within a business, office or industrial zone. Ms. O'Rourke testified that Cellular One hired Fred Kruhm, a real estate consultant, to locate a site within the search area that would be appropriate for the proposed tower. Mr. Kruhm never testified in this matter and there is no evidence submitted indicating Petitioners diligent search prior to the selection of the McMasters property. In fact, testimony clearly indicated that the search for alternative sites occurred after the selection and contractual commitment between Cellular One and the McMasters. There was no testimony or evidence indicating that any commercial or industrial zoned property was examined within the search area prior to the signing of a contract between the McMasters and Cellular One on September 22, 1989."

The evidence is no different before this Board than it was as summarized by the Zoning Commissioner in his decision. The only additional factor since the Zoning Commissioner's hearing is that a third search area has been plotted by Mr. Balecki in terms of the "red tertiary grid cell" pattern as testified before this Board. That search area again, was developed in the summer of 1990 and had no application to this case whatsoever.

The Statute as passed by the Baltimore County Council indicates that a diligent search must be made. The legislative intent and logic behind the Statute implies a search **before** a location of a tower, not after the site is picked to merely justify the selection. To interpret the Statute otherwise, would be to emasculate the intent of the Statute and the effort behind the County Council's enactment of Bill No. 64-86. To



reward the Petitioner's effort of selecting the site first and then conducting multiple searches after the site is selected to create a justification for the purposes of the Statute would produce an absurd result.

There are other areas of the law which are analogous to what the Petitioner is attempting to do before this Board:

First, in the area of criminal law, it is well recognized in search and seizure law that the "fruit of the poisonous tree" doctrine applies. That is, future evidence obtained from an illegal search or seizure is tainted. Here, there has been a tainting of the initial search as conducted by Ms. O'Rourke and Mr. Kruhm and no amount of effort or subsequent searches can justify the proposition that they failed to properly conduct an appropriate search.

Secondly, also in the area of criminal law, this effort by the Petitioner is analogous to the situation of a police officer knowing that contraband is located in a particular house, enters the house and obtains the contraband illegally then goes to a Judge to get a warrant for a search of the house because he has "probable cause" to believe that contraband is located therein.

Again, in the area of criminal law, having once obtained an illegal confession without the advice of rights to the accused, it is a general proposition that such confession is precluded from being entered into evidence.



While these three analogies are in a different field of law from the Zoning Regulations of Baltimore County, the basic principles are consistent with an analysis of our Zoning Statute. The Petitioner cannot be allowed to pick a site without adherence to the rules and regulations and then justify the selection upon the basis of a subsequent search.

Even if one were to assume that the Petitioner Bell through its multiple efforts over the years to devise a search area and explore various alternatives was valid, the evidence before this Board clearly reflects that Bell never made the effort to significantly contact Baltimore County to obtain locations on water towers owned by the County until the Protestants appeared on the scene. Even now, when they have obtained permission to utilize the Mays Chapel Tower, they have failed to consider to consider a Warren Elementary School Tower or the new tower being proposed on Sherwood Road itself in the near future.

Secondly, an analysis of the business and industrially zoned property in the corridor between Interstate 83 and York Road North to Schwann Road has clearly never been explored sufficiently by Bell and when it was, they obtained a temporary cell site on Padonia Road on an office building located on Padonia Road. Clearly, a similar site could be located on the high ground north of Schwann Road to satisfy Bell's requirements north to Hereford. A simple fact, after all the



evidence is analyzed, is that Bell desires to place this tower where it has a contract with McMasters and that any other location will be rejected out of hand if it is not that location. It is also clear, based on the testimony of Mr. Balecki, that Bell will grab as many locations as it can on the basis of potential future use for its "tertiary cell system." If that is the case, then this Board should send the message to Bell that it must comply with the Baltimore County Zoning Regulations Section 502.7.C.1 in its selection process in the future to protect other communities from the same type of activity that has occurred at the McMasters site.

It is submitted by the Protestants that since the Petitioner has failed to meet the burden that it has made a diligent search for a location within a business, office or industrial zone, the Board is not required to address the issue of whether or not this project meets the other criteria of 502.1.A through H, nor may the Board address the issues of a variance or the placing of other conditions upon the Petitioners under Section 502.7.C2 through 10.

While it is not necessary for the Protestants to address the point, it will be noted here that a Petitioner for Variance under Section 307.1 must establish "practical difficulty or unreasonable hardship." In the instant case, the testimony in evidence is clear that there is no undue hardship or burden on the Petitioner; as a matter of fact, the Petitioner has



actually leased an amount of ground which would satisfy the zoning regulations and there is no reason why it could not and cannot comply with the appropriate setbacks as required by the Baltimore County Zoning Regulations, **but for the fact that Mr. McMasters desires to minimize the amount of land surrounding the proposed facility in order that he can continue to farm or develop that area**. It is more troublesome in the instant case when one examines the variance issue to find that under the Agreement between Bell and McMasters, that McMasters can utilize the remaining portion of the leased premises for whatever purpose would be allowed by the Baltimore County Development Regulations. If that is the case, it is very clear that development could take place on this leased premises which could place the homes to be developed on said site extremely close to the proposed facility and tower. To do that, would clearly circumvent the requirements as imposed in Bill No. 64-86 and codified in Sections 502.7C.2 and 3. McMasters submitting an Affidavit that he will not do so does not provide the Protestants or the County any degree of comfort in protection in the future.

One final comment in this Memorandum. In normal cases involving Section 502.1, the Petitioner customarily cites the case of Schultz v. Pritts, 291 MD 1 (1981), for the proposition that before a special exception can be denied, the requested use must have an adverse affect above and beyond those



inheritently associated with the use, regardless of its location. While it is submitted by the Protestants that such case is frequently overused by the Petitioners, in the instant case, the Zoning Commissioner should not even be guided by this particular decision. The issue before the Commissioner is whether or not Section 501.7.C.1 has been complied with and is a procedural prerequisite to the consideration of the other issues in this case.

**WHEREFORE**, it is respectfully submitted by the Protestants, individually and on behalf of the community associations that the Board find that the procedural aspect of Section 502.7C.1 has not been complied with by the Petitioners and that it has not met the burden of establishing that it has made a diligent search for a location within business, office or industrial zone and therefore the petition must be denied.

Respectfully submitted,

J. CARROLL HOLZER
Attorney for Protestants



**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 30th day of December, 1991, a copy of the foregoing Protestants Memorandum was mailed postage prepaid to G. Scott Barhight, Whiteford, Taylor & Preston, 500 Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland 21204.

J. CARROLL HOLZER

c:\wp\memo\sherwood.mem



IN RE: AND ZONING VARIANCE - NE Corner Sherwood Road and Hollow Road (426 Sherwood Road) 8th Election District 3rd Councilmanic District
Joseph B. McMaster, et ux Petitioners

* BEFORE THE
* BOARD OF APPEALS
* OF BALTIMORE COUNTY
* Case No.: 90-382-XA

* * * * * * * * * * * *

MOTION TO SEPARATE ISSUES

Protestants, by J. Carroll Holzer of Holzer, Maher and Demilio, herein request that this Honorable Board limits its consideration of evidence to the sole issue of whether or not the Petitioners "made a diligent and reasonable search for a location" to support the above captioned request, as required in Section 502.7.c.1 of the Baltimore County Zoning Regulations for the following reasons:

1) That the Petitioners must establish as a prerequisite that they conducted a diligent search as required by Section 502.7.c.1 of the Baltimore County Zoning Regulations and;

2) That taking testimony on all of the issues as presented in a request for Special Exception, concerning 502.1 criteria would consume hours and days of this Board's time and cost the Petitioners as well and the Protestants a substantial sum of money to present experts and witnesses; Protestants recognize that if the Board finds that the Petitioners did not meet the criteria of this Section 502.7.c.1 that determination ends the case without the need for additional testimony.

LAW OFFICES
HOLZER, MAHER
& DEMILIO
305 W. CHESAPEAKE AVENUE
SUITE 105
TOWSON, MARYLAND
21204
(301) 825-6960

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines DATE: February 22, 1990
Zoning Commissioner

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Joseph B. McMaster, Item 242

The Petitioner requests a Special Exception for a wireless transmitting and receiving facility; and a Variance for relief from area and setback requirements.

Should the Petitioner's request be granted, staff offers the following comments:

- A CRG meeting or waiver be required for the proposed project. The approved zoning plan should conform to the approved CRG plan and the final landscape plan.
- A landscape plan must be submitted for approval prior to the issuance of any building permits.
- A wrought iron fence (minimum of 6 ft. high) should be installed with dark brick columns at 10-15 ft. intervals along the perimeter of the enclosed area of the tower.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/cmm

FEB 2 3 1990

*Baltimore County*
*Department of Public Works*
*Bureau of Traffic Engineering*
*Courts Building, Suite 405*
*Towson, Maryland 21204*
*(301) 887-3554*

March 9, 1990

*Dennis F. Rasmussen*
*County Executive*

J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 193, 241, 242, 243, 244, and 245.

Very truly yours,

Michael S. Flanigan
Traffic Engineer Assoc. II

MSF/lab

MAR 2 1 1990

MICROFILMED

*Baltimore County*
*Department of Permits & Licenses*
*111 West Chesapeake Avenue*
*Towson, Maryland 21204*
*(301) 887-3610*

*Ted Zaleski, Jr.*
*Director*

FEBRUARY 8, 1990

*Dennis F. Rasmussen*
*County Executive*

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

Location: CORNER OF NE/S OF SHERWOOD ROAD

Item No.: 242 Zoning Agenda: FEBRUARY 20, 1990

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: Capt. Joseph Kelly 2-9-90 Noted and Approved
Planning Group / Special Inspection Division
Fire Prevention Bureau

JK/KEK

FEB 1 3 1990

MICROFILMED

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Zoning Advisory Committee DATE: March 5, 1990

FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting
for February 20, 1990

The Developers Engineering Division has reviewed the subject zoning items and we have no comments for Items 193, 224, 241, 242, 243, 244, and 245

Robert W. Bowling

ROBERT W. BOWLING, P.E., Chief
Developers Engineering Division

RWB:s

MAR 0 1990

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO J. Robert Haines, Zoning Commissioner Date May 11, 1990

FROM Phyllis Cole Friedman, People's Counsel for Baltimore County

SUBJECT Joseph B. McMaster, et ux, Owner - Zoning Case No. 90-382-XA
Southwestern Bell Mobile Systems, Inc., T/A Cellular One, Lessee

When I entered our appearance in this matter, we intended to participate, not being aware that there was counsel representing Protestants. In view of this fact, we have decided that whatever issues there are will be adequately represented and we will not appear in person.

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

cc: G. Scott Barhight, Esquire
J. Carroll Holzer

PCF:sh

CPS-008

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

March 28, 1990

*Dennis F. Rasmussen*
*County Executive*

G. Scott Barhight, Esq.
210 W. Pennsylvania Avenue
Towson, Maryland 21204

J. Caroll Holzer, Esq.
305 W. Chesapeake Avenue, #110
Towson, Maryland 21204

Re: Case Number: 90-382-XA
Legal Owner(s): Joseph B. McMaster
Lessee: Southwestern Bell Mobile Systems, Inc.
Location: NE/S of Sherwood Road, SE/S of Hollow Road

Gentlemen:

This will confirm that due to community interest generated, the above captioned case, which was scheduled to be heard on April 3, 1990, has been postponed.

It further confirms the new hearing schedule as follows:

8:30 a.m. - 12:00 noon - Monday, May 7, 1990
8:30 a.m. - 12:00 noon - Monday, May 14, 1990
9:30 a.m. - Completion - Wednesday, May 16, 1990.

If you need further information, please do not hesitate to call.

Very truly yours,

G. G. Stephens
(301) 887-3391

cc: Steve Rosen
Clay M. Barnes
David W. Baker
James Riffin
John Massar
Joseph B. McMaster
Southwestern Bell Mobile Systems, Inc.

MICROFILMED

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

May 22, 1990

*Dennis F. Rasmussen*
*County Executive*

G. Scott Barhight, Esq.
210 W. Pennsylvania Avenue
500 Court Towers
Towson, Maryland 21204

J. Carroll Holzer, Esq.
305 W. Chesapeake Avenue
Suite #110
Towson, Maryland 21204

Re: Case Number: 90-382-XA
McMaster/Southwestern Bell Mobile Systems
(426 Sherwood Road)

Gentlemen:

This will confirm the hearing schedule of the above captioned matter. This case will continue as follows:

| | | |
|---|---|---|
| Friday | June 01, 1990 | 9:30 a.m. |
| Tuesday | July 17, 1990 | 9:30 a.m. |
| Tuesday | July 31, 1990 | 9:30 a.m. |
| Wednesday | August 01, 1990 | 9:30 a.m. |

Very truly yours,

G. G. Stephens

except: June 1 O.K.
~~July 10 ???~~
July - 17 O.K.
July - 31 O.K.
Aug. 1 - O.K.
825-6160
C. Holzer O.K.

MICROFILMED

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

June 8, 1990

*Dennis F. Rasmussen*
*County Executive*

J. Carroll Holzer, Esq.
305 W. Chesapeake Avenue
Suite 110
Towson, Maryland 21204

G. Scott Barhight, Esq.
210 W. Pennsylvania Avenue
500 Court Towers
Towson, Maryland 21204

Re: Case Number: 90-382-XA
McMaster/Southwestern Bell Mobile Systems

Gentlemen:

Confirming the rescheduling of the above captioned matter, the July 31st and August 1st dates are no longer valid; the case will continue as follows:

TUESDAY.....JULY 17, 1990 at 9:30 a.m.
TUESDAY.....AUGUST 14, 1990 at 9:30 a.m.
WEDNESDAY.....AUGUST 15, 1990 at 9:30 a.m.
THURSDAY.....AUGUST 16, 1990 at 9:30 a.m.

Very truly yours,

G. G. Stephens
(301) 887-3391

MICROFILMED

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

*Dennis F. Rasmussen*
*County Executive*

November 14, 1990

Baltimore County Board of Appeals
County Office Building, Room 315
Towson, Maryland 21204

RE: Petition for Special Exception and Zoning Variance
NE/Corner Sherwood Road and Hollow Road
(426 Sherwood Road)
8th Election District, 3rd Councilmanic District
JOSEPH B. MCMASTER, ET UX - Petitioner
Case No. 90-382-XA

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on November 13, 1990 by G. Scott Barhight, Attorney on behalf of the Petitioners. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

J. ROBERT HAINES
Zoning Commissioner

JRH:cer

cc: Joseph B. McMaster, 426 Sherwood Road, Cockeysville, MD 21030

Emilienne O'Rourke - Southwestern Bell Mobile Systems, Inc.
7855 Walker Drive, Suite 100, Greenbelt, MD 20770

G. Scott Barhight - Whiteford, Taylor & Preston
500 Court Towers, 210 W. Pennsylvania Ave., Towson, MD 21204

J. Carroll Holzer - Holzer, Maher & Demilio
305 W. Chesapeake Avenue, Suite 105, Towson, MD 21204

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

91 NOV 14 AM 10:06

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**APPEAL**

Petition for Special Exception and Zoning Variance
(426 Sherwood Road;
(426 Sherwood Road)
8th Election District - 3rd Councilmanic District
JOSEPH B. MCMASTER - Petitioner
Case No. 90-382-XA

Petitions for Special Exception and Zoning Variance

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments

Petitioner's Exhibits:
1. Yellow outlined map of Sherwood Road
2. Photograph of Site (14" x 16")
3A - 3F - DZC's Decision for Chestnut Ridge
4. Plat to accompany Petitions
5. Photographs of Trailer, fence, and tower
6. Lease Agreement
7. Phone Messages and Business Card
8A. ADC Map of Cockeysville
8B. Handwritten notes with name of Jim Pembroke
9. Site Acquisition Information (Print out)
10. Photographs of surrounding businesses
11. Search Area Site Candidates Data Sheet
12. 4-Cell Pattern
13 - 17 - Overlay (Board)
18. Seven small overlays of Loch Raven Genstar
19A - 19W Environmental Impact Assessment
20. Affidavit
21. Resume of John Osepchuk

MICROFILMED

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Appeal Checklist - Case No. 90-382-XA
November 14, 1990
Page 2

Protestant's Exhibits:
1. Photograph - Cell. One Monopole
2. Yellow Outlined Map
3A - 3B - Opposition List
4. Notice dated 3/16/90 with Site Map
5. Opposition Petition from Montview Residents
6. Notice of reasons from opposition

Zoning Commissioner's Order dated October 12, 1990 (Denied in part; Dismissed in part)

Notice of Appeal received November 13, 1990, from G. Scott Barhight, Attorney on behalf of the Petitioners

cc: Joseph B. McMaster, 426 Sherwood Road, Cockeysville, MD 21030

Emilienne O'Rourke - Southwestern Bell Mobile Systems, Inc.
7855 Walker Drive, Suite 100, Greenbelt, MD 20770

G. Scott Barhight - Whiteford, Taylor & Preston
500 Court Towers, 210 W. Pennsylvania Ave., Towson, MD 21204

J. Carroll Holzer - Holzer, Maher & Demilio
305 W. Chesapeake Avenue, Suite 105, Towson, MD 21204

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning
Patrick Keller, Office of Planning & Zoning
J. Robert Haines, Zoning Commissioner
Ann M. Nastarowicz, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
W. Carl Richards, Jr., Zoning Coordinator
Docket Clerk
Arnold Jablon, County Attorney

MICROFILMED

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JOSEPH B. McMASTER, ET UX
NE/cor Sherwood & Hollow
Rds. (426 Sherwood Road)
8th Election District
3rd Councilmanic District

#90-382-XA

SE-Wireless transmitting & receiving facility
VAR-setbacks

| | |
|---|---|
| February 21, 1990 | Petition for Special Exception for a wireless transmitting and receiving facility filed by G. Scott Barhight, Esquire on behalf of Mr. and Mrs. McMaster. Petition for Variances as to property line setbacks, building setbacks and lot area also filed. |
| October 12, 1990 | Order of the Zoning Commissioner DENYING Peittion for Special Exception and DISMISSING Petition for Variances as moot. |
| November 13 | Notice of Appeal received from G. Scott Barhight, Esquire on behalf of Petitioners. |
| June 25, 1991 | Motion to Separate Issues filed by J. Carroll Holzer, Esquire on behalf of Protestants. |
| May 28, 1992 | Opinion and Order of the Board GRANTING Petition for Special Exception with restrictions and GRANTING requested Variances. |
| June 25 | Order for Appeal filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire on behalf of Protestants. Petition to accompany appeal also filed in the Circuit Court for Baltimore County by Mr. Holzer. |
| June 30 | Certificate of Notice sent to interested parties. |
| July 9 | Transcript of testimony filed; Record of Proceedings filed in the Circuit Court for Baltimore County. |
| January 4, 1993 | Order of the CCt,BCo AFFIRMING C.B. of A. (Hon. John G. Turnbull, II). |

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12/17/90 - Following parties notified of hearing set for June 25, 1991 at 10:00 a.m.:

G. Scott Barhight, Esquire
Mr. Joseph B. McMaster
Emilienne O'Rourke - Southwestern Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
People's Counsel for Baltimore County
P. David Fields
Pat Keller
~~Public Services~~
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

4/24/91 - Above parties sent Amended Notice advising of Day Nos. 2 and 3 set for August 20 and 21, 1991 as well as retaining June 25, 1991 for Day #1.

