maintain the facility in a safe condition.
11. Outdoor storage of equipment or other items within the special exception area is prohibited.
12. Petitioner additionally 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. Petitioner shall at all times ensure that the special exception use and 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 2nd day of February, 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.