

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
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IN THE MATTER OF *
 *
New Cingular Wireless PCS, LLC *
d/b/a AT&T Mobility *
 and *
Yeshiva of Greater Washington, *
Montgomery County *
 and *
Smartlink Group, LLC *
 *
Applicants *
 *
 Gaurav Behl *
 James Miller *
 Alexander Leadore *
 *
For the Application *
 *
Douglas A. Sampson, Esq. *
Gregory E. Rapisarda, Esq. *
 *
Attorneys for the Applicants *

OZAH Case No. CU 24-14

Samantha Twinam, Smartlink Group, LLC
 – Appeared in Support
 (did not testify)

Daniel Eli
 – Neither in Support nor Opposition
 (did not testify)

Before: Katherine L. Taylor, Hearing Examiner

HEARING EXAMINER’S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On February 22, 2024, New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, Yeshiva of Greater Washington, Montgomery County, and Smartlink Group, LLC (“Applicant”) filed an application for conditional use under the Montgomery County Zoning Ordinance (“Zoning Ordinance”) §59-3.3.5.2.C.2.c (Telecommunications Tower) and §59-3.3.1.4 (Temporary Use) seeking approval for both a conditional use and for temporary use for a temporary telecommunications tower (“Facility”). The Applicant is also seeking approval for a reduced setback to a detached house building type from 300 feet to a distance of at least one foot for every foot in height on the temporary pole (122 feet for this monopole) per §59-3.3.5.2.C.2.c.(d) on the property owned by Montgomery County and occupied by Yeshiva of Greater Washington at 2010 Linden Lane, Silver Spring, MD 20850. The property is zoned R-60 (Residential Detached).

The Applicant’s proposed monopole and antenna will be used to relocate and operate three cellular communications carriers while the Washington Suburban Sanitary Commission’s (“WSSC”) North Woodside Water Tank located on Seminary Place (“WSSC Tower”), the permanent location of the tower, will be temporarily unavailable during planned refurbishment of the WSSC Tower.

The Montgomery County Transmission Facility Coordinating Group (TFCG) concluded there was a need for the facility on April 3, 2024:

... “Recommended on the condition of approval by OZAH for Conditional Use. Recommendation is subject to compliance with all applicable laws.” Exhibit 37.

Staff of the Montgomery County Planning Department (“Planning Staff” or “Staff”) issued its report on April 4, 2024. Exhibit 36. Staff recommended approval of the application subject to five conditions. *Id.*, p. 3.

OZAH issued notice of the public hearing on March 5, 2024, for a hearing on April 18, 2024. Exhibit 31. The public hearing convened on April 18, 2024, as scheduled. The Applicant presented three witnesses in support of the application:

- James Miller, Project Manager at SmartLink Group, LLC
- Gaurav Behl, an AT&T radiofrequency engineer
- Alexander Leadore, Senior Structural Engineer at Morris & Ritchie Associates

T. 15-22, 23-29, 30-39.

Weighing all the testimony and evidence of record under the “preponderance of the evidence” standard specified in *Zoning Ordinance* §59.7.1.1, the Hearing Examiner concludes that (1) the conditional use proposed in this application conforms to the general and specific standards for approval, with the conditions of approval listed in Part IV of this Report, under §59-3.3.5.2.C.2.c (Telecommunications Tower); (2) the use proposed in this application conforms to the provisions of §59-3.3.1.4 for temporary use for a temporary telecommunications tower; and (3) the Applicant’s request for a reduced setback to a detached house building type from 300 feet to a distance of at least one foot for every foot in height on the temporary pole (122 feet for this monopole) per §59-3.3.5.2.C.2.c.(d) is supported. Therefore, the Hearing Examiner hereby grants the Applicant’s requests.

II. FACTUAL BACKGROUND

A. The Purpose of the Application

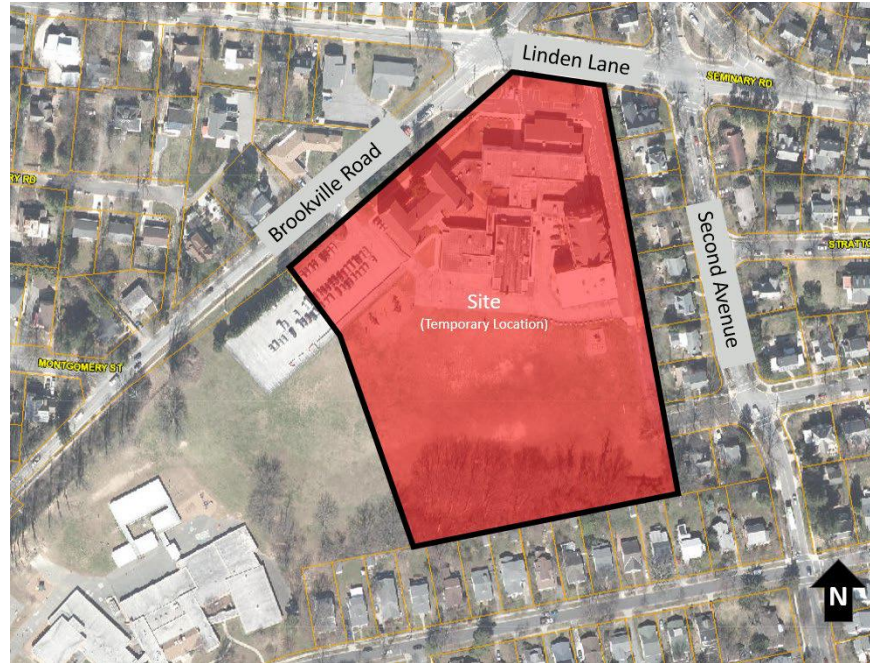
The Applicant states that the temporary Facility is required because all three major wireless providers (AT&T, T-Mobile, and Verizon) must remove their antennas from the existing telecommunications facility located on Washington Suburban Sanitary Commission's ("WSSC") North Woodside Water Tank located on Seminary Place. Because the WSSC Tower is undergoing a two year rehabilitation project, all existing wireless antennas must be removed until the rehabilitation is completed. The removal of the antennas will cause significant degradation of wireless coverage for this area of Montgomery County for all three major wireless networks. Thus, a new temporary location is required for placement of a temporary Facility. T., p. 16.

The Site was chosen to obtain maximum cell coverage feasible with the relocation. The Site does not overlap 100% with the existing location, but it is only 0.1 miles from the current WSSC water tank location and offers the best coverage given other feasible locations in the general vicinity of the WSSC water tank. T., pp. 19-21, Testimony of James Miller.

The Facility will be temporary. Once the WSSC Tower is operational again, the Facility will be removed. Applicant has stated that the WSSC Tower work will take up to 24 months. Staff recommends approval for 36 months, and I agree that the additional time is reasonable.

^B. The Subject Property

The Subject Property is 8.67 acres in size and is located at 2010 Linden Lane in Silver Spring (the "Property" or the "Site") in an area predominantly residential in character. An aerial photograph of the subject property was included in the Staff Report as Figure 2 (Exhibit 36, p. 6), and it is reproduced below, with the Site superimposed on it in red and bounded by dark black lines.



Staff Report, Subject Property, Exhibit 36, Figure 2, p. 6

C. Surrounding Neighborhood

To determine the compatibility of the proposed use, it is necessary to delineate the “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use). The area is then “characterized” to determine whether the use proposed is compatible with the character of the surrounding neighborhood.

The current primary use of the Property is for education. The requested conditional use will not change or expand the current use in any way but will add a temporary use for a telecommunications facility. The Yeshiva School Property was chosen given its close proximity to the existing telecommunication antennas on the WSSC water tank. The existing WSSC water tank is shown on Exhibit 36, p. 4, reproduced below. Staff defined the neighborhood as being within the boundaries shown in blue on Figure 1 from the Staff Report (Exhibit 36, p. 4, below).