6/26/91 - Above parties sent Amended Notice advising start time of 9:00 a.m. for Days 2 and 3 (August 20 and 21, 1991).

8/09/91 -T/C from S. Barhight -concern that case can be finished in scheduled two hearing days and problem faced with departure of Lynn Moreland as member of Board effective 8/31/91. Meeting set up for Tuesday, August 13 at 9:00 w/S. Barhight, C. Holzer, M. Sauer (chairman for this matter) and W. Hackett, Chairman of the Board to discuss alternatives.

8/13/91 -A/agreement of S. Barhight and C. Holzer, matter will be pulled from docket; to be assigned for hearing in November 1991, if nothing can be had sooner, for 5 hearing days, to be started at day #1 with new 3rd Board member assigned to case. Notice of Removal from Assignment sent to all parties. Notice of Assignment to follow. kcw

8/27/91 - Above parties notified of hearing dates November 13, 14, 19 & 20, 1991 all to begin at 9:00 a.m. and continue until 4:00 p.m. each day.

9/11/91 - Above parties sent REVISED NOTICE OF ASSIGNMENT adding Day #5, February 5, 1992 at 9:00 a.m.

10/17/91 - Above parties sent REVISED NOTICE OF ASSIGNMENT omitting Day #1 at the request of Counsel for Protestants. Original Day Nos. 2-5 will now be 1-4. (Court of Special Appeals conflict)

11/20/91 - Case completed. MEMOS DUE 12/30/91

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County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

October 17, 1991

J. Carroll Holzer, Esquire
HOLZER, MAHER & DEMILIO
305 W. Chesapeake Avenue, Suite 105
Towson, MD 21204

RE: Case No. 90-382-XA
Joseph B. McMaster, et ux

Dear Mr. Holzer:

The Board is in receipt of your letter of September 30, 1991 requesting a postponement for Wednesday, November 13, 1991 due to a conflict at the Court of Special Appeals. The Board has also received and considered correspondence dated October 3 from G. Scott Barhight, Counsel for Petitioner, objecting to same, and your follow-up letter of October 10.

After due consideration, this Board has no alternative but to grant your requested postponement. Thursday, November 14, 1991, will therefore be the first of four scheduled hearing days for this case. A fifth hearing day in place of November 13 will not be scheduled at this time, but rather will be set in, if necessary, as the Board's docket permits.

Very truly yours,

William T. Hackett

William T. Hackett, Chairman
County Board of Appeals

Enclosure

cc: Ms. Emilienne O'Rourke
G. Scott Barhight, Esquire
Karl J. Nelson, Esquire
Dr. Cyril Byron
Mr. Jerome Goodman

---

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

September 11, 1991

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: Case No. 90-382-XA
Joseph B. McMaster, et ux

Dear Mr. Barhight:

The Board is in receipt of your letter of September 5, 1991 requesting a fifth hearing day for the subject matter.

Since the Board's docket has already been set, the first available date at this time is February 5, 1992, which we are now scheduling as Day #5 for Case No. 90-382-XA. This case is now scheduled for five hearing days as indicated on the enclosed Amended Notice of Assignment.

Very truly yours,

Michael B. Sauer

Michael B. Sauer
County Board of Appeals

Enclosure

cc: Ms. Emilienne O'Rourke
J. Carroll Holzer, Esquire
Karl J. Nelson, Esquire

---

Baltimore County Government
County Executive's Office

Roger B. Hayden
County Executive

400 Washington Avenue
Towson, Maryland 21204
887-2450

September 12, 1991

Ms. Saran Adams
11424 York Road
Cockeysville, MD 21030

Dear Ms. Adams:

Thank you for caring enough to stop by the Executive Office and also to write. Your kind words about Mr. Louis Waidner were noted and appreciated, and I will pass those along to him. As you know, the new dates for the Board of Appeals Hearing are November 13, 14, 19, and 20, 1991. Please call the Board of Appeals, at 887-3180, if you have any additional questions or comments in this matter. You may also write to them at the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, 21204.

In closing, I would like to thank you for participating in the Appeals Process. Too often, citizens are apathetic and are not concerned with the affairs of their government.

Respectfully yours,

Roger B. Hayden
County Executive

RBH:mas

cc: William T. Hackett, Chairman, Board of Appeals
Louis P. Waidner, Executive Assistant

91 SEP 20 AM 8:44

8/13/91

Michael:

Scott Barhight telephoned.

- Spoke w/Don Mason. He's not interested in extending Lynn's term for any length of time; is sticking with appointment of Levero effective 9/01/91.

- Scott has spoken w/Carroll Holzer; Carroll suggested starting over, with you selecting a third member to complete the Board. Scott agrees with this suggestion.

- Further suggestion --selecting 5 new days (if that has to be in November, that would have to be in November) and letting the two days next week (8/20 and 8/21) go.

  Reason for this suggestion -he has legal problems with picking up next Tuesday on what is perceived as Day #2 continued from June date. Would prefer that a new Notice be sent to all parties, clearly indicating that this case is starting over on 5 given dates, separate and apart from any previously scheduled dates (believes this will also avoid appellate problems later down the road).

Carroll is waiting to go out of town; both would sincerely appreciate knowing what the Board's decision is in this matter (Carroll will only be available until 3:15 p.m.).

One further comment --since this would be starting again before new member, Scott and Carroll both feel case would have to be started again from Day #1, and this would not be possible at this point if the 2 dates in August are used.

Scott has left a number where he can be reached, and Kolzer will be in touch with him before going out of town.

Kathi

OK → We will start over - give them 5 new dates.

Contacted Scott @ 3:30 — 8/20 & 8/21 pulled; still keeping 5 dates (beginning at Day #1) — notice to be sent. Scott to notify Carroll.
K.

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

August 24, 1993

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: Case No. 90-382-XA
JOSEPH B. MCMASTER, ET UX - Petitioner

Dear Mr. Barhight:

As no further action has been taken regarding the subject matter since the January 4, 1993 decision from The Circuit Court for Baltimore County, we have returned the Board's copy of the subject zoning file to the office of Zoning Administration and Development Management.

Anyone interested in this case can contact the Zoning Office at 887-3391 upon receipt of this letter. By copy of this letter, all parties of record that may have an interest in this file have been notified.

Sincerely,
Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

cc: Joseph B. McMaster
Emilienne O'Rourke
J. Carroll Holzer
Sarah Adams

Printed with Soybean Ink on Recycled Paper

August 28, 1985

OFFICE OF LAW REPORT
PROPOSED AMENDMENTS TO THE BALTIMORE COUNTY ZONING REGULATIONS
CONCERNING
RADIO TOWERS AND TELEVISION TOWERS AND OTHER
WIRELESS TRANSMISSION OR RECEIVING FACILITIES

MICROFILMED

LEGISLATION PROJECT #85-04

PROPOSED AMENDMENTS TO THE BALTIMORE COUNTY ZONING REGULATIONS
CONCERNING
RADIO AND TELEVISION TOWERS AND OTHER WIRELESS TRANSMISSION OR RECEIVING FACILITIES

Discussion

Radio and television antennas and transmission and receiving towers are currently permitted as a principal use by special exception in every zone of the County except M.R., R.A.E. and O.T. zones. According to Subsection 502.1 before any special exception is granted it must appear that the use will not:

a. Be detrimental to the health, safety, or general welfare of the locality involved;

b. Tend to create congestion in roads, streets or alleys therein;

c. Create a potential hazard from fire, panic or other dangers;

d. Tend to overcrowd land and cause undue concentration of population;

e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;

f. Interfere with adequate light and air;

g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor

h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

The design of radio and television antennas and wireless transmitting and receiving towers is dependent upon the number of stations anticipated to use the tower, the type of waves being transmitted and received, the intended operating power, the size of the service area, and the terrain of the surrounding area. The most common types of transmission are land mobile radio, A.M., F.M., television, and fixed-point microwave. Land mobile radio and common carrier systems, (i.e., cellular telephone systems) are the fastest growing segment of the communications industry.

With the exceptions of A.M. and land mobile radio, nearly all radio frequencies require a clear line-of-sight path between transmitter and receiver. This is especially true for fixed-point microwave. Because of the line-of-sight requirement transmission facilities must be elevated sufficiently above the average terrain to beam signals past obstructions. Optimum line of sight path is therefore usually achieved on hilltops or on tall buildings. In areas where few tower sites are available, towers may compete with residential





development for prime hilltop sites. Residents of neighborhoods where towers are proposed argue that towers are unattractive and adversely effect property values. If a tower is to serve several station facilities at a particular height, the tower is likely to be a candelabra structure, such as the WBAL tower on T.V. Hill in Baltimore City. On the other hand, if a tower is anticipated to serve only one or two stations with the receivers and transmitters located vertically along the tower, the tower is likely to be a pencil structure. Both candelabra towers and pencil towers require numerous guy wires for anchoring. Freestanding towers are also common and are frequently shaped similar to the Eiffel Tower. Whether freestanding or not, most large towers are of an open grid, structural steel construction, with lights placed intermittently for sighting by planes.

As previously mentioned, cellular telephone systems is one of the fastest growing segments of the communication industry. Cellular telephone systems are intended to serve the mobile communications demands of a metropolitan region. The Federal Communication Commission (FCC) permits and licenses two systems in any one region. In order to prevent communication gaps, the system consists of an integrated grid network of towers, each interdependent upon others. Thus, when the location of one tower is significantly shifted, one or more towers may also have to be shifted. Because the system specifically addresses mobil communications, it is oriented to the expressways and interstates, their primary demand source. The towers themselves are generally 150 to 200 feet in height when freestanding, and they usually are of a monopole design. The distance between towers can vary significantly dependent upon the height of the tower, demand, and somewhat on terrain or obstructions. Because the number of transmissions a tower can serve at any one moment is limited (technologically) to approximately 100, as demand increases more towers may become necessary. These additional towers will in all likelihood be smaller than those of the initial system.

Proposed transmission towers are also viewed as an undesirable use in residential zones because of a fear of potential health hazards posed by long-term exposure to nonionizing electromagnetic radiation (NIER) emitted by these facilities. NIER sources are those frequencies in the lower two-thirds of the electromagnetic spectrum and include all radio, television and microwave frequencies as well as ordinary household current and radar. NIER is distinguished from ionizing electromagnetic radiation (IER)- cosmic, atomic and X-ray - by its lack of energy to ionize, or alter, the molecular structure of living tissue. Although the short and long-term damage to humans resulting from exposure to even low levels of IER is well documented, potential health hazards associated with NIER exposure is a subject of controversy among health scientists.

The problems discussed above associated with the siting of transmission towers are encountered by many jurisdictions around the country. A survey of 15 jurisdictions was conducted by the American Planning Association in a report on "Regulating Radio and Television Towers" (Bookin and Epstein. PAS Report No. 384 American Planning Assoc. 1984). The survey revealed that nearly all jurisdictions consider transmission facilities as conditional uses. Some jurisdictions allow transmission towers outright in non-residential zones



subject to special lot size, height, security and landscaping requirements. The American Planning Association report also suggested several ways to regulate towers. In communities where there is a shortage of tower sites the report suggested that the community take action to identify and protect sites (i.e., adopt a plan) that may be needed in the future. Other alternatives included a ban on transmission towers or permitting them only when no suitable sites in non-residential areas are available.

A review of the zoning ordinances of several neighboring Maryland counties and found that transmission towers are generally permitted by special exception in certain residential and agricultural zones and by right in certain commercial and industrial zones.

Under the authority of the Federal Communications Act of 1934, as amended, the FCC has developed a comprehensive system to regulate radio and television transmissions and related facilities. The height, operating power and location of transmitting structures are regulated by the FCC with additional requirements of the FAA (and the County's special exception requirements). A local jurisdiction cannot ban all new communications facilities outright or impose a permanent or open-ended moratorium. The FCC has the power to issue construction permits that override such a local prohibition and a ban on towers also may violate First Amendment rights.

In a recent special exception hearing, residents unsuccessfully opposed the construction of a 200 foot tower in their neighborhood (zoned R.C.2). The tower is to be used to provide cellular phone service in Maryland. The residents felt that the tower would block views, adversely affect property values, be struck by lightning, interfere with hot air balloons and with migratory bird patterns, and that radiation from the tower would be harmful to people and animals. The petitioners for the tower have received a license from the FCC and approval by the FAA and the Public Utilities Commission. An environmentalist testified that the tower would be relatively unobstrusive and inoffensive in this wooded area and the effect on the environment and fowl would be negligible. An environmental planner discussed national and international research and American National Standards Institute (ANSI) and Environmental Protection Agency (EPA) guidelines and standards and concluded that the proposed ranges of energy would not present health hazards. Further testimony presented by a land planner/landscape architect indicated that the proposed tower would not be detrimental to the agriculture in the area. The Deputy Zoning Commissioner found that the special exception requirements had been met and granted the special exception subject to the following additional restrictions:

1. The wireless transmitting and receiving facility shall have a maximum height of 200 feet, including all antennae, and a platform no more than 4 feet wide at the top.

2. The tower and accessory building shall be enclosed within a locked, chain-link fence at least 8 feet high.

3. The tower shall be unpainted or painted gray and shall not be lighted nor have strobe lights unless specifically required by FCC or FAA rules and regulations. The color of the fence shall be black or brown.





4. At such time as the use is terminated, the tower shall be removed.

5. All plats required for permits shall be drawn by a Maryland registered professional engineer qualified in structural design. Said engineer shall supervise and certify the tower upon completion before an occupancy use permit can be issued. Every five years, a certification by a Maryland registered professional engineer shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure continues to meet all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification.

6. EPA standards and guidelines relating to radiation emissions shall be met at all times.

7. Antennae, dishes or other wireless transmitting and receiving apparatus on the tower shall be limited to those providing cellular phone service or utilized by Baltimore County.

8. The tower shall be properly grounded to minimize the possibility of fire.

9. A landscape plan, designed to minimize the visual impact of the building and lower portion of the tower, shall be submitted to and approved by the Current Planning and Development Division.

On September 4, 1984 County Council adopted Bill No. 117-84 which addresses wireless transmitting and receiving facilities located near historic districts (see Attachment #2). This Bill does not, however, apply to towers under 350 feet in height. The issue of transmission towers near historic districts is discussed in detail in the Planning Board's final report entitled Proposed Amendments to the Baltimore County Zoning Regulations Concerning Radio and Television Towers and Other Wireless Transmission or Receiving Facilities in Proximity to Historic Buildings or Lands (Legislation Project No. 84-98).

Comments/Recommendations

Radio, television and microwave communications are increasingly important for our security, recreation and economic needs. Unfortunately, the transmission towers and related facilities that are necessary components of these systems may affect safety, health and aesthetics if they are not properly situated. The communications industry is developing at a rapid pace and it is difficult to predict what the land use ramifications will be. Overly restrictive regulations may stand in the way of progress and violate federal statutes, while regulations that are too liberal may result in a proliferation of towers in Residential zones.

Banning towers from Residential zones and restricting such towers to Business and Manufacturing zones is considered inappropriate. There are roughly 7,000 acres of land zoned for business and 24,000 acres for manufacturing while the





total acreage for R.C. and D.R. zones (the only residential zones where towers are permitted) is about 251,000 and 101,000 acres respectively. Business and Manufacturing zones in the County generally fall within the urban and suburban areas. These locations may be suitable for certain types of transmitting and receiving facilities but may be inadequate for other types of wireless transmitting or receiving facilities. Many mobile communications systems (including cellular and paging systems) are oriented towards major highways (e.g., I-695, I-83 and I-95). These highways run through urban, suburban and rural areas. The amount of land zoned for business and manufacturing is small when compared to land zoned for residential use. There is no information available which would indicate how much of the land zoned for business and manufacturing would be suitable for the location of the various types of towers that may be in demand in the future. Representatives from the cellular telephone industry indicate that three or four more towers may be needed in the County to adequately serve the metropolitan area. There may also be a need to locate towers in rural areas to serve I-83 and I-95 in the northern part of the County.

