

**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-2432

**PETITION OF AT&T WIRELESS SERVICES
[NEW HOLDER: AMERICAN TOWER, L.P.]**

RESOLUTION TO TRANSFER AND MODIFY SPECIAL EXCEPTION

(Resolution Adopted April 9, 2014)

(Effective Date of Resolution: April 29, 2014)

Case No. S-2432 is a special exception for a telecommunications facility that the Board of Appeals granted to AT&T Wireless Services, under Section 59-G-2.43 of the Montgomery County Zoning Ordinance, effective October 19, 2000. The special exception allowed a 150-foot high monopole with nine panel antennas, within a 50 by 50 foot compound area also containing an equipment shelter 28 feet long, 12 feet wide and 11 feet high.

The subject property consists of 14.98 acres known as the Pyle Property, Parcel P542, located at 211 Ednor Road, Silver Spring, Maryland, 20905-5003, in the RE-2 Zone.

The Board of Appeals has received a letter dated April 1, 2014, from Cathy G. Borten, Esquire, on behalf of Cellco Partnership, d/b/a/ Verizon Wireless, as authorized by American Tower, L.P. Ms. Borten requests administrative modification of the special exception to allow 1) expansion of the compound area to 3,240 square feet and, 2) a 12-foot high extension of the cell tower, for a total tower height of 162 feet, to accommodate the collocation of Cellco/Verizon's antennas. In support of the request, Ms. Borten states that the equipment building is allowed by right for existing towers under Section 59-A-6.14 of the Zoning Ordinance, and notes that the County's Transmission Facility Coordinating Group recommended approval of the collocation of Cellco/Verizon's antennas and equipment. She also states that "the ground level equipment compound is not visible outside of the immediate special exception area."

Ms. Borten further states that both the compound expansion and the tower extension are authorized by Section 6409(a) of the federal Middle Class Tax Relief and Job Creation Act of 2012 (Tax Act), which states, in pertinent part:

(1) IN GENERAL...a State or local government may not deny, and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.

(2) ELIGIBLE FACILITIES REQUEST. For purposes of this subsection, The term "eligible facilities request" means any request for modification of an existing wireless tower or base station that involves –

- (A) collocation of new transmission equipment;
- (B) removal of transmission equipment; or
- (C) replacement of transmission equipment...

Ms. Borten states that both changes requested are "eligible facilities requests" because they involve collocation of new transmission equipment. She cites a January 25, 2013 Public Notice published by the Federal Communications Commission which interpreted what it means to substantially change the physical dimensions of a tower or base station. That Public Notice relied upon a test set out in the Nationwide Collocation Agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers. Ms. Borten explains that under that test, "a substantial increase in the size of the tower occurs if:

- 1) [t]he mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10% or by the height of one additional antenna array, with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with the existing antennas; or
- 2) [t]he mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- 3) [t]he mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via a cable; or

4) [t]he mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site."

Ms. Borten notes that the requested 12-foot increase (from 150' to 162') in the tower height is an increase of less than 10%, and that the additional array of antennas will be ten feet away from the nearest existing array. Ms. Borten states that the compound expansion will accommodate one additional equipment shelter and one generator, consistent with the restrictions in clause two above, to the standard number of equipment cabinets and one equipment shelter.

Ms. Borten also requests transfer of the special exception to American Tower, L.P.. She explains that AT&T Wireless, the original holder of the special exception, leased the underlying land for the tower from Jane P. Harriss and has assigned all of its right, title and interest in the lease to American Tower, L.P. Ms. Borten encloses an authorization from American Tower, L.P. for Cellco/Verizon to request the modification, a copy of the Assignment and Assumption of Lease Agreement between AT&T and American Tower, L.P., authorization from the property owner for the modification, a copy of the Transmission Facility Coordinating Group recommendation regarding the modification request, as well as plans and drawings which illustrate the requested changes.

The Board of Appeals considered the modification request at its Worksession on April 9, 2014.