Staff Report, Staff-defined Defined Neighborhood Vicinity Map, Exhibit 36, Figure 1, p. 4

Staff determined the boundaries based primarily on the visual impact of the monopole (Exhibit 36):

The Applicant was limited in the locations it could choose for a Facility. Despite a thorough search, none of the wireless carriers could identify a structure suitable for co-location within the area necessary to maintain existing coverage. As a result, a temporary pole is necessary until wireless antennas can be re-located on the existing WSSC water tower following its renovation and upgrades. The potential location for a Facility was geographically limited to a set radius from the existing WSSC water tank to ensure complete and overlapping wireless coverage to minimize or eliminate any degradation in the existing wireless networks while the WSSC site is temporarily decommissioned. The location was chosen to maximize replacement coverage, while minimizing visual impact on the surrounding area.

Exhibit 36, p. 9.

The Hearing Examiner finds Staff's rationale reasonable given the lack of suitable areas and the fact that the placement on the Site will be temporary. For that reason, she accepts Staff's determination of the surrounding area.

D. Proposed Use

The Applicant proposes to construct and operate a temporary 122-foot-tall telecommunications facility (“Facility”) – monopole and antenna -- with ancillary equipment on the Property. The proposed monopole and antenna will be used to locate and operate three cellular communications carriers while the WSSC Tower in Montgomery Hills, the permanent location of the tower, will be temporarily unavailable during planned refurbishment of the WSSC Tower. The Applicant requested approval for 24 months (but Staff recommended up to 36 months). Exhibit 36, pp. 1, 15.

1. Site Plan (Tower and Compound)

According to Staff:

“The monopole will be 120 feet in height on top of a two-foot-tall base (support structure), resulting in a total height of 122 feet. It will be located within a 32-foot-wide by 32-foot-long, three-inch-thick equipment compound surrounded by a temporary eight-foot-tall chain link fence. The compound will be placed on a temporary gravel base with a 24-inch concrete barrier around the gravel. The monopole will be attached to a temporary base assembly. The base assembly will be ballasted by a total of 28 concrete blocks, weighing 4,900 pounds each, for a total ballast weight of 137,200 pounds.

Despite its temporary nature, the monopole will be structurally sound and compliant with ANSI standards and other relevant state and federal regulations. The Facility is designed to prevent structural collapse that could endanger nearby buildings or parcels.

The temporary monopole will be painted with the standard matte finish steel gray, which is designed to blend into the horizon to the extent it is visible. In addition to the monopole tower, the Applicant will install ancillary equipment to support the temporary monopole, including a transformer and equipment cabinets for carriers. The Facility will maintain and enhance the reliability of Montgomery County’s emergency services communications network and commercial wireless services for Montgomery County residents and businesses in this area.”

Exhibit 36, pp. 7-8.

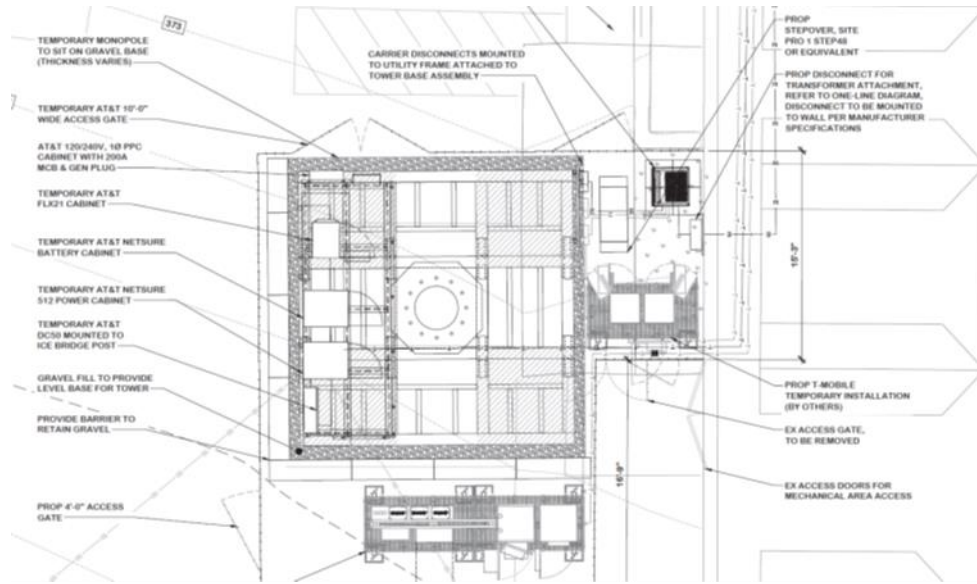


Exhibit 36, p. 8, Figure 3: Equipment Compound Detail

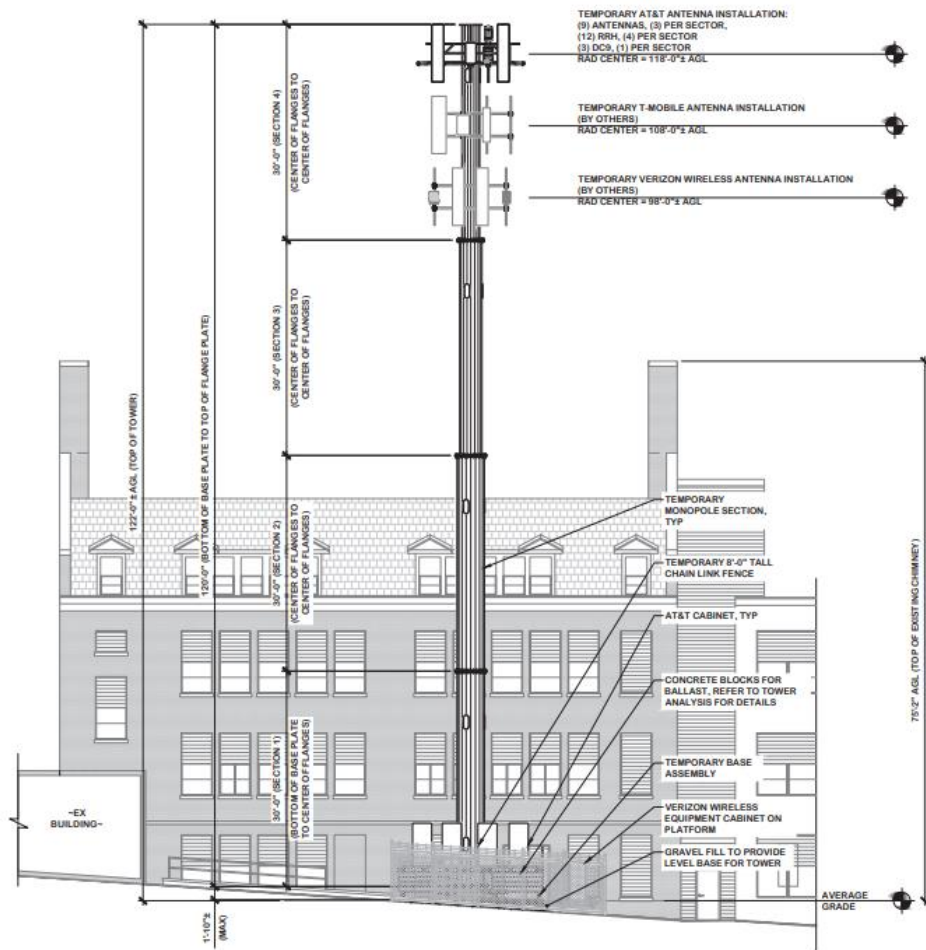
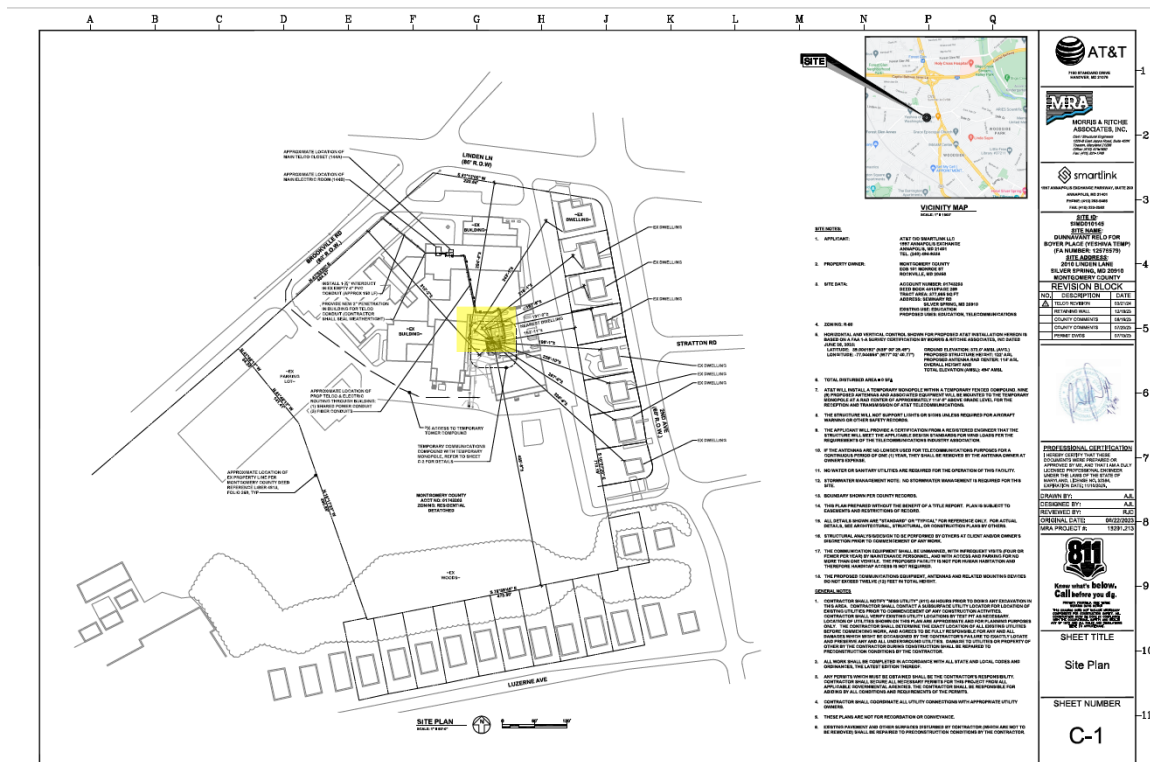