One of the major arguments against towers is that towers may emit harmful radiation. Health scientists, however, have not agreed about the effects of the low levels of radiation emitted by certain types of towers. The visual impact of towers in residential areas is also a major concern. Towers are commonly held to be unattractive to the point of adversely effecting property values. Towers can be accommodated in certain residential areas with additional controls to ensure that high standards of safety are met and visual impact is lessened.

Towers under certain circumstances may not be any more compatible in Business and Manufacturing zones than in Residential zones. Many Business and Manufacturing zones are located very close to some rather densely populated residential areas. Towers may be strongly opposed in these areas also.

In general, the manner in which towers are permitted (i.e., special exception) in Residential zones is appropriate.

> The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore valid. The special exception use is a valid zoning mechanism that delegates...a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given...are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.
>
> Schultz v. Pritts, 432 A.2d 1319 (1981).

The special exception process provides a means by which a balance of concerns may be struck. When the general special exception requirements do not achieve

the desired end, additional requirements may be adopted to insure the desired result. At some point the development of new communications systems may require the use of land in Residential zones. This land may be acquired subject to local regulations which are designed to lessen the visual impact and other inconveniences that a tower might create or the land might be acquired through federal intervention. A ban on towers in Residential zones may be preempted eventually by federal statutes. Many jurisdictions in Maryland, and in many other states as well, permit towers in certain Residential zones as either a special exception or conditional use. In some cases additional requirements or criteria such as setback, landscaping and safety provisions must also be met before the special exception is granted.

It is quite understandable that most people do not want a transmission tower near their home. The setback requirements in most Residential zones would permit a tower to be located undesirably close to a dwelling. For example, in a Resource Conservation (R.C.) 5 zone a tower would be setback only 50 feet from a property line and no visual buffer is required. It is felt that a more stringent setback should be required in Residential zones in order to insure that a sufficient fall area is provided for towers and also to serve as a "worst case" safety precaution. In addition, the characteristics of a tower and its antennas effect the strength and pattern of emissions. A study of emission levels around the tower should be presented by the petitioner to the Zoning Commissioner. These emission levels should be required to meet the EPA guidelines. The point of maximum emission may not be at the base of the tower but at some point distant from the tower. (In a recent case, this point was approximately equal to seventy percent of the height of the tower.) This together with the issue of long range harm from such emissions, the lack of specific state or federally adopted standards and the significant variations of other published standards and guidelines indicates a need for a minimum setback in Residential zones. Due to the height of most towers, a requirement to completely screen a transmission tower from view would be unreasonable. The petitioner (for a tower by special exception) should, however, be required to screen the tower as much as possible from nearby dwellings. Transmission towers should be fenced in order to prevent these towers from becoming playgrounds for children.

An amendment to the Zoning Regulations to permit towers by right under specified conditions in certain Office, Business and Manufacturing zones, along with more stringent special exception requirements in Residential zones would create a situation where non-residential zones would become more attractive locations for towers. Permitting certain towers by right in non-residential zones would provide an incentive to seek sites in these zones. A petitioner could avoid the costly and time consuming special exception process by locating in a non-residential zone. Additional regulations to protect residential areas which abut such zones could also be included. Therefore, the Baltimore County Zoning Regulations, 1955, as amended, should be further amended as set forth below.

In order to minimize possible harmful effects from radiation emissions and to minimize adverse visual effects of wireless transmitting or receiving structures in certain residential zones add stricter controls to the special exception requirements as shown below.





In Subsection 502.7 ( Special exception requirements for certain wireless transmitting and receiving facilities) add Paragraphs 502.7.C and 502.7.D to read as follows:

C. Wireless transmitting or receiving structures in R.C., D.R. or R-O zones shall be subject to the following additional requirements.

1. The setback of such structure from the nearest property line shall equal or exceed three (3) times its height above grade level.

2. The structure shall be enclosed within a locked, chain-link fence, or comparable wall or structure, at least 8 feet high.

3. A landscape plan, designed to minimize the visual impact of accessory buildings and the lower portion of the structure shall be submitted to and approved by the Director of the Office of Planning and Zoning.

4. Enviromental Protection Agency standards and guidelines relating to radiation emissions shall be met at all times.

5. At such time as the use is terminated, the structure shall be removed.

6. Every five years, a certification by a Maryland registered professional engineer shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure meets all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification.

7. No white stroboscopic lights shall be permitted.

8. In order to insure against adverse effects on its surroundings, an enviromental impact statement, as defined in Section 101, shall be submitted to the Zoning Commissioner. Such enviromental impact statement shall include information on emission levels and shall evaluate the impact of the proposed structure on birds, wildlife, livestock, etc.

D. Exemptions.

1. The provisions of Subparagraphs 502.7.C.1, 2 and 3 shall not apply to roof-mounted wireless transmitting or receiving structures.





2. The provisions of Paragraph 502.7.C shall not apply to wireless transmitting or receiving structures serving gas and electric public utility communication needs except as required by the Zoning Commissioner under the authority of Subsections 502.1 and 502.2.

In order to provide a greater incentive for the location of wireless transmitting or receiving structures in certain non-residential zones, add the following amendments.

Add Section 426 immediately after Section 425 - Alcoholic Beverages License to read as follows:

Section 426 - WIRELESS TRANSMITTING OR RECEIVING STRUCTURES

426.1 Wireless transmitting or receiving structures with a maximum height of 200 feet above grade level including all antennas and platforms shall be permitted by right in O-2 (Office Park) zones, O.T. (Office and Technology) zones, and Business and Manufacturing zones subject to the following restrictions:

A. The structure shall be enclosed within a locked, chain link fence, or comparable wall or structure, at least 8 feet high unless such structure is roof-mounted.

B. The minimum setback from any boundary of a Residential or R-O zone shall be 200 feet.

C. Enviromental Protection Agency standards and guidelines relating to radiation emissions shall be met at all times.

426.2 Within O-2, O.T., Business and Manufacturing zones, accessory wireless transmitting or receiving structures shall be permitted by right; however, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure.

In Paragraph 204.3.B (certain uses permitted by special exception in O-1 zones) add the following new entry:

3. Wireless transmitting or receiving structures

In Paragraph 205.3.A (certain uses permitted by right in O-2 zones) add the following new entry:

5. Wireless transmitting or receiving structures 200 feet or less in height above grade level (see Section 426)

In Paragraph 205.3.B (certain uses permitted by special exception in O-2 zones) add the following new entry:





4. Wireless transmitting or receiving structures not permitted by Section 426

Revise Paragraph 207.3.A (certain uses permitted by right in O.T. zones) by adding the words that are underlined:

14. Wireless transmitting or receiving structures 200 feet or less in height above grade level (see Section 426)

15. Combinations of the uses listed above

Revise Paragraph 207.3.D (certain uses permitted by special exception in O.T. zones) by adding the words that are underlined:

1. Warehouses as described in A.12 of this subsection may be allowed by special exception providing the warehouse accounts for no more than 60% of the total gross floor area.

2. Wireless transmitting or receiving structures not permitted by Section 426

In Subsection 230.9 (certain uses permitted by right in B.L. zones) add alphabetically the following new entry:

Wireless transmitting or receiving structures 200 feet or less in height above grade level (see Section 426)

Revise Subsection 230.13 (certain uses permitted by special exception in B.L. zones) by adding the words that are underlined:

Wireless transmitting and or receiving structure not permitted by Section 426

Revise Subsections 233.4, 236.4, 248.4.a and 256.4 (certain uses permitted by special exception in B.M., B.R., M.L.R. and M.H. zones) by deleting the words that are lined through and adding the words that are underlined as shown below:

Wireless transmitting and or receiving structure not permitted by Section 426; ~~except as a minor accessory use or structure (which is permitted without a special exception); provided that, for the purposes of this subsection, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure.~~

In Subsection 248.3 (certain uses permitted by right in M.L.R. zones) add the words that are underlined as shown below:

248.3 - Living quarters for watchmen and caretakers and their families living on the premises and engaged in connection with any lawful use in the M.L.R. Zone;





Accessory buildings and uses in connection with living quarters (see above) and as limited by Section 400.

Hotels and motels when within an M.L.R. zone which is part of a contiguous area of 25 acres or more of industrial zoning, and provided that the combined tract areas developed for such uses do not occupy more than 25 percent of the particular contiguous area of industrial zoning in which they are located.

Wireless transmitting or receiving structures 200 feet or less in height above grade level (see Section 426)

In Paragraph 253.1.B (certain transportation, storage or quasi-public uses or utilities permitted by right in M.L. zones) add the following new entry:

19. Wireless transmitting or receiving structures 200 feet or less in height above grade level (see Section 426)

Revise Paragraph 253.2.D. (certain uses permitted by special exception in M.L. zones) by deleting the words that are lined through and adding the words that are underlined as shown below:

2. Wireless transmitting and or receiving structures not permitted by Section 426; ~~except as minor accessory uses or structures (which are permitted without a special exception); provided that, for the purposes of this paragraph, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure.~~

In Subsection 256.1 (certain uses permitted by right in M.H. zones) add alphabetically the following new entry:

Wireless transmitting or receiving structures 200 feet or less in height above grade level (see Section 426)



SUMMARY OF PROPOSED ZONING REGULATIONS FOR PRINCIPAL WIRELESS TRANSMITTING OR RECEIVING STRUCTURES

| Zone | Manner Permitted | Conditions | Sections |
|---|---|---|---|
| R.C. and D.R. | Special Exception | 3:1 setback; fenced, landscaped, EIS, no strobe lights, 5 yr. inspection; must meet emissions standards. | 502.1 and 502.7.C |
| R.A.E. | Not Permitted | -o- | -o- |
| R.O. | Special Exception | 3:1 setback, fenced, landscaped; EIS, no strobe lights, 5 yr. inspection; must meet EPA emission standards. | 502.1 and 502.7.C. |
| O-1 | Special Exception | as determined by Zoning Commissioner following hearing. | 502.1 |
| O-2, O.T., Business, M.L.R., M.L. M.H. | By Right | 200' max. height; 200' min. setback from residential and R.O. zone; fenced; must meet EPA emissions standards. | 426 |
| | Special Exception | all those not covered by above subject to conditions determined by Zoning Commissioner following hearing. | 502.1 |
| M.R. | Not Permitted | -o- | -o- |

Notes: 1) Section 502.1 refers to the general findings that must be made prior to granting a special exception.

2) All such structures over 350 feet are subject to the additional historical impact review of Section 502.7.

3) Section 502.7.C is a proposed new section.

4) Section 426 is a proposed new section.

5) Exceptions: accessory antennas including those in conjuction with licensed amateur radio operators; Section 502.7.C not applicable to communication towers accessory to Baltimore Gas and Electric operations - such as substations and gas lines.

LAW OFFICES

WHITEFORD, TAYLOR & PRESTON

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SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202
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TOWSON, MARYLAND 21204-4515
301-832-2000

FAX: 301-832-2015

SUITE 400
888 17TH STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202-659-0606

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2090

May 16, 1990

RECEIVED
MAY 17 1990
ZONING OFFICE

The Honorable J. Robert Haines
Zoning Commissioner
Office of Planning & Zoning
111 W. Chesapeake Avenue
County Office Building, Room 113
Towson, Maryland 21204

Re: Southwestern Bell Mobile Systems, Inc.,
t/a Cellular One
Petitions for Special Exception and
Zoning Variance
Case No. 90-382-XA

Dear Mr. Haines:

This letter is to follow up on my earlier conversations with Marlene regarding potential dates for the continuation of the above case. After thoughtfully reviewing the number and nature of witnesses which I intend to present, and providing adequate time for the Protestant to present testimony, it appears clear to me that we will need a minimum of four hearing dates to complete this case. At a minimum, I will be presenting four additional witnesses. It is highly likely that I may be presenting as many as nine additional witnesses.

The June 1 date previously mentioned is satisfactory. I have a conflict on the June 14 date. Although I am available during the morning of June 18, George Gavrelis, the only witness who must attend each of the hearings in order to lay a foundation for his testimony, is unavailable between June 15 and June 24. Therefore, June 18 is not a possible date.

I am available during the following dates: June 25, 27 and 28, July 3, 5, 6, 16 through 20, 30, 31. Although I am available during these dates, I will need to confirm the availability of other witnesses, especially Mr. Gavrelis, before providing final confirmation for a date.



I appreciate your continued time and attention to this matter.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: J. Carroll Holzer, Esquire
Ms. Amy O'Rourke

MICROFILMED

LAW OFFICES

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G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

May 22, 1990

RECEIVED
MAY 22 1990
ZONING OFFICE

HAND DELIVERY

The Honorable J. Robert Haines
Zoning Commissioner
Office of Planning & Zoning
111 W. Chesapeake Avenue
County Office Building, Room 113
Towson, Maryland 21204

Re: Southwestern Bell Mobile Systems, Inc.,
t/a Cellular One
Petitions for Special Exception and
Zoning Variance
Case No. 90-382-XA
Hearing Dates: May 14 and May 16, 1990

Dear Mr. Haines:

Please accept this letter as my request for copies of the tape recordings of the above-referenced hearings. Through conversations with Jun, it is my understanding that the charge for this copying will be $30.00. I will pay this amount upon receipt of the tapes.

Please contact me after the tapes for these two hearing dates have been copied. I will have someone from this office pay the amounts due and pick up the tapes as soon as I receive your call.

Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Ms. Amy O'Rourke

LAW OFFICES

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G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

August 17, 1990

RECEIVED
AUG 20 1990
ZONING OFFICE

HAND DELIVERY

The Honorable J. Robert Haines
Zoning Commissioner
Office of Planning & Zoning
111 W. Chesapeake Avenue
County Office Building, Room 113
Towson, Maryland 21204

Re: Southwestern Bell Mobile Systems, Inc.,
t/a Cellular One
Petitions for Special Exception and
Zoning Variance
Case No. 90-382-XA
Hearing Dates: June 1, July 17 and
August 14, 1990

Dear Mr. Haines:

Please accept this letter as my request for copies of the tape recordings of the above-referenced hearings. Through conversations with Jun, it is my understanding that the charge for this copying will be $15.00 per tape. I will pay the amount due upon receipt of the tapes.

Please contact me after the tapes for these three hearing dates have been copied and inform me of the total cost. I will have someone from this office pay the amounts due and pick up the tapes as soon as I receive your call.

Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Ms. Amy O'Rourke

LAW OFFICES

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G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

November 12, 1990

RECEIVED
NOV 13 1990
ZONING OFFICE

HAND DELIVERY

The Honorable J. Robert Haines
Zoning Commissioner
Office of Planning & Zoning
111 W. Chesapeake Avenue
County Office Building, Room 109
Towson, Maryland 21204

Re: Notice of Appeal
Petitions for Special Exception and Zoning Variance
Petitioners: Joseph B. McMaster, et ux. and
Southwestern Bell Mobile Systems, Inc. t/a Cellular One
Case No. 90-382-XA

Dear Commissioner Haines:

Please note an appeal of the above-referenced case to the County Board of Appeals on behalf of the Petitioners, Joseph B. McMaster and Vivian Baker McMaster (Legal Owners) and Southwestern Bell Mobile Systems, Inc. t/a Cellular One (Lessee). Mr. and Mrs. McMaster's address is 426 Sherwood Road, Cockeysville, Maryland 21030. Cellular One's address is 7855 Walker Drive, Suite 100, Greenbelt, Maryland 20770. Enclosed is a check made payable to Baltimore County, Maryland in the amount of $300.00 as payment for the filing fee and sign costs associated with this appeal.

Should you have any questions or comments, please feel free to contact me. Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Ms. Amy O'Rourke
J. Carroll Holzer, Esquire

MICROFILMED

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TELEPHONE 202-835-0606

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

March 4, 1991

The Honorable William T. Hackett
Chairman
County Board of Appeals
of Baltimore County
County Office Building
Room 315
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Joseph B. McMaster, et ux.
Case No. 90-382-XA

Dear Mr. Chairman:

The above matter is currently assigned to be heard on Tuesday, June 25, 1991 at 10:00 a.m. Since this matter took large portions of five different days before the Zoning Commissioner, I respectfully request that the Board assign three additional full hearing dates to this case. Time is a critical element in the Petitioner's need for this site. The Petitioner strongly believes that unnecessary delays will be caused if the requisite number of hearing dates are not scheduled in advance. Upon receipt of this correspondence, please schedule three additional hearing dates for this matter as soon after June 25 as possible. Should you have any questions or comments, please feel free to contact me.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Ms. Emilienne O'Rourke
J. Carroll Holzer, Esquire
People's Counsel for Baltimore County

LAW OFFICES

WHITEFORD, TAYLOR & PRESTON

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 301-347-8700

500 COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
301-832-2000
FAX: 301-832-2015

SUITE 600
888 17TH STREET, NW
WASHINGTON, D.C. 20006
TELEPHONE 202-659-6800

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

August 7, 1991

J. Carroll Holzer, Esquire
305 W. Chesapeake Avenue
Suite 105
Towson, Maryland 21204

Re: Joseph B. McMaster, et ux.
Case No. 90-382-XA
Hearing Assignments

Dear Carroll:

Since I have been having some difficulty contacting you by telephone during the last several weeks, I thought it wise to correspond with you regarding the additional hearing dates required in the above-referenced matter. I appreciate your recent efforts to contact me. However, since August is quickly slipping away and Chairman Sauer specifically requested that we provide the Board with additional hearing dates, I thought further delay would be unwise.

My calendar permits me to participate in additional hearings on August 22, 23, 26, 28, 29 and 30. Please contact me so that we can communicate which dates are available on your calendar as well.

It is my understanding that the term of one of the Board members sitting in this hearing, Ms. Moreland, is to expire effective September 1. We should do everything within our power to complete the hearing during Ms. Moreland's regular term.