Rule 12.2 of the Board of Appeals Rules of Procedure [Resolution Numbers 12-865 (Adopted October 27, 1992), 14-742 (Adopted January 30, 2001) and 15-554 (Adopted March 23, 2004)] provides that the transfer of a special exception is a modification under Section 59-G-1.3 of the Zoning Ordinance. Section 59-G-1.3(c)(1) of the 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 the tower extension and related compound expansion are authorized by Section 6409(a) of the federal Middle Class Tax Relief and Job Creation Act of 2012 (Tax Act). Based on the evidence presented, the requested tower extension does not constitute a substantial increase in the tower's height, and the compound expansion, with additional equipment cabinets and generator, does not exceed the standard number of equipment cabinets or more than one equipment shelter. The Board finds, based on Ms. Borten's statement, that the

equipment compound is not visible outside the immediate special exception area, and its expansion will not increase its intensity or effect on the immediate neighborhood. Therefore, on a motion by Stanley B. Boyd, seconded by David K. Perdue, Vice-Chair, with Carolyn J. Shawaker, John H. Pentecost and Catherine G. Titus, Chair, in agreement:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the record in Case No. S-2432 is re-opened to receive Cathy Borten's letter dated April 1, 2014, with attachments; and

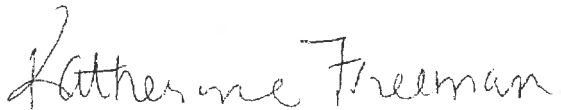
BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that the request to modify the special exception, including the transfer to American Tower, L.P., is granted; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland that all terms and conditions of the original special exception, together with any modifications granted by the Board of Appeals, remain in effect.



Catherine G. Titus
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 29th day of April, 2014.



Katherine Freeman
Executive Director

NOTE:

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.

BOARD OF APPEALS
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MONTGOMERY COUNTY

Stella B. Werner Council Office Building
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Rockville, Maryland 20850
240-777-6600

Case No. S-2432
(OZAH Referral No. 00-8)

PETITION OF AT&T WIRELESS SERVICES

OPINION OF THE BOARD

(Effective Date of Opinion: October 19, 2000)

Case No. S-2432 is a petition for a special exception for a telecommunications facility pursuant to Section 59-G-2.43 of the Montgomery County Zoning Ordinance. The request is for a 150-foot high monopole within a 50 by 50 foot area located south of the existing improvements on the site. The monopole will contain nine panel antennas. An equipment shelter 28 feet long, 12 feet wide and 11 feet high will be located adjacent to the monopole.

The subject property consists of 14.98 acres known as the Pyle Property, Parcel P542, located at 211 Ednor Road, Cloverly.

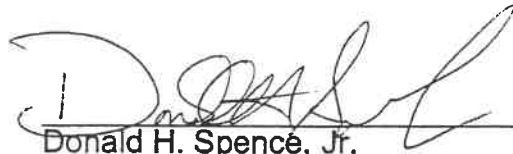
On June 8, 2000 the Board of Appeals referred the above referenced case to the Hearing Examiner, pursuant to the authority contained in Section 59-G-4.125 of the Zoning Ordinance. A hearing was held on July 14, 2000.

The Board has carefully reviewed the Report and Recommendation of the Hearing Examiner dated August 11, 2000. At its worksession on September 5, 2000 the Board voted to accept the Hearing Examiner's Report and Recommendation to grant the special exception, with conditions.

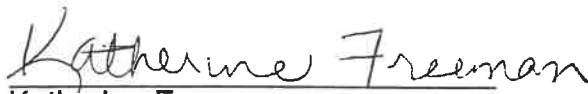
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| Decision of the Board: | Special Exception granted , subject to conditions in the Hearing Examiner's Report and Recommendation. |
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On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donald H. Spence, Jr. Chairman, Donna L. Barron and Mindy Pittell Hurwitz in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County Maryland that the Report and Recommendation of the Hearing Examiner in Case No. S-2432 (OZAH Referral No. 00-8) be adopted as the Resolution required by law as its decision in the above-entitled case.


Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 19th day of October, 2000.


Katherine Freeman
Executive Secretary to the Board

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.