Exhibit 36, p. 9, Figure 4: Elevation of Proposed Temporary Monopole

The conditional use area consists of the footprint of the 32-foot-wide by 32-foot-long, three-inch-thick equipment Compound surrounded by a temporary eight-foot-tall chain link fence (“Compound”) in which the two-foot-tall base (support structure) will be. This 1,024 square foot area is sufficient for the support structure and accompanying ballasts. The Facility will be unmanned and uninhabited and does not require any public services or facilities beyond what already exists on the Property. T., pp. 33-35. Exhibit 38, page C-1

(below) shows the relationship of the conditional use area (highlighted) to the entire Property.



Site Plan, Exhibit 38, page C-1

2. Parking and Access

The Zoning Ordinance contains no parking requirements for a telecommunications tower and the Applicants do not seek authorization for parking. *Zoning Ordinance*, §59.6.2.4. As stated in the Applicant’s Statement of Justification, the site will be accessed by personnel on foot and, therefore, no driveway access or parking is required. Exhibit 3, p. 9. Since the device is not staffed and requires maintenance visits only once or twice a month, a parking facility is not needed. Staff confirms that the Zoning Ordinance sets no parking requirements for this type of use. Exhibit 36, p. 16.

As stated above, the monopole will be 120 feet in height (122 feet including the 2-foot base support structure), located within the Compound. The Compound will be placed

on a temporary gravel base with a 24-inch concrete barrier around the gravel. The monopole will be attached to a temporary base assembly that will be ballasted by a total of 28 concrete blocks, weighing 4,900 pounds each, for a total ballast weight of 137,200 pounds. According to Timothy Leadore, the gravel base will be on top of existing asphalt and when the monopole is removed, the Site will be returned to the existing state. T., pp. 32-33. Exhibit 3, p. 3. There will be no grading or permanent construction footers necessary. T., p. 39. According to Staff, “there is no new land disturbance required for placement of the monopole as it is in an area that is currently used for staff parking and dumpsters.” Exhibit 36, pp. 9-10.

3. Landscaping, Lighting and Signage

The Applicants do not propose any lights on the tower or the Compound. Exhibit 3, p. 11; Exhibit 36, p. 18.

Staff stated:

The Facility will operate automatically and will not require any personnel or hours of attendance. It will operate 24 hours a day, 365 days per year. Maintenance personnel will visit the Site occasionally for repairs or modifications. This maintenance can be performed by a single technician in a standard vehicle. Therefore, the Facility will not create any impact on traffic in the area. The Facility will comply with all relevant standards set forth in the Zoning Ordinance and other related regulations.

Exhibit 36, p. 14.

As for signage, as required by the Zoning Ordinance, the Applicant shall supply a sign no larger than two square feet which shall be affixed to the structure to identify the facility owner(s) and operator(s). No other signs are allowed, unless required by the Federal Communications Commission (FCC), the Federal Aviation Administration (FAA), or the County. Applicant states it will comply with this provision. Exhibit 3, p. 9.

Zoning Ordinance, §59-3.3.5.2.C.2.c.iv. provides, inter alia, “Screening under Division 6.5 is not required.” However, the visibility of a telecommunications tower is always a concern in

terms of compatibility, so both Staff and the Hearing Examiner do examine issues relating to landscaping and screening. See Site Plan, Exhibit 38, C-1, above. The Applicant has identified a location on the Site that takes advantage of the existing screening provided by existing buildings and trees. Exhibit 36, p. 18.

E. Visual Impact

The most significant issue regarding a telecommunications tower in an area with nearby residences is its visual impact upon the neighbors. There have been no submissions by neighbors in opposition to this proposal, most likely because the Facility will be temporary. According to Staff:

“The Facility will not create any noise or light pollution and will be well insulated inside the Property and surrounded by existing school buildings which will offer screening, as previously noted. It will have no impact on the peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood.

Exhibit 36, p. 18.

Applicant submitted several photographs from four vantage points surrounding the proposed replacement poles. Those photographs were included in the Staff Report and are reproduced below.

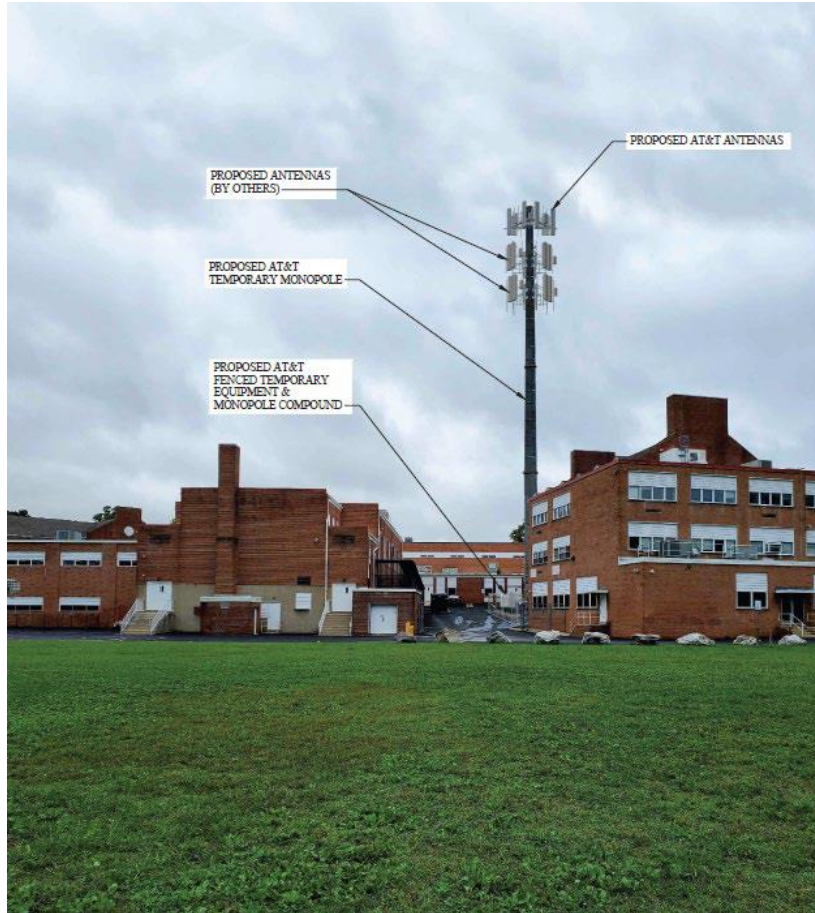


Exhibit 36, p. 10, Figure 6: Southern Elevation of Proposed Temporary Pole (From Athletic Fields)