I look forward to your response. Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Michael B. Sauer, Esquire

91 AUG 22 PM 12:55
COUNTY BOARD OF APPEALS

Kathy -
These were hand-delivered to Mike
Please file.
Thanks,
Lesley

LAW OFFICES

WHITEFORD, TAYLOR & PRESTON

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 301-347-8700

500 COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
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301-832-2000
FAX: 301-832-2015

SUITE 600
888 17TH STREET, NW
WASHINGTON, D.C. 20006
TELEPHONE 202-659-6800

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

August 19, 1991

J. Carroll Holzer, Esquire
305 W. Chesapeake Avenue
Suite 105
Towson, Maryland 21204

Re: Joseph B. McMaster, et ux.
Case No. 90-382-XA
Hearing Assignments

Dear Carroll:

This letter is to confirm the results of our several telephone conversations on August 13, 1991 regarding the above case. Since Ms. Moreland's term is expiring effective August 30, we agreed to cancel the previously scheduled hearing dates of August 20 and August 21, that Chairman Sauer would select a replacement for Ms. Moreland on the panel, that we would start the hearing anew and that the Board would schedule five hearing dates at its earliest convenience. It is my understanding that the Board of Appeals will notify us of Ms. Moreland's replacement and the new hearing dates in the very near future. I will be prepared to present my opening statement and offer my first witness on the first day of the five days to be scheduled.

Should you have any questions or comments, please feel free to contact me. I am pleased that we were able to reach an agreement in this matter.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Chairman Michael B. Sauer
Ms. Emilienne O'Rourke

LAW OFFICES

WHITEFORD, TAYLOR & PRESTON

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 301-347-8700

500 COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
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FAX: 301-832-2015

SUITE 600
888 17TH STREET, NW
WASHINGTON, D.C. 20006
TELEPHONE 202-659-6800

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

August 19, 1991

HAND DELIVERY

Michael B. Sauer, Esquire
Chairman
Suite 802
401 Washington Avenue
Towson, MD 21204

Re: Case No. 90-382-XA
Joseph B. McMaster, et ux.

Dear Chairman Sauer:

As my letter of this same date to Mr. Holzer confirms, it is my understanding that the Board will be replacing Ms. Moreland on the panel assigned to the above-referenced case and scheduling a new hearing consisting of five hearing dates some time during November, 1991. I will be prepared to present my opening statement and offer my first witness on the first day of the five days to be rescheduled.

Please review any necessary notice and/or posting requirements which might be appropriate and contact me to confirm the Board's actions. If I can be of any assistance, please feel free to contact me. Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Ms. Emilienne O'Rourke
J. Carroll Holzer, Esquire

LAW OFFICES

WHITEFORD, TAYLOR & PRESTON

SUITE 1400
SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 301-347-8700

500 COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
301-832-2000
FAX: 301-832-2015

SUITE 600
888 17TH STREET, NW
WASHINGTON, D.C. 20006
TELEPHONE 202-835-0606

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

September 5, 1991

Michael B. Sauer, Esquire
Chairman
Suite 802
401 Washington Avenue
Towson, Maryland 21204

Re: Case No. 90-382-XA
Joseph B. McMaster, et ux.

Dear Chairman Sauer:

This letter is to follow up on the Notice of Assignment dated August 21, 1991 regarding the above matter. During our earlier conversations, and pursuant to an agreement with opposing counsel, it was my understanding that the Board would be scheduling five (5) hearing dates for this matter. The August 21 Notice only assigns four (4) dates.

In light of the numerous witnesses which will be called, and so as to avoid any additional delay in the completion of this case, I respectfully request that a fifth day be scheduled in November, 1991. If the additional day is necessary, and we fail to schedule the date now, the fifth day could be delayed until February or March of 1992.

Please review my request and contact me should you have any questions or concerns. Please also review any necessary notice and/or posting requirements which might be appropriate for the November hearing dates and contact me to confirm the Board's actions.

RONALD L. MAHER
J. CARROLL HOLZER
CAROLE S. DEMILIO
THOMAS J. LEE

J. HOWARD HOLZER
1907-1989

LAW OFFICES
HOLZER, MAHER, DEMILIO & LEE
305 W. CHESAPEAKE AVENUE
SUITE 103
TOWSON, MARYLAND 21204
(301) 825-6960
FAX (301) 825-6964
DIRECT DIAL:

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MARYLAND 21784
(301) 795-8556
FAX (301) 795-5535

SUITE 700
1725 DeSALES STREET, N.W.
WASHINGTON, D.C. 20036

FILE NO:

September 30, 1991
#6508

Mr. Michael Sauer
Chairman
Baltimore County
Board of Appeals
County Office Building
Towson, Maryland 21204

Dear Chairman Sauer:

Please be advised that I have just received notification from the Maryland Court of Special Appeals that Case No.: 262, September Term, 1991, Rockdale Civic and Improvement Association v. Janson Homes, Inc. is set for Wednesday, November 13, 1991 for oral argument.

That conflicts with the first day scheduled for the Board of Appeals hearing on the Sherwood Hill Tower case.

I would therefore request a postponement of the whole day for Wednesday, November 13, 1991 in that I am not sure when our case will be completed in order for me to get back from Annapolis to Towson. It would appear to be logical that the case would then start on Thursday, November 14, 1991 and we already have five (5) days scheduled.

Very truly yours,

J. Carroll Holzer

JCH:mlg

cc: G. Scott Barhite, Esquire
Dr. Cyril Byron
Mr. Jerome Goodman

91 OCT -1 AM 11:55

COUNTY BOARD OF APPEALS
RECEIVED

LAW OFFICES
WHITEFORD, TAYLOR & PRESTON

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 301-347-8700

500 COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
301-832-2000
FAX: 301-832-2015

SUITE 400
666 17TH STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202-659-6800

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

October 3, 1991

Michael B. Sauer, Esquire
Chairman
Baltimore County Board of Appeals
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

Re: Case No. 90-382-XA
Joseph B. McMaster, et ux.

Dear Chairman Sauer:

This letter is in response to Mr. Holzer's September 30 letter to you requesting a postponement of the November 13 hearing date in the above matter. Please accept this letter as the Petitioner's/Appellant's opposition to this request for postponement.

As you are well aware, this case has continued to be besieged by events which further delay the hearing of this matter. It is unfair and unreasonable to expect the Petitioners to sit idly by while the conclusion of this hearing gets pushed further and further into 1992. This case should have been able to be completed before the end of November, 1991, as was suggested by the Board when the case was rescheduled.

On behalf of my clients, I respectfully suggest that Mr. Holzer should correspond with the Maryland Court of Special Appeals and request a postponement of that oral argument. The scheduling of the McMaster case preceded the scheduling of the Rockdale v. Janson Homes case and has already been subject to considerable delay and inconvenience.

Since it is unfair, unjust and unreasonable to suggest that my client submit to further delays, I respectfully suggest that Mr. Holzer's request for postponement be denied. Justice delayed

91 OCT -7 AM 11:30

COUNTY BOARD OF APPEALS
RECEIVED

RONALD L. MAHER
J. CARROLL HOLZER
CAROLE S. DEMILIO
THOMAS J. LEE

J. HOWARD HOLZER
1907-1989

LAW OFFICES
HOLZER, MAHER, DEMILIO & LEE
305 W. CHESAPEAKE AVENUE
SUITE 103
TOWSON, MARYLAND 21204
(301) 825-6960
FAX (301) 825-6964
DIRECT DIAL:

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MARYLAND 21784
(301) 795-8556
FAX (301) 795-5535

SUITE 700
1725 DeSALES STREET, N.W.
WASHINGTON, D.C. 20036

FILE NO:

October 10, 1991
#6498

Mr. Michael Sauer
Chairman
Baltimore County
Board of Appeals
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Joseph B. McMaster, et ux.
Case No.: 90-382-XA

Dear Chairman Sauer:

I received Mr. Barhight's letter of October 3, 1991, suggesting that I contact the Maryland Court of Special Appeals to request a postponement of that oral argument. Unfortunately, in the past for other reasons, I have made efforts to request the Court of Special Appeals to reschedule oral arguments but to no avail. It is not their policy to change an oral argument once it has been scheduled.

In that the Court of Special Appeals presumably takes precedence over the Baltimore County Board of Appeals, I have no choice but to continue to request such a postponement as contained in my prior letter.

Thank you very much for your consideration.

Very truly yours,

J. Carroll Holzer

JCH:mlg

cc: Scott Barhight

91 OCT 11 PM 3:12

COUNTY BOARD OF APPEALS
RECEIVED

RONALD L. MAHER
J. CARROLL HOLZER
CAROLE S. DEMILIO

J. HOWARD HOLZER
1907-1989

LAW OFFICES
HOLZER, MAHER & DEMILIO
305 W. CHESAPEAKE AVENUE
SUITE 103
TOWSON, MARYLAND 21204
(301) 825-6960
FAX (301) 825-6964

WASHINGTON, D.C. OFFICE
SUITE 700
1725 DeSALES STREET, N.W.
WASHINGTON, D.C. 20036

September 24, 1990
#6498

RECEIVED
SEP 24 1990
ZONING OFFICE

J. Robert Haines
Zoning Commissioner for Baltimore County
County Office Building
Towson, Maryland 21204

Re: Petition for Special Exception and
Zoning Variance by Southwestern Bell
Mobile Systems, Inc.
Case No.: 90-382-XA

Dear Commissioner Haines:

Attached is a copy of a report by the county Office of Law concerning the proposed amendments to the Baltimore County Zoning Regulations as they relate to radio towers and other wireless transmission or receiving facilities dated August 28, 1985.

I trust you will find this report, which I referenced in the Protestants' Memorandum already submitted in the above case, on point and of some assistance in this matter.

Very truly yours,

J. Carroll Holzer

Enclosure

MICROFILMED

DAFT-McCUNE-WALKER, INC. Land Planning, Landscape Architecture & Environmental Design
200 East Pennsylvania Avenue Towson, Maryland 21204 301 296 3333 FAX 301 296 4705

Joe - File

RECEIVED
JUN 18 1990
ZONING OFFICE

June 15, 1990

Mr. J. Robert Haines, Zoning Commission
Baltimore County Zoning Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Caves Valley Club
Special Exception for Country Club and
Related Accessory Uses
Case No. 89-409-X

Land Planning
Environmental
Landscape Architecture
Computer Technologies
Engineering
Surveying GIS

Dear Mr. Haines:

The order in Case No. 89-409-X, issued June 6, 1989, indicated several restrictions, including a requirement for submission of a certified site plan clearly identifying all buildings with their size and area dimensions and distances from property lines.

Several plans have subsequently been submitted to your office for Special Hearings, Exceptions and Amendments to previous submissions. Detailed architectural drawings and accompanying site plans have also been submitted to the Zoning Office for building permit review.

We believe that these items satisfy the requirement specified in Case No. 89-409-X. Please notify us if you feel additional material is needed.

Sincerely,

Deanna C. Bailey
Landscape Architect

DCB/lmr

DAFT-McCUNE-WALKER, INC.
200 East Pennsylvania Avenue Towson, Maryland 21204 301 296 3333 FAX 301 296 4705

Minutes of Meeting

Land Planning
Environmental Sciences
Landscape Architecture
Computer Technologies
Engineering
Surveying GIS

Date: August 3, 1990

Re: Caves Valley Club Maintenance Center
Project No. 88015.A

Present: Bob Haines - Zoning Commissioner
Joe Merry - Assistant to the Zoning Commissioner
George Nilson - Piper and Marbury
Bruce Cadarelli - Caves Valley Golf Club
George Gavrelis - Daft-McCune-Walker

Purpose: To review changes to maintenance area plan, its effect on previously requested variances, and ways or curing any zoning problems.

Commissioner Haines is about to release his order for Case 90-362 SPHA. Believing that there is no flexibility to permit building separations less than those advertised in the public notice, he will revise it to permit Buildings A, B, C, D and E. This will be accomplished by a restriction in the order requiring all buildings to be in compliance with a more detailed, site specific plan to be developed as a result of the order. This will enable release of permits for all but Building F in accordance with the more detailed plan.

Discussion indicated that maintenance area changes in large measure were generated by wetland proximity issues raised by DEPRM. Bob Haines wants a revised comment from DEPRM acknowledging that it is acceptable with respect to building and parking arrangement and is environmentally superior to the original.

In any case, he will issue his order Tuesday, August 7 or Wednesday, August 8.

Follow-Up Actions:

1. DMW to immediately contact DEPRM and get appropriate revised comments to Haines.

2. DMW to prepare a new site specific plan for maintenance center on which to secure permits

   - label Building F as needing a revised variance which will be petitioned
   - sort out with Whiting Turner any consequential actions needed if Building Permits are already filed

3. DMW to prepare a Special Hearing Plan and Plat to amend the variances previously granted in Case 90-362

   - Description already prepared
   - Revise Sheet 3
   - Create language, coordinate with Nilson

4. George Nilson to prepare Special Hearing petition and secure signatures from legal owners.

Other Items: Commissioner Haines has received well easement revisions and the lotting plan showing details of wells and septic areas. He will incorporate into his order, suggesting that they will be granted.

Some Options:

1. Instead of proceeding with Building B and C and deferring Building F, we can proceed with Building F since A to F variance request is 20 feet.

2. Need for additional variance can be eliminated by connecting buildings with a wall within which is a gate. Need also to clarify with zoning staff their minimum requirements for the connection.

GEG/lmb

cc: Mr. Dennis Biedronski
Mr. Dan White
Mr. Edmund Haile

MICROFILMED

A Team of Land Planning Environmental & Engineering Professionals Providing Complete Site Services & Development Solutions

SHERWOOD HILL COMMUNITY ASSOCIATION
P. O. Box 1011
Cockeysville, Maryland 21030

RECEIVED
MAR 23 1990
ZONING OFFICE

March 23, 1990

HAND DELIVERED

J. Robert Haines, Zoning Commissioner of Baltimore County
111 W. Chesapeake Avenue, Room 109
Towson, Maryland 21204

Re: Petition for Special Exception and Zoning Variance
Filed by Southwester Bell Mobile Systems, Inc.
Case No.: 90-382-XA

Dear Commissioner Haines:

As President of Sherwood Hill Community Association, I am requesting a postponement of the hearing presently scheduled before you on April 3, 1990 at 9:30 a.m. The reasons for this request are as follows:

1. We became aware of the petition last week and we will need time to review the matter and to obtain an attorney to represent our interests. The required sign was not properly posted until Friday, March 16, 1990. and this has impeded notification to our members.

2. We have contacted one attorney who has indicated that he would be unable to handle this matter on our behalf on such short notice. We believe it is essential that we be afforded the opportunity to obtain counsel to assist us at the hearing.

3. We have also been in contact with the petitioner's attorney, G. Scott Barhight, who has agreed to furnish us with additional information, not on file, in support of the Petition. After our review of this information, we plan to meet with Mr. Barhight to discuss community concerns. It will not be possible to accomplish these objectives prior to the scheduled hearing.

MICROFILMED

J. Robert Haines, Zoning Commissioner of Baltimore County
March 23, 1990
Page Two

4. I have spoken with the officers of three adjoining community associations (Montvieu Community Association, Powers Avenue Community Association and Knollbrook Community Assembly) who concur with the above approach and with the requested continuance.

In view of the practical considerations involved in notifying our membership of a postponement, we would appreciate hearing from you at your earliest convenience.

Very truly yours,

Clay M. Barnes

CMB/lal

cc: The Honorable Charles A. Ruppersberger, III
G. Scott Barhight, Esquire (Hand Delivered)
Mr. David Baker, Powers Avenue Community Association
Mr. John Masser, Knollbrook Community Assembly
Mr. Steven Rosen, Montvieu Improvement Association

---

2501 Hartham Court
Timonium, MD 21093
April 3, 1990

Honorable J. Robert Haines
Baltimore County Zoning Commissioner
111 West Chesapeake Avenue
Towson, MD 21204

Re Case No. 90-382-XA

Dear Mr. Haines

Please be advised that I am a Protestant in the above entitled matter and oppose the Petition and requested Variances.

Please advise me of all hearing dates and of your Decision.

Very truly yours,

Michael P. Tanczyn

MPT/ed

RECEIVED
APR 5 1990
ZONING OFFICE

MICROFILMED

---

August 21, 1991

RECEIVED
COUNTY BOARD OF APPEALS
91 AUG 22 AM 11:20

REC
COUNTY BOAR
91 AUG 2

County Board of Appeals of Baltimore County
County Office Building, Room 315
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Sirs,

Since we, the public, are notified officially that the case number of the posted property is cycled into your calendar, may I request that we, the public, be notified of the changes, via that sign?

Thanking you, I am, an interested citizen

Sarah Adams
Sarah Adams
11424 York Road
Cockeysville, Maryland 21030

Copies: Louis J. Waidner, Phyllis Friedman, Roger B. Hayden.
Fernando T. Robert Haines "

---

September 24, 1991

County Board of Appeals of Baltimore County
Room 315 County Office Building
Towson, Maryland 21204

Re: Letter per posted dates for
McMaster Appeal -
Case No. 90-382-XA

Dear Sirs:

Thank you for the written notification -
Case No 90-382-XA - dated September 11, 1991
and U.S. Postal - Sept 13, 1991.

Sincerely,
Sarah Adams

SARAH ADAMS
11424 York Road
Cockeysville, MD. 21030

91 SEP 25 AM 9:16

---

October 1, 1991

County Board of Appeals of Baltimore County
County Office Building Room 315
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Sirs:

Thank you for notice in re. Rule 2(c) CCBA No 91-A,
"Limit 11/13/91 date case no. 90-382-XA".

Sincerely,
Sarah Adams

Sarah Adams
11424 York Road
Cockeysville, Maryland
21030

91 SEP 25 AM 9:16

---

May 16, 1990

Mr. Jun Fernando
Office of the Zoning Commissioner
111 W. Chesapeake Avenue
Towson MD 21204

Re: Case No. 90-382-XA
Petition of Southwestern Bell T/A Cellular One

Gentlemen:

Please provide the undersigned with a copy of the tape made of the hearing in the above case on May 14, 1990 and May 16, 1990.