Exhibit 36, p. 11, Figure 7: Northern Elevation of Proposed Temporary Pole (From Linden Lane)



Exhibit 36, p. 12, Figure 8: Western Elevation of Proposed Temporary Pole (From Brookville Road)

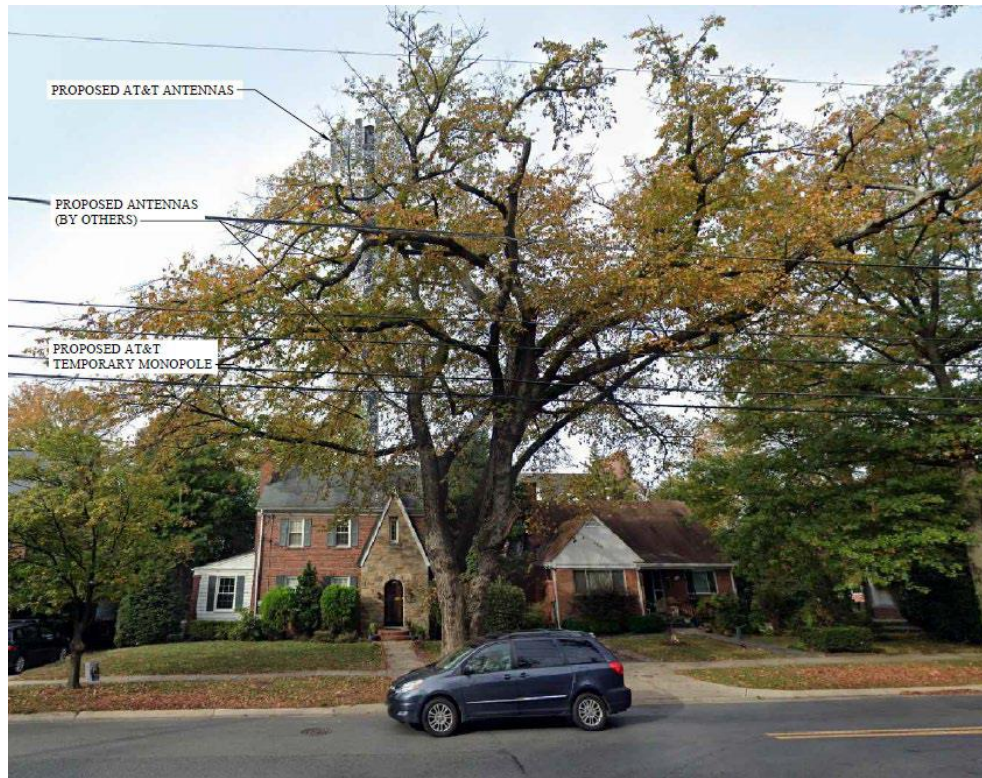


Exhibit 36, p. 13, Figure 9: Eastern Elevation of Proposed Temporary Pole (From Second Avenue and Stratton Road)

As stated by Staff, “the potential location for a Facility was geographically limited to a set radius from the existing WSSC water tank to ensure complete and overlapping wireless coverage to minimize or eliminate any degradation in the existing wireless networks while the WSSC site is temporarily decommissioned. The location – approximately 8[00]¹ feet from the existing antennas on the water tank—was chosen to maximize replacement coverage, while minimizing visual impact on the surrounding area.” Exhibit 36, p. 9. The Staff Report continued:

“The specific location for the temporary pole on the Site was chosen in coordination with the Yeshiva Greater Washington School. School officials requested that the facility be located in an area of low foot traffic, away from playgrounds or other open space areas on the Property that are regularly used by children. The location was also ideal for the Facility because it is already graded and paved. This way installation of the Facility will not require any land disturbance and will allow for quick remediation back to present

¹ The Staff Report, Exhibit 36, p. 9, states that the distance is 88 feet. The Applicant’s Statement of Justification states the distance at 800 feet. I find 800 feet to be the correct estimated distance.

conditions when the Facility is no longer required. No trees, grass or other vegetation will be disturbed.

Additional consideration for the location chosen was screening from private lots and public pathways. Locating the Facility between existing school buildings helps to completely screen the ground equipment and partially screen the pole. Locating the facility between existing buildings also offers easy access to power and fiber lines already installed. The Applicant will not need to install underground utility lines to support the Facility. The proximity to existing buildings will facilitate quicker remediation when the Facility is no longer required.

Exhibit 36, p. 13. See also, T., pp. 33-37, Testimony of Timothy Leadore.

The diagram below shows that the Facility Compound will be shielded from neighboring homes on all sides.

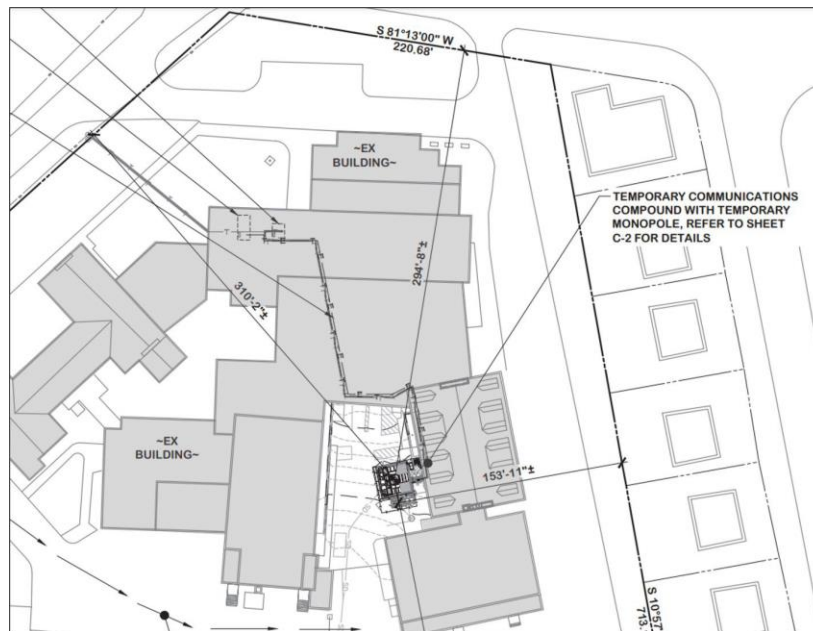


Exhibit 36, p. 14, Figure 9: Site Plan with Proposed Temporary Telecommunications Tower Location

F. Community Response

The Notice of Hearing was sent to Abutting and Confronting Property Owners. Exhibit 31, p. 3; Exhibit 5. Neither OZAH nor the Planning Department received any letters of opposition to this application. No one appeared at the hearing to testify in opposition. One person, Daniel Eli, appeared via Zoom to observe but offered no testimony.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that predetermined legislative standards are met. These standards are both specific and general. General standards are those findings that must be made for almost all conditional uses. *Zoning Ordinance*, §59.7.3.1.E. Specific standards are those which apply to the particular use requested -- in this case, a Telecommunications Tower allowed under *Zoning Ordinance* §59.3.5.2.C.2. These standards are listed below with the Hearing Examiner's findings on each standard.

In addition to conditional use approval, Applicant seeks the approval for a Temporary Use and the granting of a Temporary Use Permit. The Zoning Ordinance allows for the approval of a "Temporary Use" under the following conditions: (1) the use is temporary in nature; (2) the use is established for a fixed period of time with the intent to discontinue the use when that time is up; and (3) the use does not involve construction or alteration to any permanent structure. See *Zoning Ordinance*, § 3.1.4(A).