Thank you

RECEIVED
MAY 16 1990
ZONING OFFICE

Very Truly Yours,

Clay M Barnes
Sherwood Hill Improvement Assoc.

BARNES AND RAINE, P.A.
ATTORNEYS AT LAW
405 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
(3011 321-0818

CLAY M. BARNES

RESIDENCE
628-0818

---

90-382-XA 8/14/90

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Amy O'Rourke | Cellular One 7855 Walker Dr Greenbelt MD 20768 |
| John M. Osepchuk | 2 Technology Park Dr Westford, MA 01886 |

---

July 17, 1990 — 90-382XA

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Carey Burch | 6850 Versar Center, Springfield, VA |
| George E. Gavrelis | 200 E. Penn Ave. Towson 21204 Cellular One |
| Jerry Bialecki | 7855 Walker Drive, Greenbelt MD. |

---

90-382XA

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Dennis Francis | 7855 Walker Dr Suite 410 Greenbelt MD 20768 |
| Amy O'Rourke | 7855 Walker Dr Greenbelt, MD 20768 |
| Jerry Bialecki | 7855 Walker Dr. Greenbelt, Md. 20770 |
| George E. Gavrelis | DMW 200 E Penn Ave. Towson, 21204 |

---

90-382XA

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Dennis Francis | 7855 Walker Dr Suite 410 Greenbelt MD 20768 |
| Amy O'Rourke | 7855 Walker Dr Greenbelt, MD 20770 |
| Carey Burch | 6850 Versar Center, Springfield VA |
| George E. Gavrelis | DMW 200 E Penn Ave. Towson, 21204 |
| Jerry Bialecki | 7855 Walker Dr. Greenbelt, Md. 20770 |

---

90-382-XA 5/16/90

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Amy O'Rourke | 7855 Walker Dr, Greenbelt MD 20770 |
| Dennis Francis | 7855 Walker Dr, Greenbelt MD 20770 |
| Connie Carter | 7855 Walker Dr Greenbelt, Md 20770 |
| Joan Ransone | 412 Delaware Ave 21204 |
| Nathaniel Burkett | 18930 Middletown Rd |
| Carey Burch | 6850 Versar Center, Springfield VA 22151 |
| George Gavrelis | DMW 200 E Penn Ave 21204 |

7/17/90

90-382XA

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Clay M. Barnes | 405 W. Pennsylvania Ave 21204 |
| STEVE ROSEN | 81 MONTVIEW CT Cockeysville 21030 |

90-382XA

June 1-1990

PROTESTANT(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Kay Twit | 2 Norgate Ct, Cockeysville |

5/16/90

90-382 XA

PROTESTANT(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Clay M. Barnes | Pres, Sherwood Hill Comm Assoc PO Box 1011 21030 |
| DAVID W BAKER | PRES POWERS AVE COMM. ASSOC. PO Box 333 21030 |
| STEVE ROSEN | PRES, MONTVIEW ASSOC 81 MONTVIEW CT Cockeysville 21030 |
| JENNY WISE | 427 SHERWOOD RD 21030 |
| ANTHONY J. FALCONE | 10922 Powers Ave Cockeysville 21030 |

PROTESTANT(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Margaret D Basham | 38 Sherwood Rd . 21030 |
| Thomas S. Basham | 38 Sherwood Rd 21030 |
| Charles Gladstone | 10618 Partridge Ln 21030 |
| Walter J. Wilmer | 10618 Partridge Ln 21030 |
| Geraldine Wise | 427 Sherwood Rd 21030 |
| James H Wise | 427 Sherwood Rd 21030 |
| STEVEN ROSEN (President Montview Assoc) | 81 MONTVIEW CT 21030 |
| Clay M. Barnes, Pres. Sherwood Hill - | PO Box 1011 Cockeysville MD 21030 |
| Kay Twit V.P. Powers Ave. Assoc. | 2 Norgate Ct, Cockeysville MD 21030 |
| David W. Baker (President Powers Ave Assoc.) | 11007 GATEVIEW RD 21030 |

- 90-382XA

PROTESTANT(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| STEVEN D. ROSEN (MONTVIEW ASSOCIATION) | 81 MONTVIEW CT Cockeysville 21030 |
| Clay M. Barnes - Sherwood Hill Community Assoc. | PO Box 1011 Cockeysville MD 21030 |
| DAVID W. BAKER - POWERS AVE. COMMUNITY ASSOC. | PO Box 333 Cockeysville MD. 21030 |
| Kay Twit | 2 Norgate Ct, Cockeysville 21030 |
| ANTHONY J. FALCONE | 10922 Powers Ave, Cockeysville 21030 |
| Marsha Hewes | 10611 Topsfield Dr, Cockeysville 21030 |
| Frank Anders | 10609 TOPSFIELD DR, COCKEYSVILLE, 21030 |
| Lois C. WILMER | 10618 PARTRIDGE LN COCKEYSVILLE 21030 |
| Peg Sadler | 10616 Sherwood Ave. 21030 |
| Geraldine Wise | 427 Sherwood Rd 21030 |

Prot Ex#1

1

VOLUME III

IN RE: ZONING VARIANCE - NE CORNER SHERWOOD ROAD AND HOLLOW ROAD (426 SHERWOOD ROAD) 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT
JOSEPH B. McMASTER, et ux
Petitioners

\+ BEFORE THE
\+ BOARD OF APPEALS
\+ OF BALTIMORE COUNTY
\+ Case No: 90-382-XA

\+ + + + + + + + +

The above-entitled matter continued on for hearing on Wednesday, November 20, 1991, commencing at 9:44 a.m., at 111 West Chesapeake Avenue, Towson, Maryland 21204, before Michael B. Sauer, Chairman.

APPEARANCES:

Karl Nelson, Esquire
G. Scott Barnight, Esquire
on behalf of the Petitioners

J. Carroll Holzer, Esquire
on behalf of the Protestants

ALSO PRESENT: Judson H. Lipowitz, Board Member
Harry E. Buchheister, Board Member

Reported by: Richard D. Baker, Jr.

VOLUME III

WALLS REPORTING

BALTIMORE, MD 21202

## THE MONTVIEU IMPROVEMENT ASSOCIATION

**RESOLVED**: THAT AT THE ANNUAL MEMBERSHIP MEETING OF THE MONTVIEU IMPROVEMENT ASSOCIATION, HELD ON JULY 2, 1991 AT THE COCKEYSVILLE PUBLIC LIBRARY, IT WAS DECIDED BY THE ASSOCIATION THAT RESPONSIBILITY FOR REVIEW AND ACTION ON ALL ZONING MATTERS FOR THE PERIOD OF ONE YEAR, BE PLACED IN THE BOARD OF DIRECTORS CONSISTING OF THE FOLLOWING MEMBERS:

Steven D. Rosen, President
Charlie Latrobe, Vice President
Tom Carson, Treasurer
Niel Fick, Secretary
Directors, Members of the Board:
The Stewart Family
The Minakowski Family
The Bodie Family
The Macht Family
The Nash Family
The Weis Family
The Butler Family

AS WITNESS OUR HANDS & SEAL THIS 2ND DAY OF JULY, 1991.

ATTEST: The Montvieu Improvement Association

Nathaniel Fick
Secretary

Steven Rosen
President

Prot Ex#2

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the (Board of Directors) ~~Zoning Committee~~ of the SHERWOOD HILL IMPROVEMENT Association.

ATTEST:

Thomas S. Basham

Secretary ALEXANDER A. HASSANI

Thomas S. Basham

President THOMAS S. BASHAM

Prot Ex#3

SHERWOOD HILL IMPROVEMENT ASSOCIATION, INC.

Cellular One Tower Opposition Response

| | | |
|---|---|---|
| 10512 Abbey Road | - | Elaine Karpenko |
| 10595 Blue Bell Way | - | Donna Banning |
| 10602 Blue Bell Way | - | Jerry Francik |
| 10604 Blue Bell Way | - | Majorie Denneen |
| 10605 Blue Bell Way | - | Louis Luperini |
| 10607 Blue Bell Way | - | Charles Gladstone |
| 10608 Blue Bell Way | - | Dione Marchione |
| 10609 Blue Bell Way | - | Daniel Atkin |
| 28 Bosley Road | - | Benjamin Turnbaugh |
| 105 Bosley Road | - | Suzanne Reinke |
| 109 Bosley Road | - | Burton |
| 112 Bosley Road | - | Kerryn Brandt |
| 117 Bosley Road | - | Ray Reordon |
| Box 63 | - | Mary Scott |
| Box 63 | - | Ann T. White |
| 3 Brecon Place | - | David Spring |
| 6 Brecon Place | - | Philip Walker |
| 11 Cedar Knoll Road | - | Edward Coniff |
| 209 Dawson Drive | - | Anthony Spann |
| 210 Dawson Drive | - | William Bennett |
| 211 Dawson Drive | - | Joseph Noll |
| 212 Dawson Drive | - | Leonard Emala |
| 217 Dawson Drive | - | Louis Wilson |
| 219 Dawson Drive | - | Frank Wynn |
| 221 Dawson Drive | - | Timothy Kane |
| 224 Dawson Drive | - | James Stayer |
| 225 Dawson Drive | - | Stephen Heemann |
| 228 Dawson Drive | - | George Hummel |
| 229 Dawson Drive | - | Dean Stump |
| 230 Dawson Drive | - | Melvin Hammel |
| 231 Dawson Drive | - | H. Langrall |
| 233 Dawson Drive | - | Thomas Fahey |
| 1 Deer Pass Court | - | Charles Thompson |
| 2 Deer Pass Court | - | Charles Graham, Jr. |
| 3 Deer Pass Court | - | Alex Hassani |
| 5 Deer Pass Court | - | William Caulfield |
| 7 Deer Pass Court | - | James Henthorn |
| 9 Deer Pass Court | - | Stanley Siuta |
| 3 Glendorian Court | - | Marsha Todd |
| 6 Glendorian Court | - | Fred Knabe |
| 8 Glendorian Court | - | William Purnell |
| 9 Glendorian Court | - | George Beam, Jr. |
| 11 Glendorian Court | - | James Paraut |
| 12 Glendorian Court | - | H. Zimmerman |
| 124 Glenmoore Avenue | - | Raymond Hiser |
| 207 Glenmoore Avenue | - | Eldwood Lyan, Jr. |
| 5 Hillside Avenue | - | James Walker |
| 10509 Hoyard Avenue | - | R. Valentin |

Protestant's PETITIONERS EXHIBIT 34 90-382XA

TOWSON REPORTING COMPANY, INC. 600 Baltimore Avenue, Suite 201 Towson, Maryland 21204-4054 (301) 823-4446 Court and General Reporting

**CIRCUIT COURT FOR BALTIMORE COUNTY**

**CIVIL CATEGORY** APPEAL

92cv6036

IN THE MATTER OF THE APPLICATION OF JOSEPH B. MCMASTER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCES ON PROPERTY LOCATED ON THE NORTHEAST CORNER OF SHERWOOD AND HOLLOW ROADS (426 SHERWOOD ROAD) 8th ELECTION DISTRICT 3rd COUNCILMAN DISTRICT

CBA NO. 90-382-XA

JOSEPH B. McMASTER, VIVIAN McMASTER and SOUTHWESTERN BELL MOBILE SYSTEM, INC. t/a CELLULAR ONE
Appellees'

J. Carroll Holzer, Esq
Holzer, Maher, Demilio & Lee
305 W. Chesapeake Ave.
Ste. 105, (04) 825-6960

G. Scott Barnight
Karl J. Nelson
Whiteford, Taylor & Preston 832-2000
500 Ct Tower, 210 W Penn. Ave (4)
APPELLEES'

D/E: MAILED 1/5/93

25,1992 - Appellant's order for appeal from the Decision of the Board
s and Petition for appeal, fd.

9, 1992 - Transcript of Record, fd. (G1)

9, 1992 - Notice of Filing of Record, fd.

30, 1992 certificate of notice, fd.

SCRIPT IN BASEMENT
ATION: ~~BOX 6~~ - Sent to CBA
rd back to Goning 12-11-95

1992 - App. G. Scott Barnhight. Karl J. Nelson for Appellee Joseph
22, 1992 - App of G. Scott Barnight, Karl J. Nelson and Whiteford,
lor & Preston and Same Day Answer to Petition on Appeal fd.
15, 1992 - Appellee Southwestern Bell Mobile Systems, Inc.'s Rule B12
randum, with exhibits, fd (rec'd 9/4/92)

1992 Hon. John G. Turnbull, II. Hearing had. Case held sub-curia.
d and Order to be filed.

5, 1993 Opinion and Order of Court that the decision of the Board and the same is hereby AFFIRMED., fd. (JGT,II)

| CV GEN COSTS | 92.00 |
|---|---|
| CV CLK | 80.00 |
| B LBRY | 10.00 |
| POST | 2.00 |
| CKCHECK FL | 92.00 |
| #20913 C002 R01 T09:2 | 06/24/9 |

26 Page 147 Case 92 CV- 6036

TOWSON REPORTING COMPANY, INC. 600 Baltimore Avenue, Suite 201 Towson, Maryland 21204-4054 (301) 823-4446 Court and General Reporting

1

ORIGINAL

IN THE MATTER OF * BEFORE THE
JOSEPH B. MCMASTER, et ux. * COUNTY BOARD OF APPEALS
* OF BALTIMORE COUNTY
* Case No. 90-382-XA
* November 19, 1991
* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the County Office Building at 9 o'clock a.m., November 19, 1991.

* * * * *

Reported by:

C.E. Peatt

TOWSON REPORTING COMPANY, INC.

Cont. Exh #4F

LEGISLATION PROJECT #85-04

PROPOSED AMENDMENTS TO THE BALTIMORE COUNTY ZONING REGULATIONS
CONCERNING
RADIO AND TELEVISION TOWERS AND OTHER WIRELESS TRANSMISSION OR RECEIVING FACILITIES

A Report of the Office of Planning and Zoning
(May 1985)

Project Description

County Council Resolution No. 13-85 (see Attachment #1) requests that the Planning Board consider the appropriateness of restricting the location of new radio and television towers and other wireless transmitting or receiving structures to the commercial, industrial and business zones of the County.

Discussion

Radio and television antennas and transmission and receiving towers are currently permitted by special exception in every zone of the County except M.R., R.A.E. and O.T. zones. According to Subsection 502.1 before any special exception is granted it must appear that the use will not:

a. Be detrimental to the health, safety, or general welfare of the locality involved;

b. Tend to create congestion in roads, streets or alleys therein;

c. Create a potential hazard from fire, panic or other dangers;

d. Tend to overcrowd land and cause undue concentration of population;

e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;

f. Interfere with adequate light and air;

g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of the Zoning Regulations; nor

h. Be inconsistent with the impermeable surface and vegetative retention of the Zoning Regulations.

The design of radio and television antennas and wireless transmitting and receiving towers is dependent upon the number of stations anticipated to use the tower, the type of waves being transmitted and received, the intended operating power, the size of the service area, and the terrain of the surrounding area. The most common types of transmission are land mobile radio, A.M., F.M., television, and fixed-point microwave. Land mobile radio and common carrier systems, (i.e., cellular telephone systems) are the fastest growing segment of the communications industry.

August 28, 1985

Cont. Exh #4B

OFFICE OF LAW REPORT
PROPOSED AMENDMENTS TO THE BALTIMORE COUNTY ZONING REGULATIONS
CONCERNING
RADIO TOWERS AND TELEVISION TOWERS AND OTHER
WIRELESS TRANSMISSION OR RECEIVING FACILITIES

Cont Exh #4C

LEGISLATION PROJECT #85-04

PROPOSED AMENDMENTS TO THE BALTIMORE COUNTY ZONING REGULATIONS
CONCERNING
RADIO AND TELEVISION TOWERS AND OTHER WIRELESS TRANSMISSION OR RECEIVING FACILITIES

A Report of the Baltimore County Planning Board
(July 18, 1985)

Project Description

County Council Resolution No. 13-85 (see Attachment #1) requests that the Planning Board consider the appropriateness of restricting the location of new radio and television towers and other wireless transmitting or receiving structures to the commercial, industrial and business zones of the County.

Discussion

Radio and television antennas and transmission and receiving towers are currently permitted as a principal use by special exception in every zone of the County except M.R., R.A.E. and O.T. zones. According to Subsection 502.1 before any special exception is granted it must appear that the use will not:

a. Be detrimental to the health, safety, or general welfare of the locality involved;

b. Tend to create congestion in roads, streets or alleys therein;

c. Create a potential hazard from fire, panic or other dangers;

d. Tend to overcrowd land and cause undue concentration of population;

e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;

f. Interfere with adequate light and air;

g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor .

h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

The design of radio and television antennas and wireless transmitting and receiving towers is dependent upon the number of stations anticipated to use the tower, the type of waves being transmitted and received, the intended operating power, the size of the service area, and the terrain of the surrounding area. The most common types of transmission are land mobile radio, A.M., F.M., television, and fixed-point microwave. Land mobile radio and common carrier systems, (i.e., cellular telephone systems) are the fastest growing segment of the communications industry.

PROTESTANT'S EXHIBIT 4
90-382XA




PETITION FOR ZONING VARIANCE (continued)

Petitioner: Southwestern Bell Mobile Systems, Inc.
t/a Cellular One

The Petitioner hereby petitions for a variance from Sections 502.7.C.2 and 102.2 to permit a setback to the nearest property line of 10 ft. in lieu of the required 300 ft., from Sections 502.7.C.3 and 102.2 to permit a lot area of 0.13 acres in lieu of the required 5 acres, from Sections 1A03.4.B.4 and 102.2 to permit building setbacks of 12 ft., 7 ft. and 8 ft., respectively, as shown on the plat, in lieu of the required 50 ft.

SHERWOOD HILL COMMUNITY ASSOCIATION
P. O. Box 1011
Cockeysville, Maryland 21030

March 16, 1990

IMPORTANT NOTICE

Several days ago, we learned that a Petition for Zoning Variance had been filed with the Zoning Commissioner of Baltimore County by Southwestern Bell Mobile Systems, Inc., trading as Cellular One, requesting permission for authority to alter the existing zoning regulations to permit the erection of a telecommunications tower with accessory buildings to be enclosed within a chainlink fence or comparable wall or structure. The proposed location is east of Sherwood Road and south of Hollow Road. See plat on reverse. The officers of your Association have met and determined that the requested variance would not be in the best interests of our community.

Apart from the visual and esthetic implications, documents filed in support of the petition indicate that "[e]nvironmental protection agency standards and guidelines relating to radiation admissions shall be met at all times." There may be other significant implications and issues raised by the granting of the requested zoning variance, the least of which is the establishment of a negative precedent in our community. There are also important questions concerning interference with radio and television reception. The proposed tower will be nearly 15 stories high which is approximately three times as high as the AAI building located on York Road in Cockeysville!

A hearing has been scheduled by the Zoning Commissioner of Baltimore County on Tuesday, April 3, 1990 at 9:30 a.m. in Room 106 of the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204. It is essential that our community residents make a strong showing at this hearing to oppose the requested zoning variance. In addition, it appears that we may need to obtain a zoning attorney and an expert witness to represent the community interests in opposing this variance.

In the event that you are unable to personally appear at the zoning hearing, we are enclosing a postcard which you should complete and return to us immediately so that the same may be presented to the Zoning Commissioner at the hearing. In addition, we are requesting that you send us a check in the amount of $30.00 as a contribution towards anticipated legal fees and expenses.

We urge your prompt attention and we thank you for your support and cooperation.

SHERWOOD HILL COMMUNITY ASSOCIATION

PROTESTANT'S EXHIBIT 4
90-382XA

PROTESTANT'S EXHIBIT 6

AUG 13, 1990

We, the undersigned residents of Montview Association, Inc., are opposed to approval of installation of the Cellular One Tower at the McMaster-Hamden, Sherwood Road, Cockeysville.

90-382XA

| | |
|---|---|
| Jane Sirk<br>58 Montview Ct.<br>Cockeysville, Md. 21030 | Giuseppe Castellano<br>65 Montview Ct<br>Cockeysville MD 21030 |
| Skip Nowakowski<br>73 Montview Ct<br>Cockeysville, Md. 21030 | Annette C. Strauch<br>44 Montview Ct. 21030 |
| Frances M. Nowakowski<br>73 Montview Court<br>Cockeysville, Md. 21030 | Mary Ruth Chapin<br>61 Montview Ct 21030 |
| Michael Kwiatkowski<br>42 Montview Court | Ann B. Marsh<br>74 Montview Ct. 21030<br>D. Myers<br>38 Montview Ct |

PROTESTANT'S EXHIBIT 5

| | |
|---|---|
| R.B. Mangert<br>38 Montview Ct.<br>Hunt Valley, Md. 21030 | Sylvia & Andrew Harris<br>49 Montview Ct.<br>Cockeysville, Md. 21030 |
| Cathy & Mike Kiss<br>30 Montview Ct<br>Cockeysville, Md 21030 | Sandra Rosen<br>81 Montview Ct<br>Cockeysville Md 21030 |

PROTESTANT'S EXHIBIT 5
90-382XA

PROTESTANT'S EXHIBIT 6
90-382-XA
#242

Cellular One Telecommunications Tower

There is a zoning notice posted at the McMaster's driveway on Sherwood Road. Southwestern Bell is requesting a variance to the RD-4 zoning to erect a tower for cellular telephone service. A public hearing on the re-zoning will be held in room 106 of the County Office Building at 111 W. Chesapeake Avenue on the following dates:

| | |
|---|---|
| Monday, May 7 | 8:30 a.m. to 12:00 noon |
| * Monday, May 14 | 8:30 a.m. to 12:00 noon |
| * Wednesday, May 16 | 8:30 a.m. to 12:00 noon |

(*) These times and dates are reserved in case the issue cannot be resolved in the May 7th hearing.

According to the zoning office, the location for the facility is to be 1500 feet from Hollow Road and 600 feet from Sherwood Road. It will be 75 feet behind the McMaster's house. There are currently two buildings at that location. A third will be added, as well as a 150 foot tower (approximately the height of a 15 story building). The entire complex will be enclosed by an eight foot high fence or similar barrier.

The Sherwood Hill Community Association is opposing the construction of the Southwestern Bell telecommunications complex. They are contracting a zoning lawyer to present the combined communities' case at the zoning hearing. They have contacted the other associations on "the hill" and asked for support. The Montview Association has agreed to support the effort, and will accept 25% of the cost. The Knollbrook Community Association has been contacted. We do not know, at this time, of their commitment (if any). The Board of Directors of PACA has unanimously voted to support the Sherwood Hill Community Association. We will accept 25% of the cost up to a maximum of $1500.00.

Our reasoning is:

1. We oppose the zoning variance because it sets a precedent for compromising the RD-4 watershed nature of the area. Southwestern Bell must prove, at the hearing, that there is no suitable location available which is already zoned commercial. PACA is not convinced that no such location can be found.

2. It may encourage other companies to start using the Sherwood Road corridor for additional development.

3. It is aesthetically ugly! It is certainly incompatible with the nature of the existing area.

4. There may be a danger unknown to present technology.

Versar

Pet Ex #1, 2, 11
Pet Ex #17
Exhibit pg. 1, 2

ENVIRONMENTAL IMPACT ASSESSMENT
OF CELLULAR ONE'S PROPOSED
RADIO TELEPHONE STATION:
LOCH RAVEN SITE
BALTIMORE COUNTY, MARYLAND

Prepared for:

Cellular One
2855 Walker Drive
Greenbelt, Maryland 30770

Prepared by:

Versar, Inc.
Technical Services Group
6850 Versar Center
Springfield, VA 22151

Versar Job No. 6591.16.1

July 16 1990







Pet Ex #10

## The Cell Site

Once the theoretical grid point is established, Cellular One searches for a c te location. The search follows a set order of location preferences based upon a c to maximize the cell site's compatibility with surrounding land uses. These location preferences are listed below by priority.

1. Existing broadcast/communications tower structures;
2. Existing water tower/tank/standpipe;
3. Property zoned for commercial/industrial/public utility use (i.e. high rise office buildings). This category would also include the lease or purchase of bare/open land zoned accordingly;
4. Local or county government/agency service facilities such as post offices or police and fire departments with communications requirements which would permit co-location of communications equipment;
5. Property with the least residential population density and/or property that will provide natural screening to the public at large.

Each site must also be determined to be technically adequate for covering the cell, i.e. engineering elevation requirements and construction feasibility.

After the site location has been determined and approved by all concerned parties and while the final lease agreement is in preparation, surveyors, architects and engineers visit the site to collect data for the preparation of site and building plans and to perform soils tests (where applicable).

As a public service utility, time is of the essence to Cellular One in the construction and operation of new cell sites. This expansion of Cellular One coverage and capacity is directed at maintaining a high level quality and service excellence to Cellular One subscribers. Initial to the process of commissioning a cell site for service is the executed lease agreement. The signed lease must be secured prior to filing for required zoning the building permits, the acquisition of which may take up to one year in open counties of the service area. Upon receiving all necessary approvals and permits construction begins immediately. The entire construction process takes approximately two months, conditioned upon weather and availability of special materials. If not available at the leased site location, electric power and telephone lines are then brought to the site by the local utility and telephone companies via non-exclusive easements or rights of way. During the two weeks following construction, the antennas and related cooling are mounted and the radio and interconnect equipment is installed and tested. The site is then placed on the air and for approximately four weeks, technical adjustments are made by technicians twice per week.

It is Cellular One's harmonious us establish sc concern: b aesthetics, with the fol

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6

CELLULAR ONE
A Southwestern Bell Company

Pet Ex #2



Cellular One 150' monopole utilizing Kathrein® antennas.

22

CELLULAR ONE
A Southwestern Bell Company

# PETITIONER'S EXHIBIT 6

Pet Ex #13

REAL PROPERTY LEASE AGREEMENT

THIS LEASE, made and entered into this 23rd day of September 1989 by and between Joseph B. McMaster and Vivian Baker McMaster, herein referred to as "Landlord", and SOUTHWESTERN BELL MOBILE SYSTEMS, INC. trading as CELLULAR ONE, herein referred to as "Tenant", the parties mutually agree as follows:

1. LEASED PREMISES:

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord in consideration of the payment of rentals and performance of the covenants and agreements herein mentioned, an approximate 8.26 acre portion of that parcel of ground commonly addressed as 426 Sherwood Road, Cockeysville, Baltimore County, Maryland 21030 for the purpose of establishing a cellular telecommunications exchange location, herein referred to as Cell Site. Tenant intends to erect a 150 foot self-supporting communications monopole and to construct an accessory equipment building having approximate exterior dimensions of 14' x 40' x 10' high to house Tenant's appurtenant radio and telephone communications equipment. The location of Tenant's equipment building and monopole is further described in Exhibit A attached hereto. Collectively, the 8.26 acre portion including Tenant's monopole and equipment building shall be referred to as the Leased Premises.

2. USE OF LEASED PREMISES:

(a) Landlord leases to Tenant the Leased Premises, together with the right to use adjoining and adjacent land as is reasonably required during construction, installation, maintenance, and operation of the Cell Site, and of power lines and cables, and for construction and use of an access road and approach for ingress and egress to and from the existing service road to the Cell Site for the use and benefit of the Leased Premises, if necessary; together with the right and license to construct, erect, install, operate, relocate, and maintain aerial and underground communication cables from the Leased Premises over, across and through the adjacent property of Landlord upon and to the nearest available utility sources. The foregoing shall be accomplished without interfering with the use or development of its adjoining property by Landlord.

(b) Landlord hereby grants Tenant and the local utility and telephone companies an easement and right of way to construct, maintain, operate and repair overhead and underground communication and electric power lines and systems along, over and under the parcel and any adjacent access road, easements, or rights of way of Landlord.

(c) Landlord hereby grants Tenant a non-exclusive easement and right of way for ingress and egress over its Parcel and any existing access roads, easements, or rights of way of Landlord, to the Leased Premises and the Cell Site, for the purpose of constructing, installing, maintaining, operating and repairing the Cell Site.

90-382 XA Petitioners 13

Pet Ex #14

## AFFIDAVIT

We, the undersigned, being the owners of the property known as 426 Sherwood Road, and being the Petitioners in Case No. 90-382-XA, hereby state as follows:

1) If the above-referenced special exception and variances are granted, we agree not to permit any additional residential structures to be built within 200 feet of the base of the proposed monopole;

2) If the special exception and variances are granted, we will maintain the existing trees and shrubs along those portions of the property which are adjacent to Sherwood Road or Hollow Road;

3) If the special exception and variances are granted, and if the Zoning Commissioner's Order so requires, we will execute such deed restrictions to be recorded in the Land Records to confirm this agreement.

Witness:

Joseph B. McMaster

Vivian Baker McMaster

STATE OF MARYLAND, COUNTY of BALTIMORE, TO WIT:

I HEREBY CERTIFY that on this 10th day of August, 1990, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared Joseph B. McMaster and Vivian Baker McMaster, known to me, or satisfactorily proven, to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

AS WITNESS my hand and Notarial Seal the day and year first above written.

Darlene E Ramsey
Notary Public

My Commission Expires: 6-1-94

# PETITIONER'S EXHIBIT 20

IN RE: PETITIONS - SPECIAL EXCEPTION, SPECIAL HEARING, AND VARIANCE S/S of Greenspring Ave., 1125' SE of the c/l of Ridge Rd. 4th Election District
The Chestnut Ridge Volunteer Fire Company, Petitioner

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 97-177-XSPHA

* * * * * * * * * * *

The Petitioner herein requests a special exception to permit a wireless transmitting and receiving structure; a special hearing to determine whether or not approval should be granted to amend the special exception permitted in Case Nos. 3988 and 77-104-ASPH by reducing the area of the original special exception to 2.17 acres in lieu of the original 2.50 acres; and variances to permit a setback of 35 feet from the nearest property line in lieu of the required 300 feet and to permit a lot size of 0.229 acres in lieu of the required minimum lot size of 5 acres.

At the onset of the hearing, Counsel for the Petitioner moved to amend the instant Petition to request a variance from Section 1A04.3A of the Baltimore County Zoning Regulations (BCZR) to permit the structure to be 150' in height in lieu of the permitted 35'. That height was indicated on the plan submitted with the original petition. The motion was granted.

On behalf of the Petitioner, the surveyor submitted a modified plan, ~~[illegible]~~ prepared by Gerhold, Cross & Etzel, revised October 27, 1986 and identified as Petitioner's Exhibit 1, and testified that the Chestnut Ridge Volunteer Fire Company owns and utilizes the front portion of 2.5 acres. The Petitioner intends to provide 10,000 sq.ft. of leased area at the rear property line and a 10-foot access easement to the Washington/Baltimore Cellular One Telephone Company. The National Guard owns and uses 8.6 acres to the north of the property; to the south there is a field and to the west there are woods and a pasture. The site also has woods along the western boundary line as well as along part of the northern property line.

# PETITIONER'S EXHIBIT 3A

90-382XA

3) In the event that the Board rules that the Petitioners have met the criteria, then the additional testimony can be taken at the convenience of the Board during the time already allocated by the Board.

4) In support of this position, the Petitioners attach the Findings of Fact and Conclusion of Law of J. Robert Haines, Zoning Commissioner of Baltimore County, dated October 12, 1990 as Exhibit 1 and Section 502.7.c.1 of the Baltimore County Zoning Regulations as Exhibit 2.

WHEREFORE, Petitioners respectfully request this Honorable Board to limit the issues to determine first, whether or not procedurally, the Petitioners have complied with the Zoning Regulations.

Respectfully Submitted,

J. Carroll Holzer
305 West Chesapeake Avenue
Suite 105
Towson, MD 21204
(301) 825-6960

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of June, 1991 a copy of this aforegoing Motion to Separate Issues was mailed, certified, return receipt requested to G. Scott Barnheight, Esq., Whiteford, Taylor and Preston, 500 Court Towers, Towson, MD 21204.

J. Carroll Holzer

LAW OFFICES
HOLZER, MAHER
& DEMILIO
305 W. CHESAPEAKE AVENUE
SUITE 105
TOWSON, MARYLAND
21204
(301) 825-6960

502.7--Wireless Transmitting and Receiving Facilities. [Bill No. 117, 1984.]

A. A special exception may not be granted for any wireless transmitting or receiving facility which is within one and one-half miles of (1) an existing district on the Baltimore County Final Historic Landmarks List, or (2) any of the following historical districts on the National Register of Historic Places, namely, Oella, My Lady's Manor, Western Run, Worthington Valley, Greenspring Valley, and Long Green Valley, if the horizontal distance from the facility to the boundary or property line of such district does not exceed ten times the height of the facility above grade, and unless the Zoning Commissioner or the Board of Appeals, upon appeal, finds that the proposed use will not be detrimental to or detract from the documented values of any such district due to the height of the proposed structure and its placement and visibility relative to such district. [Bill No. 117, 1984.]

B. Paragraph 502.7.A. does not apply to a wireless transmitting or receiving facility which is:

1. Not higher than three hundred fifty feet above grade level, or

2. Authorized by grant of special exception that is final and unappealable on the effective date of this Act. Such a facility may be fully restored in accordance with the terms of the special exception if it is destroyed or damaged to any extent, and such a facility may be enlarged, extended, or expanded notwithstanding the provisions of subsection A. above, subject to the approval of the Zoning Commissioner or Board of Appeals. [Bill No. 117, 1984.]

C. Wireless transmitting or receiving structures in R.C., D.R. or R-O zones are subject to the following additional requirements; provided that nothing herein shall be deemed to prohibit the granting, where appropriate, or variances from such requirements pursuant to Section 307 of these regulations. [Bill No. 64, 1986.]

1. Petitioner shall have the burden of establishing that it has made a diligent search for a location within a business, office or industrial zone, or for mounting on any existing structure over fifty (50) feet in height and that, due to valid considerations, including but not limited to, location, economic, elevation, engineering or technologic feasibility, no appropriate location is available. [Bill No. 64, 1986.]

REV 4/89

5-12

APPROVED JUL 0 1 1989

10-23-90

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER
PETITION FOR VARIANCE
Corner NE/S of Sherwood Rd., : OF BALTIMORE COUNTY
SE/S of Hollow Rd. (426 Sherwood Rd.) :
8th Election District :
3rd Councilmanic District :

JOSEPH B. McMASTER, et ux, : Case No. 90-382-XA
Petitioners

: : : : : : :

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 304, County Office Building
Towson, Maryland 21204
887-2188

I HEREBY CERTIFY that on this 23rd day of March, 1990, a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esquire, 500 Court Towers, 210 W. Pennsylvania Ave., Towson, MD 21204, Attorney for Petitioners; and Emilienne O'Rourke, Southwestern Bell Mobile Systems, Inc., t/a Cellular One, 7855 Walker Drive, Suite 100, Greenbelt, MD 20770, Lessee.

Peter Max Zimmerman

MICROFILMED

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE - NE/Corner Sherwood Road and Hollow Road (426 Sherwood Road) 8th Election District 3rd Councilmanic District
Joseph B. McMaster, et ux Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-382-XA

* * * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special exception for a wireless transmitting and receiving facility and a variance to permit a property line setback of 10 feet in lieu of the required 300 feet, a lot area of 0.13 acres in lieu of the required 5.0 acres, and to permit building setbacks of 12 feet, 7 feet and 8 feet in lieu of the required 50 feet for each, all as more particularly described in Petitioner's Exhibit 1.