A. Conditional Use - Necessary Findings (§59.7.3.1.E.)

The general findings necessary to approve a conditional use are found in §59.7.3.1.E of the Zoning Ordinance:

E. Necessary Findings

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended

Conclusion: Planning Staff approved FCP Exemption and Existing Conditions Plan No. 42024109E on February 6, 2024. There are no other applicable previous approvals on the Subject Site. Exhibit 36, p. 16.

b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6

Conclusion: This subsection requires the proposed development to meet the standards of the R-60 (Residential Detached) Zone contained in Article 59-4, the specific use standards for a Telecommunications Tower contained in Article 59-3, and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate §s of this Report and Decision (Parts III.B, C, and D, respectively). Based on a review of those standards, the Hearing Examiner finds that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6 of the Zoning Ordinance.

c. substantially conforms with the recommendations of the applicable master plan

Conclusion: Development of the Property is guided by the *2000 North and West Silver Spring Master Plan* (“Master Plan”), and any other applicable master plans. Staff advises that the Master Plan “does not expressly address telecommunications or wireless facilities. On page 15 it says, ‘The focus of this Master Plan is on maintaining, preserving, and enhancing the existing neighborhoods to ensure a good quality of life for area citizens and businesses.’ Maintaining reliable emergency and non-emergency wireless services is consistent with the Master Plan’s goals.” Exhibit 36; p. 16. Staff determined that the application substantially conforms with the Master Plan. *Id.* The Hearing Examiner finds that this criterion is met.

d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan.

Staff found that the proposed tower meets the above criterion:

The Facility will not alter the character of the surrounding neighborhood. The Facility is being located in between existing school buildings which will completely screen the equipment compound. The height was chosen to be the least visually intrusive, while meeting coverage needs to maintain existing wireless networks. The temporary monopole will be painted with the standard matte finish steel gray, which is designed to blend into the horizon to the extent it is visible. In addition to the monopole tower, the Applicant will install ancillary equipment to support the temporary monopole, including a transformer and equipment cabinets for carriers. The Facility will replace and support existing wireless coverage to ensure the area maintains adequate and reliable emergency and non-emergency wireless services.

Exhibit 36, p. 16.

Staff concluded that any visual impact will be temporary. Exhibit 36, p. 16.

Conclusion: The Hearing Examiner has already discussed conformance to the Master Plan. For the reasons stated in there and here, the Hearing Examiner finds that the proposed use will be in harmony with the character of the neighborhood and will not alter the surrounding neighborhood in a manner inconsistent with the Plan. The tower cannot be fully screened from view, but other than its temporary visual impact, nothing in the record suggests that the use will have a notable negative impact on the area since it generates no traffic, does not require parking, and will not generate noise or smells. The Hearing Examiner finds that this criterion for approval is met.

e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area

Conclusion: A review of the Zoning Map in this case (Exhibit 4) shows that the abutting property is zoned R-60 (Residential Detached). Staff found that “while there are a significant number of conditional uses and special exceptions within the staff-defined neighborhood vicinity, the majority are residential in nature, and most are located on major roads such as Brookville Road, Columbia Boulevard and Linden Lane. Furthermore, the Site is currently located on a school and not a residential property.” Exhibit 36, p. 17. Importantly, the application is for a temporary installation that will be removed once the WSSC Tower rehabilitation work is complete. The Hearing Examiner finds that this criterion for approval is met.

f. 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. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:

i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

Conclusion: Staff did not indicate that the proposed use will require approval of a preliminary plan of subdivision. Therefore, the Hearing Examiner must determine whether the proposed use will be served by adequate public services and facilities. By its nature, an unmanned and unoccupied telecommunication tower would have no significant impact on schools, police and fire protection, water, sanitary sewer, and public roads. Staff advises that the use does not require any

public services or facilities beyond what already exists on the Property and will remain sufficient for the proposed use. Exhibit 36, p. 17. The Hearing Examiner finds that the proposed development will be served by adequate public services and facilities. The Hearing Examiner finds that this criterion is met.

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;***
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or***
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.***

Staff concluded that:

Inherent impacts of a communications facility are visual and disruptions due to construction for installing and removing the monopole and associated equipment. The Applicant has identified a location on the Site that takes advantage of the existing screening provided by existing buildings and trees. The location is also accessible by vehicle, which should limit traffic impacts of the construction vehicles. Some noise will be made during construction and removal, but those impacts will be temporary and under the review the Department of Permitting Services.

The Facility will not create any noise or light pollution and will be well insulated inside the Property and surrounded by existing school buildings which will offer screening, as previously noted. It will have no impact on the peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood. As conditioned, the Facility will be removed in no more than 36 months.

Exhibit 36, p. 18.

The physical and operational characteristics associated with a telecommunications tower are:

- antennas installed on or within a support structure with a significant height;
- visual impacts associated with the height of the support structure;
- an equipment Compound at the base of the tower that may be enclosed within a fence;

- radio frequency emissions;
- vehicle trips for maintenance; and
- noise and emissions associated with back-up generators or other mechanical equipment.

The support structure—a monopole in this case—will be 122 feet high. It is virtually impossible to hide a 122-foot-tall pole that includes a set of antennas at the top. However, the Applicant is installing the monopole Compound in the center of existing buildings so that the Compound structure will not be visible from surrounding properties. There are not any non-inherent adverse effects. Exhibit 36, p. 18.

Staff found that the monopole will not have any impact on health, safety, welfare of neighbors, residents, visitors, or employees, as the monopole and equipment area will be surrounded by a chain link fence that will provide safety and security to users of the school. Exhibit 36, p. 18.

This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §59.1.4.2. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.*

As specified in §59.7.3.1.E.1.g., quoted above, inherent adverse effects are not a sufficient basis for denial of a conditional use. Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a conditional use, but there are not non-inherent adverse effects.

Conclusion: The Hearing Examiner agrees with Staff’s analysis of the inherent and non-inherent characteristics of a telecommunications facility. Based on this record, the Hearing Examiner

concludes that the proposed use, as conditioned, will not cause undue harm to the neighborhood as a result of adverse effects in any of the categories listed in §59.7.3.1.E.1.g.

2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.

Staff concluded:

“The Facility is compatible with the neighborhood and will not have any significant visual impact on the area. The Applicant provided renderings of the proposed Facility from several vantage points in the area, and while the facility is visible, the facility will be partially screened within the existing conditions of the area including, the buildings located on the Yeshiva of Greater Washington School property and neighboring trees. Approval of the Facility will maintain existing emergency and non-emergency wireless services in the area, thereby maintaining the present character of communications and emergency services in the neighborhood. After the antennas are relocated on the WSSC water tank, the Facility will be removed, and the area will be returned to its present condition.

Exhibit 36, p. 18-19.

Conclusion: The Hearing Examiner finds that this criterion for approval is met.

3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.

Conclusion: The application satisfies all specific requirements for the conditional use, and for the reasons discussed above, the Hearing Examiner concludes that the conditional use should be approved, as conditioned in Part IV of this Report and Decision.

B. Conditional Use - Development Standards of the Zone (Article 59.4)

To approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the zone where the use will be located – in this case, the R-60 (Residential - Detached) Zone. Development standards for the R-60 Zone are contained in §59.4.4.9.B. of the Zoning Ordinance.

Conclusion: The Hearing Examiner agrees the proposed Facility is appropriate given the fact that (1) the Site is on the campus of an existing educational institution; (2) the project will not require any grading or permanent buildings or structures; (3) no additional access points are needed; no landscaping is required; (4) the Zoning Ordinance does not require parking spaces for unmanned telecommunication facilities; (5) no lighting or signage is proposed except the sign mandated by the Zoning Ordinance.

Based on this evidence, and having none to the contrary, the Hearing Examiner finds that the application meets the development standards of the R-60 Zone.

C. Conditional Use - Use Standards for a Telecommunications Tower

(§59.3.5.2.C.2.c.)

The specific use standards for approval of a Telecommunications Tower Conditional Use are set out in §59.3.5.2.C.c. of the Zoning Ordinance. The applicable standards are:

C. Telecommunications Tower

...

2. Use Standards

...

c. Where a Telecommunications Tower is allowed as a conditional use, it may be permitted by the Hearing Examiner under § 3.5.2.C.2.a, limited use standards, § 7.3.1, Conditional Use, and the following standards:

i. Before the Hearing Examiner approves any conditional use for a Telecommunications Tower, the proposed facility must be reviewed by the Transmission Facility Coordinating Group. The applicant for a conditional use must file a recommendation from the Transmission Facility Coordinating Group with the Hearing Examiner at least 5 days before the date set for the public hearing. The recommendation must be no more than 90 days old when the conditional use application is accepted.

Conclusion: The Hearing Examiner finds that the requirements of this § have been met. The TFCG initially reviewed this application and recommended approval of the Applicants' proposal on October 4, 2023. Applicants filed the TFCG recommendation with its application, which was

accepted on February 22, 2024, which date is more than 90 days after the date of the recommendation. The Applicant submitted a second TFCG Notice of Action on April 3, 2024, which recommended approval. This criterion is met.

i. A Telecommunications Tower must be set back, as measured from the base of the support structure, as follows:

(a) A Telecommunications Tower is prohibited in any scenic setback indicated in a master plan.

Conclusion: Staff advises that the structure is not located in any scenic setback. Exhibit 36, p.

19. Having no evidence to the contrary, the Hearing Examiner finds that this criterion is met.

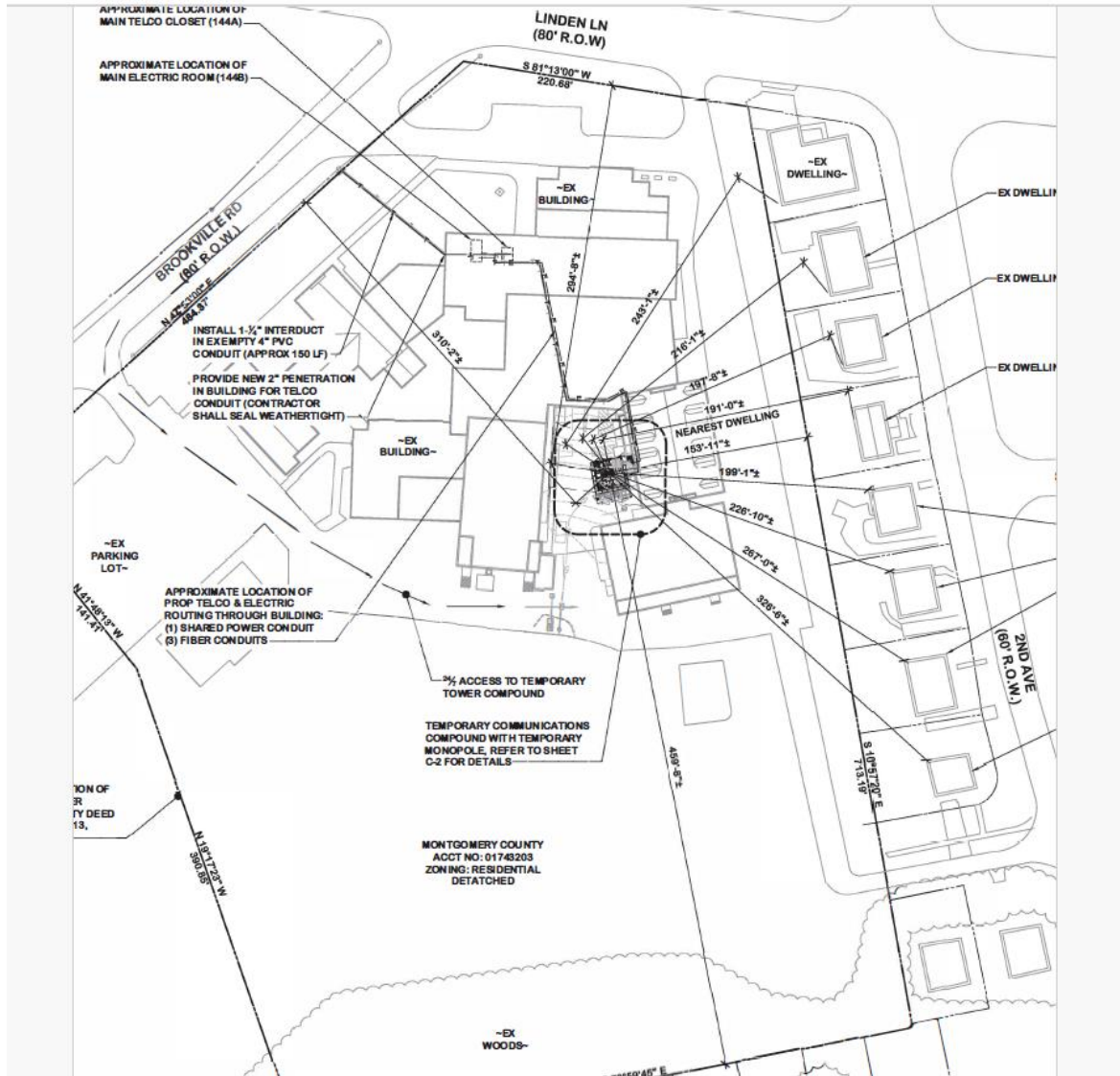
(b) In the Agricultural, Rural Residential, and Residential Detached zones, a distance of one foot for every foot of height or 300 feet from an existing dwelling, whichever provides the greater setback.

Conclusion: The Property is located in a Residential Detached zone (R-60). The proposed temporary monopole is set back more than one foot for every foot of height of the temporary pole from all property lines and dwellings. However, the setback from the nearest detached house building is less than 300 feet. For that reason, the Applicant is requesting the Hearing Examiner allow for a temporary reduced setback requirement to a detached house building type from 300 feet to a distance of at least one foot for every foot of height on the temporary pole (122 feet), as allowed by §59-3.5.2.C.2.ii(d) Zoning Ordinance and as further discussed in Finding 2.ii.d below. The temporary pole is set back as follows:

- 459.66 feet from the south Property line;
- 310.16 feet from the west/northwest Property line;
- 294.66 feet from the north Property line; and
- 153.9 feet from the nearest existing dwelling to the east.

The Site Plan, Exhibit 38, page C-1, duplicated above on page 9 of this Report, shows the setbacks. As can be seen from the Site Plan, the nearest dwelling to the east is 153.9 feet, far less than 300 feet. Thus, a reduced setback will be necessary. Following is a cropped version

of the Site Plan, Exhibit 38, page C-1, which allows the setback distances to be seen more easily:



Crop from Site Plan, Exhibit 38, page C-1, duplicated above on page 9 of this Report

(c) In the Employment zones, a distance of one-half foot for every foot of height from the property lines of abutting Commercial/Residential, Employment, or Industrial zoned properties, and one foot for every foot of height from the property lines of abutting Agricultural, Rural Residential, or Residential zoned properties.

Conclusion: The Property is not in an employment zone. This criterion does not apply.

(d) The Hearing Examiner may reduce the setback requirement to not less than the building setback for a detached house building type in the applicable zone or to a distance of one foot from an off-site dwelling for every foot of height of the support structure, whichever is greater, if evidence indicates that a reduced setback will allow the support structure to be located on the property in a less visually obtrusive location than locations on-site where all setback requirements can be met after considering the height of the structure, topography, existing vegetation, nearby residential properties, and visibility from the street. A reduced setback may be approved only if there is a location on the property where the setback requirements can be met.

Conclusion: The Applicant is requesting a reduction the required minimum setback for the temporary pole from a detached dwelling to not less than a distance of one foot for every foot of height, or 122 feet in this case. The Applicant can achieve a distance of 153.9 feet between the Facility and the nearest off-site dwelling unit.

By allowing a reduction in setback, the Applicant can locate the Facility between the existing Yeshiva of Greater Washington school buildings, reducing visual impact to the students and teachers of the School and any other effects on the surrounding neighborhood. The ground equipment will be completely screened, and the pole will be partially visible. This location will not require any land disturbance, as the location is currently paved and level. Finally, locating the Facility between buildings provides easier access to fiber and power lines, already installed in the school, negating the need to install underground utility lines.

Despite its temporary nature, the facility is designed to meet all ANSI and other engineering standards, and it will offer no danger to nearby buildings. Reducing the setback will not impact nearby dwellings, because even if the tower were laid on its side, it would be well short of the nearest property lines. The facility is temporary in nature and will be removed completely within twenty-four months, so the visual impact, if any, will be temporary.