The Petitioners, Joseph B. McMasters, Legal Owner, and Southwestern Bell Mobile Systems, Inc., T/A Cellular One, Contract Lessee, by Emilienne O'Rourke, appeared, testified, and were represented by G. Scott Barhight, Esquire. Also appearing on behalf of the Petitions were Jerry Bialecki, Director of Engineering for Cellular One, George Gavrelis, Land Planner, Dennis Francis, Professional Engineer, Carey Burch, Environmentalist, John M. Osepchuk, Consulting Scientist, David Ransone, Professional Property Line Surveyor, a Mr. Lipman, Real Estate Appraiser, Conny Carter, and Nathaniel Burkert. Appearing as Protestants in the matter were Thomas S. and Margaret D. Basham, Walter J. and Elva C. Wilmer, James H. and Gerardino Wise, Steven Rosen, President, Montview Association, Clay M. Barnes, President, Sherwood Hill Association, Kay Twit, Vice President, and David W. Baker, President, Powers Avenue Community Association. The Protestants were represented by J. Carroll Holzer, Esquire.

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By BJS

As the hearing in this matter extended over a four day period, only portions of the testimony and evidence presented therein will be highlighted in this opinion.

Testimony indicated that the subject property, known as 426 Sherwood Road, consists of 104.7 acres of farmland more or less split zoned R.C. 4 and D.R. 2, and is improved with a single family dwelling, barn and other accessory structures. Petitioners have entered into a lease agreement with Cellular One who is desirous of erecting a 100-foot tall wireless transmitting and receiving tower on 0.13 acres of the subject property as depicted on Petitioner's Exhibit 4.

Emilienne O'Rourke testified that current customer demand requires the addition of the proposed tower to improve transmission and reception along the I-83 corridor. She indicated that there is currently poor reception in this area and that other existing towers must pick up calls from this area as "overflow." Ms. O'Rourke testified that Cellular One is also desirous of constructing an equipment building, 14' x 30' wide x 10' high. She testified that an 8' high chain link security fence would be erected around the tower and equipment building and that appropriate landscaping would be provided. Ms. O'Rourke testified that Cellular One is also requesting permission to use a temporary antenna and equipment building while the permanent facility is being constructed.

Dennis Francis testified regarding the technical aspects of the Cellular One system and the need for the proposed tower. Mr. Francis certified specifically regarding the search area and the specific sites considered and discounted for the subject tower. Mr. Francis concluded his testimony by indicating that in his opinion, the proposed site is the most appropriate location for the subject tower.

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Carey Burch, who was hired by Petitioners to conduct an environmental impact study of the subject site, concluded, based upon the findings of his study, that the subject tower would have no detrimental impact on the surrounding environment.

George Gavrelis testified on behalf of the Petitions and indicated that in his opinion, the relief requested is consistent with the requirements set forth in Sections 502.1, 502.7 and 307.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) and that the proposed location provides a better buffer from the surrounding residential community. Mr. Gavrelis further stated that in his opinion the subject request is generally consistent with the B.C.Z.R.

A contention raised by the Protestants, which is of particular concern, is whether Petitioners have met the preconditions concerning the search area, imposed specifically under Section 502.7.C.1 of the B.C.Z.R. Section 502.7.C.1 reads as follows:

> "Petitioner shall have the burden of establishing that it has made a diligent search for a location within a business, office or industrial zone, or for mounting on any existing structure over fifty (50) feet in height and that, due to valid considerations, including but not limited to, location, economic, elevation, engineering or technologic feasibility, no appropriate location is available."

Section 502.7.C.1 clearly places the burden on the Petitioners to establish that they have made a "diligent search" for a location within a business, office or industrial zone. Ms. O'Rourke testified that Cellular One hired Frederick Kruhm, a real estate consultant, to locate a site within the search area that would be appropriate for the proposed tower. Mr. Kruhm never testified in this matter and there was no evidence submitted indicating Petitioners' diligent search prior to the selection of the McMasters' property. In fact, testimony clearly indicated that the search

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for alternate sites occurred after the selection and contractual commitment between Cellular One and the McMasters. There was no testimony or evidence indicating that any commercial- or industrial-zoned property was examined within the search area prior to the signing of a contract between the McMasters and Cellular One on September 22, 1989.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Sections 502.1 and 502.7 of the B.C.Z.R. Based upon the testimony and evidence presented, the Petitioner has not met this burden. It was abundantly clear from the testimony that Petitioners made no diligent or reasonable search for a location within the business, office or industrial zones until after the execution of a lease between the McMasters and Cellular One on September 22, 1989. Petitioners testimony and the evidence presented did not provide "valid considerations" for not selecting a site in the commercial zone. In fact, Petitioners presented no testimony which would indicate that they seriously considered any other location other than the McMasters' property.

In the opinion of the Zoning Commissioner, the Petitioners have not complied with the requirements of Section 502.7.C.1 of the B.C.Z.R. Said regulation requires Petitioners to establish that they have made a diligent search within a business, office or industrial zone. A diligent search requires more than the exploration of one, two or three alternate sites.

After due consideration of the testimony and evidence presented, it is the opinion of the Zoning Commissioner that the Petition for Special Exception should be denied.

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Petitioners have also requested the granting of certain variances which were contingent upon the relief sought in the special exception request being granted. In view of the fact that the Petition for Special Exception has been denied, the relief requested in the Petition for Zoning Variance is rendered moot, and as such, should be dismissed.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the relief requested in the special exception should be denied and the variances dismissed as moot.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 12th day of October, 1990 that the Petition for Special Exception for a wireless transmitting and receiving facility on the subject property, in accordance with Petitioner's Exhibit 4, be and is hereby DENIED; and.

IT IS FURTHER ORDERED that the Petition for Zoning Variance to permit to permit a property line setback of 10 feet in lieu of the required 300 feet, a lot area of 0.13 acres in lieu of the required 5.0 acres, and to permit building setbacks of 12 feet, 7 feet and 8 feet in lieu of the required 50 feet for each, be and is hereby DISMISSED as moot.

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH:bjs

ORDER RECEIVED FOR FILING
Date 10/12/90
By BJS

MICROFILMED

IN THE MATTER OF THE APPLICATION OF JOSEPH B. McMASTER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCES ON PROPERTY LOCATED ON THE NORTHEAST CORNER OF SHERWOOD AND HOLLOW ROADS (426 SHERWOOD ROAD) 8TH ELECTION DISTRICT 3RD COUNCILMAN DISTRICT

CBA No.: 90-382-XA

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No.:

* * * * * * * * * * * * * *

**PETITION ON APPEAL**

1. That the Board of Appeals had no legally sufficient evidence upon which to base its conclusion and therefore their Order passed is illegal, arbitrary and capricious.

2. That the Board of Appeals erred in misapplying the standards of Baltimore County Zoning Regulations Section 502.7, particularly 502.7C.

3. That there is no evidence in the record to support the Board of Appeals findings and Order pursuant to Section 502.7C and Section 502.1.

4. That the record in the instant case is devoid of any facts to support the granting of the variance by the Board of Appeals.

5. The Board of Appeals erred as a matter of law in granting the variance in that there is no proper finding of unreasonable hardship and practical difficulty required under Section 307.1 of Baltimore County Zoning Regulations.

6. And for such other reasons as may be raised upon a review of the transcript.

**WHEREFORE**, Appellants pray that this Honorable Court issue an Order reversing the Baltimore County Board of Appeals.

J. Carroll Holzer

**J. CARROLL HOLZER, Esquire**
Holzer, Maher, Demilio & Lee
305 West Chesapeake Avenue
Suite 105
Towson, Maryland 21204
410-825-6960
Attorney for Appellants

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 25th day of June, 1992, a copy of the foregoing Petition on Appeal was mailed, first-class, postage pre-paid to: G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 500 Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland 21204.

J. Carroll Holzer

**J. CARROLL HOLZER, Esquire**

c:\wp\pet\mcmaster.pet



LAW OFFICES
HOLZER, MAHER
& DEMILIO
305 W. CHESAPEAKE AVENUE
SUITE 105
TOWSON, MARYLAND
21204
(301) 825-6960

IN THE MATTER OF THE APPLICATION OF JOSEPH B. McMASTER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCES ON PROPERTY LOCATED ON THE NORTHEAST CORNER OF SHERWOOD AND HOLLOW ROADS (426 SHERWOOD ROAD) 8TH ELECTION DISTRICT 3RD COUNCILMAN DISTRICT

CBA No.: 90-382-XA

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No.: 92CV6036
* 26/147

* * * * * * * * * * * * * *

**NOTICE OF APPEAL**

**J. Carroll Holzer**, on behalf of his clients, Sherwood Hill Improvement Association, Montvieu Improvement Association, Clay M. Barnes, David Baker, Thomas S. Basham and Steven L. Rosen, appeal to the Circuit Court for Baltimore County the decision of the Board of Appeals in the above captioned matter decided on May 28, 1992.

RECEIVED AND FILED
92 JUN 25 PM 1:10
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY, MARYLAND

J. Carroll Holzer

**J. CARROLL HOLZER, Esquire**
Holzer, Maher, Demilio & Lee
305 West Chesapeake Avenue
Suite 105
Towson, Maryland 21204
410-825-6960
Attorney for Appellants

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 25th day of June, 1992, a copy of the aforegoing Notice of Appeal was mailed, first-class, postage pre-paid to: G. Scott Barhight, Whiteford, Taylor and Preston, 500 Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland 21204.

J. Carroll Holzer

**J. CARROLL HOLZER, Esquire**

notice-1\mcmaster.not

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IN THE MATTER OF THE APPLICATION OF JOSEPH B. McMASTER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCES ON PROPERTY LOCATED ON THE NORTHEAST CORNER OF SHERWOOD AND HOLLOW ROADS (426 SHERWOOD ROAD) 8TH ELECTION DISTRICT 3RD COUNCILMAN DISTRICT

Case No.: 90-382-XA

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: 90-382-XA

* * * * * * * * * * * * * *

**O P I N I O N**

This case comes before this Board on an appeal from a decision of the Zoning Commissioner dated October 12, 1990, denying the Petition for Special Exception for a wireless cellular telephone transmitting and receiving facility and dismissing certain zoning variance requests as moot.

The Petitioners in this case, which was heard de novo, were Joseph B. and Vivian B. McMaster, Property Owners, and Southwestern Bell Mobile Systems, Inc., t/a Cellular One, Contract Lessee.

The Protestants were Sherwood Hill Improvement Association, Inc., Powers Avenue Community Association and Montview Improvement Association along with Clay M. Barnes, David Baker, Thomas S. Basham and Steven L. Rosen, individually.

Mr. David Ransome, a registered professional land surveyor, testified for the Petitioners as an expert witness in the field of land surveying. Mr. Ransome testified that he prepared the Plat to accompany the Petitions for Special Exception and Zoning Variance in this case. Mr. Ransome explained the three zoning variance requests in detail.

Mr. Jerry Bialecki, Cellular One's chief design engineer, testified as an expert in cellular radio telephone technology. Mr. Bialecki primarily testified about three maps which he prepared depicting areas which would meet Cellular One's technological needs



for a cell site in the Loch Raven area.

Ms. Amy O'Rourke, Cellular One's director of real estate, testified that she was responsible for locating the cell site for the Loch Raven facility. Ms. O'Rourke testified that she searched for a cell site based on the information given to her by Mr. Bialecki regarding engineering and technologic feasibility and Cellular One's policies concerning the location of cell sites.

Mr. Ronald Lipman testified for the Petitioners as an expert in the field of real estate appraising. Mr. Lipman testified that he had conducted studies concerning the effect of various transmitting structures upon property values and concluded that such structures had no significant negative impact upon property values.

Mr. Joseph Joyce, Cellular One's construction manager, testified about the various costs associated with lattice-type towers and monopoles and concluded that lattice-type towers were more expensive to construct than monopoles.

Mr. George E. Gavrelis testified for the Petitioners as an expert witness in the field of planning and zoning. Mr. Gavrelis testified that the proposed use of the cell site would comply with all of the special exception and variance requirements contained in the Baltimore County Zoning Regulations (hereinafter "BCZR").

Mr. Carey W. Burch testified for the Petitioners as an expert in the field of environmental matters and the preparation of environmental impact statements. Mr. Burch testified that he prepared an environmental impact statement for the subject property.

Dr. John Osepchuk, an expert in the field of radio



transmissions and radiation, testified for the Petitioners about Environmental Protection Agency standards and guidelines relating to radiation emissions.

Mr. Steven L. Rosen, one of the Protestants, testified as an individual and on behalf of Montview Improvement Association. Mr. Thomas S. Basham, another Protestant, testified as an individual and on behalf of Sherwood Hill Improvement Association, Inc. Messrs. Rosen and Basham testified, among other things, that they believed this location was picked by Cellular One for height consideration only; that it is a commercial fixture which should not be located in a residential area; and that Cellular One failed to develop a suitable search area. In addition, they expressed concern for the property value of the surrounding homes as well as the aesthetics of having a structure of this nature located in their neighborhood.

**FINDINGS OF FACT**

From the testimony and evidence received, the Board finds the following facts:

The Petitioners plan to construct a wireless cellular telephone transmitting and receiving facility on the farm of Joseph and Vivian McMaster located at 426 Sherwood Road, Cockeysville, Maryland. The farm has a total acreage of 104.7 acres and the relevant portion of the property is zoned R.C. 4. Currently, the property is a working farm consisting of cropland, pastureland, pig farming facilities and some cattle grazing areas. Approximately fifty percent (50%) of the farm is wooded and the majority of the Sherwood Road frontage is tree lined. The relevant area of the farm has a ground elevation of approximately 590 feet above mean



sea level.

The proposed site for the wireless cellular telephone transmitting and receiving facility, known as the "cell site," consists of .13 acres and is located between existing farm buildings on the northeast portion of the farm. The proposed transmitting and receiving facility consists of a 100-foot tall, freestanding monopole tower with attached antennae and an unmanned 14'x30'x10' equipment building with an adjacent single vehicle parking space. The proposed cell site is to be enclosed by an 8-foot high chain link fence topped with barbed wire and the proposed monopole is to have no lights or beacons. The proposed cell site as currently configured is approximately 600 feet from the nearest non-farm property line and approximately 700 feet from the nearest non-farm residential structure. Further, the proposed cell site is more than 200 feet from any residential structure on the McMaster farm.

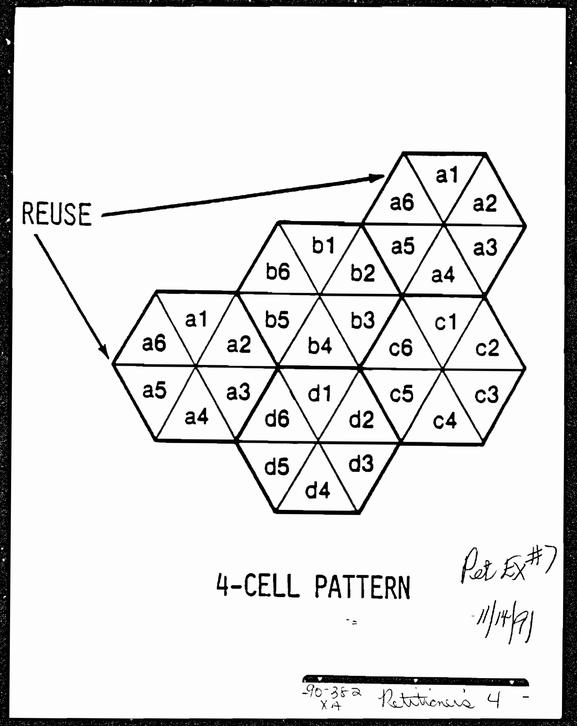
Pursuant to a document entitled Real Property Lease Agreement, dated September 22, 1989, Cellular One is currently leasing 8.26 acres of the property from the McMasters.

Mr. Bialecki prepared a map, dated September 10, 1987, which initially depicted the cell site areas necessary to meet Cellular One's technological parameters. In March of 1989, Mr. Bialecki produced a search area map which depicted Cellular One's geographical needs for a cell site in the Loch Raven area. In the summer of 1990, Mr. Bialecki generated another search map based on Cellular One's technical needs. From a coverage standpoint, Cellular One requires a cell site in the Loch Raven area. From a technological standpoint, Cellular One requires a 650 to 700 foot



minimum above ground antenna elevation in the Loch Raven area. Based on a propagation model prepared by Mr. Bialecki, it was determined that certain potential cell sites did not work because they had low elevations and/or lacked coverage in one direction or the other. From a technological standpoint, a wireless cellular telephone transmitting and receiving facility with an above-ground antenna elevation of 650 to 700 feet could be erected within the commercially zoned valley west of York Road.