The reduction of the setback from 300 feet to 153.9 feet from the nearest dwelling building to the east will be allowed. The Hearing Examiner finds that this criterion is met.

iii. The maximum height of a support structure and antenna is 135 feet, unless it can be demonstrated that additional height up to 179 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 required by the building permit, the applicant must certify to DPS that the height and location of the support structure conforms with the height and location of the support structure on the building permit.

Conclusion: The proposed height of the monopole is 122 feet (120-foot pole with a 2-foot base), which is lower than the 135-foot maximum. The Applicant stated that it will certify that the height and location conform with the building permit before the facility comes online. Exhibit 3, p. 7.

This criterion is met.

iv. The support structure must be located to minimize its visual impact. Screening under Division 6.5 is not required, however, the Hearing Examiner 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 nearby residential properties.

Conclusion: The issue of visual impact is always a major concern with large telecommunications facilities. Applicant states that the location was chosen to maximize coverage, while minimizing visual impact on the surrounding area. The Facility is located in between existing school buildings which will completely screen the equipment Compound. The monopole is 122 feet high, which is the minimum height to allow all three wireless carriers to co-locate their antennas to preserve

emergency and non-emergency wireless services in this area of Montgomery County. Exhibit 3, p. 7. Importantly, the Facility is temporary, so the visual impact, if any, will be temporary.

The Hearing Examiner finds the Applicants have minimized the visual impact of the Facility as much as possible. The Hearing Examiner finds that this criterion is met.

v. The property owner must be an applicant for the conditional use for each support structure.

Conclusion: The property owner provided a letter authorizing this application for a conditional use to build the Facility on the Property. Exhibit 36, p. 21. This criterion is met.

vi. A modification of a conditional use is only required for a change to any use within the conditional use area directly related to the conditional use approval.

Conclusion: Not applicable. The subject application is for a new use, not a modification.

vii. A support structure must be constructed to hold a minimum of 3 wireless communication carriers unless the Hearing Examiner finds:

(a) that collocation at the proposed location is not essential to the public interest; and

(b) that construction of a lower support structure with fewer wireless communication carriers will promote community compatibility.

Conclusion: The Facility is designed for at least three (3) wireless carriers: AT&T, Verizon, and T-Mobile. (Exhibit 38, Site Plan at C-3). The Applicant is AT&T. Verizon and T-Mobile support this application and submitted letters confirming their intention to co-locate on the Facility. The Hearing Examiner finds that this criterion is met.

viii. The equipment compound must have sufficient area to accommodate equipment sheds or cabinets associated with all the carriers. Outdoor storage of equipment or other items is prohibited.

Conclusion: Staff found, and the Hearing Examiner agrees, that the equipment Compound has sufficient, designated areas for the equipment sheds or cabinets of the three carriers and is already designed to accommodate all three carriers at the earliest date possible. Exhibit 36, p. 22. No

outdoor storage of unrelated equipment or other items is reflected in the plans and such storage is prohibited by a condition in Part IV of this Report and Decision.

ix. The support structure must be removed at the cost of the owner of the Telecommunications Tower when the Telecommunications Tower is no longer in use by any wireless communication carrier for more than 12 months.

Conclusion: To ensure compliance with this provision, the Hearing Examiner has imposed a condition in Part IV of this Report requiring that the support structure be removed at the cost of the owner of the Telecommunications Tower when the Telecommunications Tower is no longer in use by any wireless communication carrier for more than 12 months.

x. The support structure must be identified by a sign 2 square feet or smaller, 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 Hearing Examiner notified within 10 days of any change in ownership.

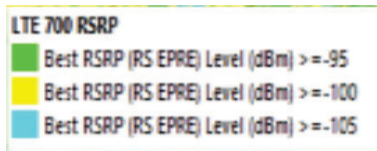
Conclusion: To ensure compliance with this provision, the Hearing Examiner has imposed a condition in Part IV of this Report and Decision, requiring that the support structure be identified by a sign two square feet or smaller, affixed to the support structure or any equipment building and requiring that the sign be updated, and the Hearing Examiner notified within 10 days of any change in ownership.

xi. Each owner of the Telecommunications Tower is responsible for maintaining the wireless communications tower in a safe condition.

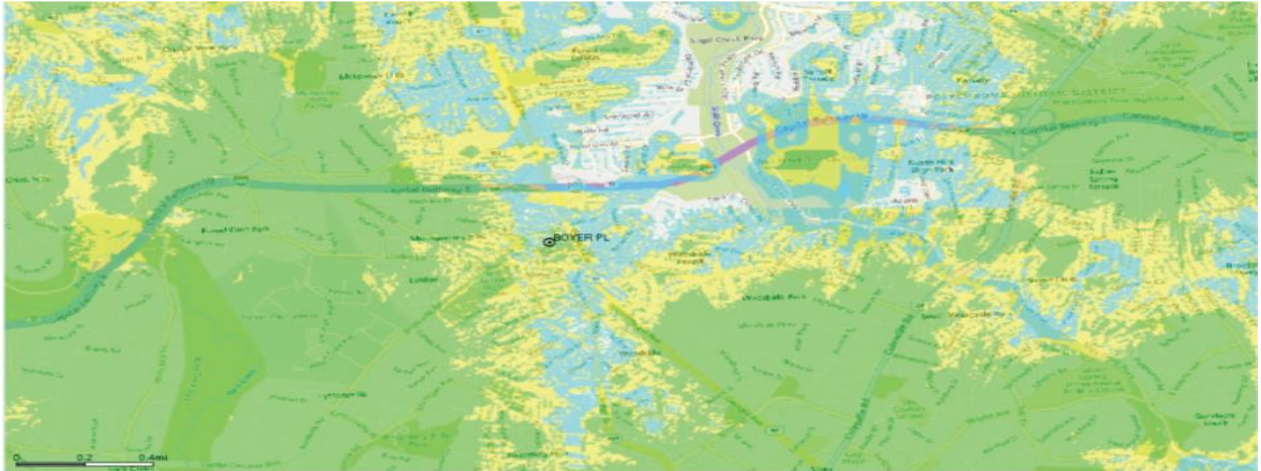
Conclusion: To ensure compliance with this provision, the Hearing Examiner has imposed a condition in Part IV of this Report requiring that the Applicants and any owners of the telecommunications facility are responsible for maintaining the facility in a safe condition.

xii. The Hearing Examiner must make a separate, independent finding as to need and location of the facility. The applicant must submit evidence sufficient to demonstrate the need for the proposed facility.

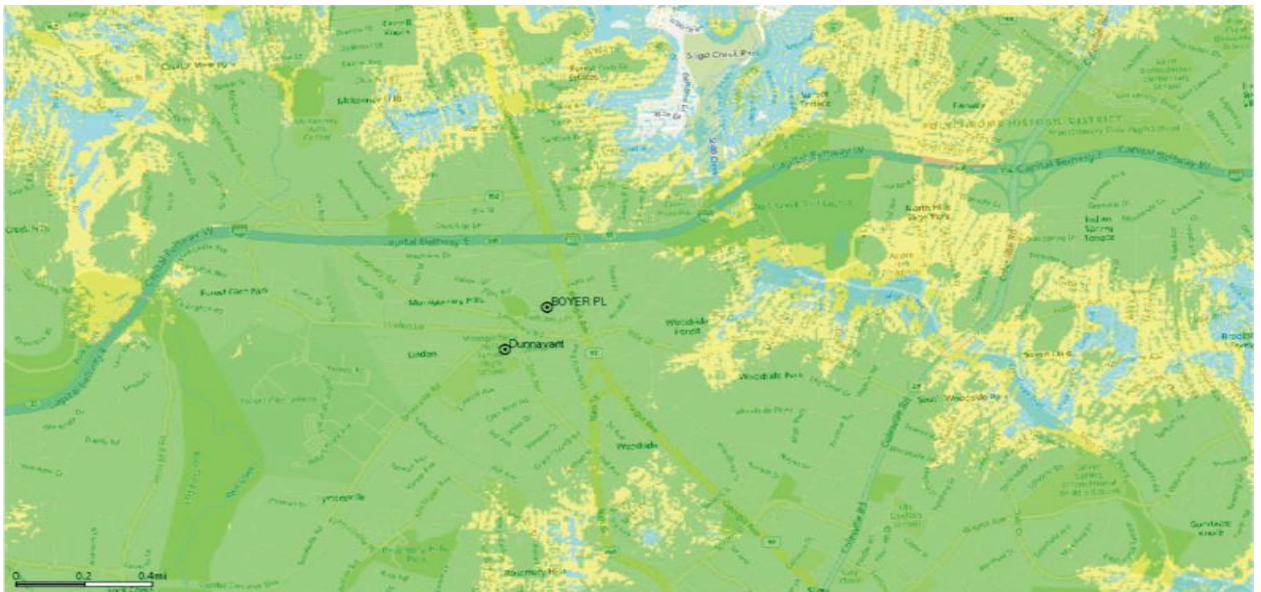
Conclusion: Based on the record in this case, the Hearing Examiner finds that there is a need for a telecommunications facility of the proposed height, both for cell phone service needs and collocation requirements, at the location specified in the Applicants’ plans. The removal of the antennas will cause significant degradation and “blackout” areas for all three wireless providers in the Silver Spring area. Below are maps of (1) the current coverage with the antennae located on the WSSC Tower, (2) coverage with the antennae removed and not relocated; and (3) coverage with the antennae at the Site location. As can be seen, without relocation of the antennae to the proposed Site, there will be a significant blackout of both emergency and non-emergency coverage, including portions of I-495. The Facility was chosen as the best, and only, potential property where a Facility could be located to maintain existing emergency and non-emergency wireless coverage. T., pp. 23-29, Testimony of Gaurav Behl.



Existing Coverage: Exhibit 36a, Attachment D



Proposed Coverage without antennae: Exhibit 36a, Attachment D



Proposed Coverage with Temporary antennae: Exhibit 36a, Attachment D

D. Conditional Use - Applicable General Development Standards (Article 59.6)

Conclusion: Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. Section 59.3.5.2.C.2.c.iv. exempts telecommunications towers from the screening requirements of Article 59-6 and states: “The support structure must be located to minimize its visual impact. Screening under Division 6.5 is not required, however, the Hearing Examiner 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 nearby residential properties.” Other provisions of Article 59-6 of the Zoning Ordinance, such as parking, site access, and open space do not apply to this facility.

The Applicants do not propose signage (except the mandatory sign outside the Compound) or lighting. The practical fact is that traffic, access, parking, lighting, and signage are generally not issues in a cell tower case. The use has no significant need for parking; it creates virtually no vehicular traffic; the site is rarely accessed; it will not have lighting on the tower except as required by law or regulation; and it will have only the identification sign required by the Zoning Ordinance. Thus, there is no need to further address the general development standards in this case. The Hearing Examiner finds that the subject proposal satisfies the applicable general development standards “to the extent ... necessary to ensure compatibility,” as required by *Zoning Ordinance*, §59.7.3.1.E.1.b.

E. Temporary Use

The Zoning Ordinance allows for the approval of a “Temporary Use” if: (1) the use is temporary in nature; (2) the use is established for a fixed period with the intent to discontinue the use when that time is up; (3) the use does not involve construction or alteration to any permanent structure; and (4) the use requires a temporary use permit under Chapter 8. See *Zoning Ordinance*, §59-3.3.1.4(A).

Conclusion: According to the Applicant and agreed to by Staff, AT&T, Verizon, and T-Mobile are required to remove their antennas from the nearby WSSC Tower to allow the tank to be refurbished by WSSC. Applicant states the wireless antennas will need to be removed for a period of no more than twenty-four (24) months, after which time AT&T, Verizon, and T-Mobile all intend to relocate their respective antennas back onto the WSSC Tower. In fact, all three providers have contractual obligations under lease agreements to relocate the antennas on the WSSC Tower. Therefore, the temporary Facility will be in use for a period of no more than twenty-four (24) months. The temporary Facility will not require any land disturbance and will not involve construction or alteration to any permanent structure. When the Temporary Use is no longer needed, the Facility will be completely removed and the Property will be returned to its present state. Exhibit 38, Site Plans at C-1 through C-3; and Exhibit 36, p. 15.

The Hearing Examiner agrees that the Facility is a Temporary Use.

IV. CONCLUSION AND DECISION

As set forth above, the application meets all the standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, Yeshiva of Greater Washington, Montgomery County, and Smartlink Group, LLC, regarding the property owned by Montgomery County and occupied by Yeshiva of Greater Washington at 2010 Linden Lane, Silver Spring, MD 20850 for:

- A. for approval of a conditional use under Zoning Ordinance §59-3.3.5.2.C.2.c (Telecommunications Tower) for a temporary telecommunications tower,
- B. for approval under Zoning Ordinance §59-3.3.1.4 (Temporary Use) for temporary use for a temporary telecommunications tower, and

C. for a reduced setback to the nearest detached house building type from the required 300 foot setback to 153.9 feet which is a distance of at least one foot for every foot in height on the temporary pole (122 feet for this monopole) per §59-3.3.5.2.C.2.c.(d),

are hereby **GRANTED**, subject to the following conditions:

1. The approvals herein are valid for a period of thirty-six (36) months after the date of this Report and Decision and shall expire at 11:59PM on May 8, 2027.
2. The Telecommunications Tower on the site must conform to the updated Site Plan (Exhibit 38).
3. The Telecommunications Tower, which includes the support structure and antenna, must be no taller than one hundred twenty-two (122) feet. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection required by the building permit, the Applicant must certify to the Department of Permitting Services (DPS) that the height and location of the support structure conforms with the height and location of the support structure on the building permit.
4. In accordance with *Zoning Ordinance* §59.3.5.2.C.2.c.vii., the support structure must provide space for the antennas of minimum of three (3) wireless communication carriers, including the Applicant, Verizon and T-Mobile. No outdoor storage of equipment or other items unrelated to the conditional use is permitted.
5. When the WSSC Tower refurbishment is completed, but no later than the expiration of this Report and Decision, the antennas and associated equipment shall be relocated to their original location (Washington Suburban Sanitary Commission's North Woodside Water Tank located on Seminary Place.
6. In accordance with *Zoning Ordinance* §59.3.5.2.C.2.c.ix., the Telecommunications Tower support structure and equipment must be removed at the cost of the owner of the Telecommunications Tower when the Telecommunications Tower is no longer in use by any wireless communication carrier for more than 12 months.
7. In accordance with *Zoning Ordinance* §59.3.5.2.C.2.c.x., the Telecommunications Tower must display a contact information sign, two square feet or smaller, affixed to the outside of the support structure or equipment building. This sign must identify the owner and the maintenance service provider of the support structure and any attached antenna, and it must provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Hearing Examiner notified within 10 days of any change in ownership.
8. In accordance with *Zoning Ordinance* §59.3.5.2.C.2.c.xi., the Applicants and all owners of the Telecommunications Tower are responsible for maintaining the facility in a safe condition.
9. Applicants must comply with Forest Conservation Exemption No. 42024109E, as approved by M-NCPPC staff on February 6, 2024.

10. The Applicants and any successors in interest 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 conditional use premises and operate the conditional use as granted herein. The Applicants and any successors in interest shall at all times ensure that the Telecommunications Tower conditional 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, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 8th day of May 2024.



Katherine L. Taylor
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to present an appeal and oral argument before the Board of Appeals, within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in *Zoning Ordinance* §59.7.3.1.F.1.c.

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600

<http://www.montgomerycountymd.gov/boa/>

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses

will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session.

Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its website: <http://www.montgomerycountymd.gov/boa/>.

NOTIFICATION MEMOS TO:

New Cingular Wireless PCS, Applicant
Douglas Sampson, Esq.
Robert Kroenberg, Deputy Director, Planning Department
Katerine Mencarini, Planning Department
Grace Bogdan, Planning Department
Department of Permitting Services Greg Nichols, Manager, SPES at DPS
Michael Coveyou, Director, Finance Department
Washington Suburban Sanitary Commission
Montgomery County Public Schools
Barbara Jay, Executive Director, Montgomery County Board of Appeals
Elana Robinson, Esq. Associate County Attorney