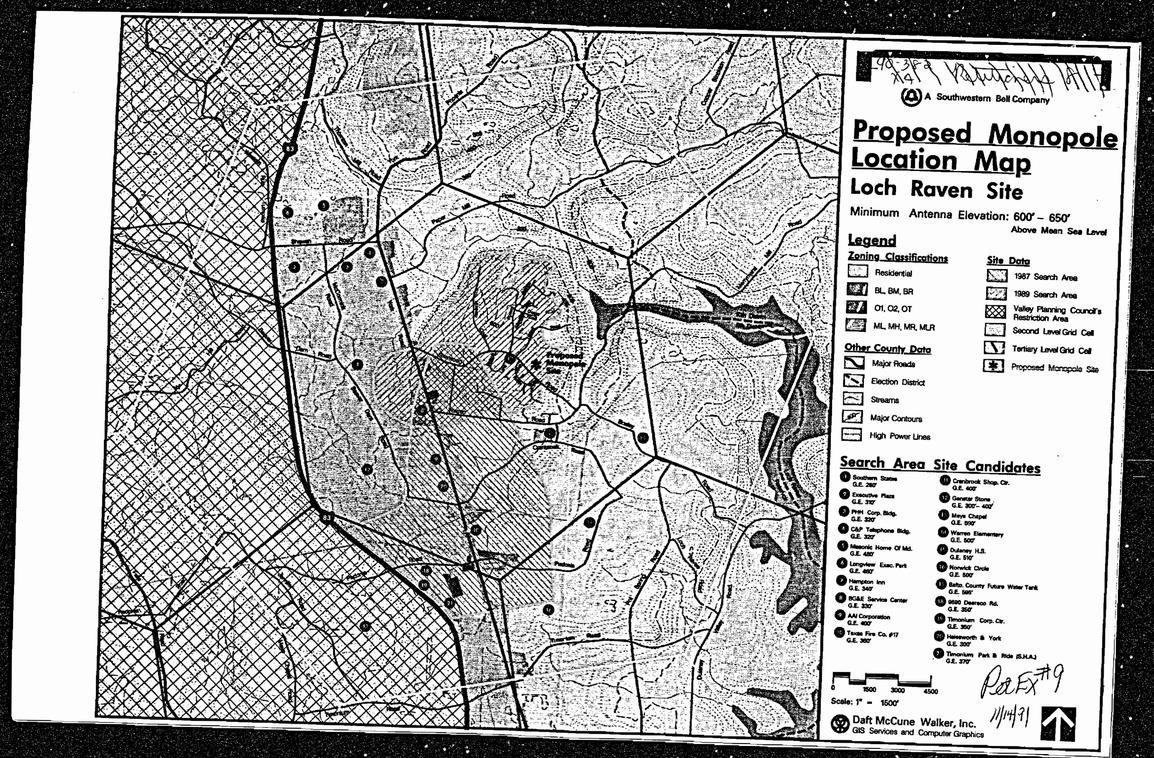
Ms. O'Rourke began to search for potential cell sites in the Loch Raven area in April of 1989. Ms. O'Rourke based her search on Cellular One's geographic, engineering, technologic and elevation requirements and was guided by Cellular One's policies when she conducted her search for the Loch Raven cell site. Ms. O'Rourke examined the overall topography of the search area defined by Mr. Bialecki and concluded that the commercially zoned area lying west of York Road was mostly in a valley with above-ground elevations ranging from 200 to 400 feet. The low elevations of the commercially zoned areas would have created the need for a 300 to 400 foot tower. For the proposed 100-foot application, Cellular One utilizes a single, self-supporting monopole which resembles a tall telephone pole. For a 300 or more foot tower, Cellular One utilizes a three-sided lattice-type tower that has steel cross-members which are woven through three legs for structural purposes. Lattice-type towers create a much greater visual impact than monopoles do. The FAA requires that all structures in excess of 200 feet in height be lighted with red lights and such structures must be painted red and white. The cost of constructing a lattice-type tower is significantly greater than the cost of constructing




4-CELL PATTERN

Pet Ex #7
11/14/91

90-382A
XA Petitioner's 4




Pet Ex #9
11/14/91

PETITIONER(S) EXHIBIT ( 7 )

12:53
4/19/90

A
Joe Patbert
GenStar
Re Tower on Texas Quarry in Cockeysville
527-4165
He doesn't know if he can accumulate us, but he's interested in talking

12:59
3/7

A
Jerry Tolbert
Gen Star
527-4165

BALTIMORE GAS AND ELECTRIC

Wendell Colson
Supervisor for
R.E. & Envtl. Mgmt.

RICHARD R. REICHELT
LAND MANAGEMENT REPRESENTATIVE
FACILITIES MANAGEMENT DEPARTMENT

BALTIMORE GAS AND ELECTRIC COMPANY
Windsor Office Building
P.O. Box 1475, Baltimore, MD 21203 (301) 281-3105

1053

R. L. Benhaven, Broker

1. GENERAL SITE INFORMATION

Bus Frac N. Krupa 421 9510

REMARKS

PETITIONER'S EXHIBIT 9

90-382XA

SEARCH AREA SITE CANDIDATES DATA SHEET

SEARCH AREA: Cockeysville "Loch Raven" Site G.E. REQUIRED: 360'± ANTENNA HT. AGL: 120'

| SITE NAME ADDRESS | ZONING | TYPE STRUCTURE | G.E. | AGL | EQUIP SPACE | INSIDE SEARCH AREA? | IF NOT, DISTANCE/DIRECTION | TWR/POLE REQ'D? | YES | NO | SITE ACCEPTANCE REPORT WHY NOT |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Southern States 10825 Beaver Dam Rd | ML-IM | ss Tower | 260' | 200' | NO | NO | 2000' Due West | Replace Tower | | X | No equip space and 400'± tower req'd |
| Executive Plaza 11350 McCormick Rd | ML-IM | Ofc Bldg | 310' | 140' | YES | NO | 1 mile WNW | N/A | | X | Site too low won't clear ridge |
| FMH Corp. Bldg. 11333 McCormick Rd | ML-IM | Ofc Bldg | 320' | 87' | YES | NO | 1 mile WNW | N/A | | X | Same as above |
| C&P Telephone Bldg Shawan & York Roads | BL | Ofc Bldg | 320' | 50' | NO | NO | 1 mile Northwest | N/A | | X | No equip space and Site much too low |
| Masonic Home of MD 300 International Cr | RC 4 DR 1&2 | Retirement Home | 480' | 60' | YES | NO | 1.5 miles NW | YES-200' | | X | Masons Declined Too visible on Hill |
| Longview Exec Park 303 International Dr | MLR | Ofc Bldg | 460' | 70' | YES | NO | 1.5 miles NW | N/A | | X | Site too low |
| Hampton Inn York & Paper Mill | BR-CHS | Hotel | 340' | 80' | NO | NO | 1000' Northwest | N/A | | X | No space Site too low |
| BG&E Service Center 10500 block York Rd | ML-IM | Ofc Bldg | 330' | 20' | NO | YES | | YES-350' | | X | No space for tower or equipment |
| AAI Corporation Industry Ln & York | ML-CS2 | Ofc Bldg | 400' | 40' | NO | NO | 2500' South | YES-200' | | X | No space for tower or equipment |
| Texas Fire Co.#17 Galloway Ave & York | DR-16 | Station House | 360' | 20' | NO | NO | 4200' South | YES-300'± | | X | Same as above |
| Crenbrook Shop. Ctr Crenbrook & Ridgland | BL | Strip Stores | 400' | 24' | NO | NO | 900' South | YES-200' | | X | Same |
| Genstar Stone Beaver Dam & Church | MH-IM | Quarry Bare Land | 300'– 400' | N/A | YES | NO | 3000' South | YES 300'–400' | | X | Same |

PETITIONER'S EXHIBIT 11

90-382XA

Scotch™
VIDEOCASSETTE
LOCH RAVEN
POLE "TEST"
Petitioner's #16
EVERYDAY USE
for general purpose recording
VHS
Made in USA

PETITIONER(S) EXHIBIT ( )

90-382XA

PETITIONER'S EXHIBIT 18

Seven small overlays
1. Loch Raven Genstar
2. Loch Raven South
3. Loch Raven Inver. Water Tank
4. Loch Raven Rossly Water Tank
5. Loch Raven Golf Water Tank
6. Loch Raven Norwick Water Tank
7. Loch Raven Office Building

90-382-XA

[redacted]

PETITIONER'S EXHIBIT 19 A

90-382XA

Versar INC. ENVIRONMENTAL RISK MANAGEMENT

Versar, Inc.

P.E. A

ENVIRONMENTAL IMPACT ASSESSMENT
OF CELLULAR ONE'S PROPOSED
RADIO TELEPHONE STATION:
LOCH RAVEN SITE
BALTIMORE COUNTY, MARYLAND

Prepared for:

Cellular One
2855 Walker Drive
Greenbelt, Maryland 30770

Prepared by:

Versar, Inc.
Technical Services Group
6850 Versar Center
Springfield, VA 22151

Versar Job No. 6591.16.1

May 4, 1990

90-382XA

PETITIONER'S EXHIBIT 19 B

Versar, Inc.

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PETITIONER'S EXHIBIT 19 C

90-382XA



Versar, Inc.

## 2.0 PROPOSED ACTION

### 2.1 Project Background

The history of cellular radio began in 1968 when the Federal Communications Commission (FCC) instituted an inquiry into methods to alleviate mobile communications congestion. The FCC requested comments on a proposal to eliminate UHF television channels 70 through 83 in 1970. (The elimination of these channels was proposed in order to expand the mobile communications network.) In 1977, the FCC granted two experimental licenses authorizing the construction of developmental cellular systems to demonstrate cellular's feasibility. One license was awarded to Illinois Bell Telephone in the Chicago, Illinois area and the second was awarded to American TeleService (now Cellular One) for the Washington/Baltimore region. It was American TeleService system that laid the foundation for the Cellular One network. The experimental system was a joint venture between American TeleService and Motorola. American TeleService began its experimental system in December 1981 when the first market trial customers began using and paying for the service.

In September 1983, the five original applicants in the Washington/Baltimore market signed a complete market settlement. Each applicant agreed to consolidate their interests behind the Cellular One application. The commercial license to operate the Washington/Baltimore system was awarded to Cellular One on December 16, 1983. Since then, Cellular One has been upgrading and expanding the original market trial system to handle the demands for cellular telephone service in the Washington/ Baltimore area. Today, the system provides coverage to the full 5,186 square mile market area.

Cellular radio telephone service is officially called "Domestic Public Cellular Radio Telecommunications" (DPCRTS) by the FCC, but is universally referred to as "cellular". Cellular represents the combination of a large portion of the radio spectrum with sophisticated switching technology and is capable of providing mobile or portable

[D95ea]

90-382XA



PETITIONER'S EXHIBIT 19 D

(hand-held) telephone service to virtually any number of subscribers in a given area. The transmission quality is indistinguishable from that provided by conventional fixed (wire line) telephone and the same dialing capabilities and features are available. Cellular allows a person to make telephone calls to any telephone in the nation or to over 100 foreign nations. To understand cellular, it is useful to look at conventional mobile telephone service. Conventional mobile telephone systems use one high-powered transmitter to cover an area with a 20 to 30 mile radius (see Figure 2-1). Such systems have no more than 12 radio channels available to them; however the typical number is three. When all three channels are in use, all other subscribers within the 30-mile radius must wait until the channel clears to make a telephone call. Subscription is limited to approximately 200 mobile units (in a population of more than 2 million) and even with this limitation on the number of users, the waiting time for a free channel is 15 minutes on an average. The waiting time may exceed 30 minutes during peak rush hour.

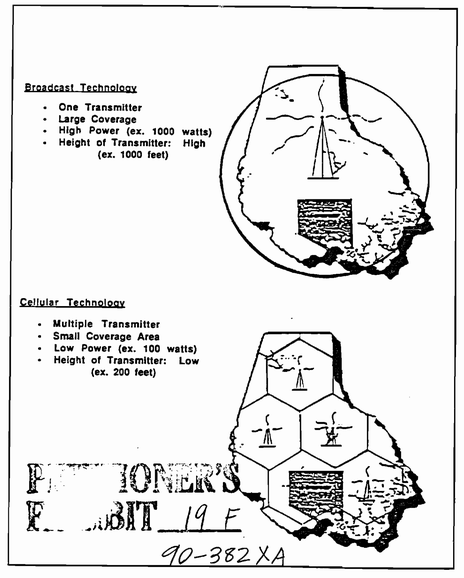
Cellular replaces the single, high-powered transmitter with several smaller low-powered transmitters throughout the same area as shown in Figure 2-1. With a nominal service radius of 8 to 10 miles, these subdivisions, or cells (hence, cellular) enable a user in one area to talk on the same frequency as a user in another area with no interference. As the user travels, the switching equipment which controls the cells monitors the relative signal strength and switches control of the call from one cell to another. This process, called "hand-off", makes for a very complex and expensive switching network, but provides the users with a continuous coverage over as large of an area as the cellular system operator chooses to cover.

PETITIONER'S EXHIBIT 19 E

90-382XA



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Figure 2-1. Comparison of Conventional Broadcast Technology and Cellular Technology.



Versar, Inc.

### 2.2 Purpose of the Proposed Action

The primary purpose of constructing a new 100 feet monopole on the McMaster's property and constructing a 14 feet by 30 feet by 10 feet unmanned equipment building on the property is to provide increased signal strength and availability of service in the Cockeysville, Baltimore County, Maryland area. The proposed station will enable Cellular One to maintain their existing level of service in the general area by:

(1) Maintaining the signal strength,

(2) Maintaining the geographical area of good reception, and

(3) Maintaining the number of frequencies that are simultaneously available in separate, nonadjacent cells. (Within a cellular system, nonadjacent cells may simultaneously use the same frequencies without interference.)

Failure to operate a station within this cell would result in a loss of signal strength and reception, thus disrupting communications and creating a dead zone where the Cellular One system would be inoperative.

### 2.3 Project Description

#### 2.3.1 Monopole and Equipment Building

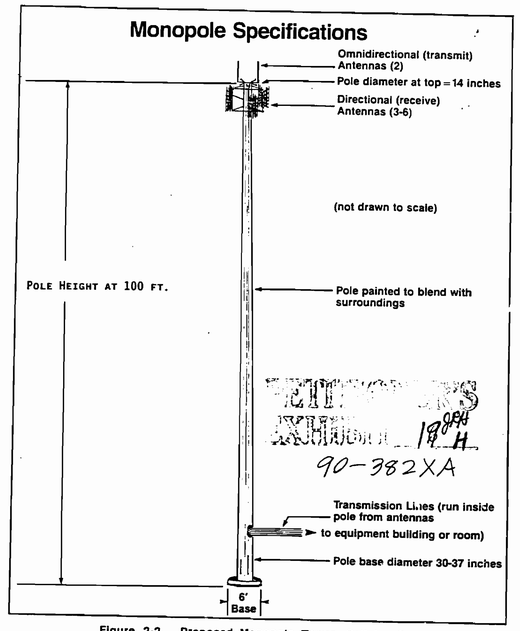
The proposed station will be constructed on land currently owned by Joseph B. and Virginia McMaster. The site is located at 426 Sherwood Road in Cockeysville, Maryland. The station will be owned and operated by Cellular One and will be located approximately 200 feet north of the McMaster's residential dwelling and 600 feet north of Sherwood Road. The station antenna will be mounted on a self-supporting monopole structure, with a concrete foundation (see Figure 2-2). The structural design of the monopole is in accordance with the following standards:

(1) ANSI/EIA-22-D-1988 at 80 miles per hour + 1/2-inch ice Structural Standards for Steel Antenna Towers and Steel Antenna Supporting Structures (Electronic Industries Association).

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Figure 2-2. Proposed Monopole Tower, Cellular One, Cockeysville, Maryland.

(2) AISC Steel Construction Specification for the Design, Fabrication, and Erection of Structural Steel for Buildings, Eighth Edition (American Institute of Steel Construction).

(3) ACI Standard 301 and Standard 614, Specifications for Reinforced Concrete (American Construction Institute).

The equipment building will be a single story brick veneer structure. The building will be the standard Cellular One equipment building (which is 14 feet wide, 30 feet long, and 10 feet in height). There will be no plumbing utility lines required for the building. The structure will have its own HVAC (heating, ventilation, and air conditioning) system. Electrical power and telephone will be supplied by a local utility company and will be mounted to the structure from the nearest utility pole. A single car parking space will also be constructed adjacent to the equipment building.

Once the station is completed and tested, it will operate unmanned. It will be visited by a licensed radio technician on a regular basis (approximately once every two weeks) for routine maintenance. Should emergency maintenance require, the station may be visited at any time.

2.3.2 Radio Frequency Transmissions

The station will transmit and receive electromagnetic energy in the form of radio frequency (RF) transmissions. These RF transmissions are defined by frequency and power density. The electromagnetic spectrum is divided into frequencies for each type of use, including AM, FM, two-way radio, television, and microwave transmissions. Frequency is measured by the number of times the wave-like RF transmission cycles from positive to negative charge per second, called hertz (Hz). The hertz scale is logarithmic, with values typically expressed in kilohertz (KHz; thousands of hertz), megahertz (MHz; millions of hertz), and gigahertz (GHz; billions of hertz). Table 2-1 illustrates typical uses of different frequencies and Figure 2-3 displays the frequencies of the electromagnetic spectrum.

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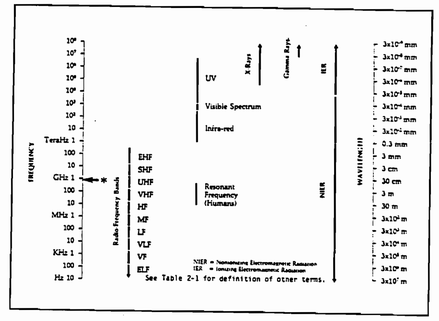
**Table 2-1. Typical Uses by Frequency Ranges**

| Frequency | Wavelength | Band Designations | Typical Uses | Wave Type |
|---|---|---|---|---|
| 300 GHz | 10 mm | EHF—Extremely high frequency | Satellite communications; Radar; Microwave relay; Radionavigation. amateur. | Millimeter waves |
| 30 GHz | 1 cm | SHF—Super high frequency | Satellite communications; Radar; Amateur; Microwave relay; Airborne weather radar. | Microwaves |
| 3 GHz | 10 cm | UHF—Ultrahigh frequency | Short-range communications; Amateur; Taxi; Police; Fire; Radar; Citizens band; Radionavigation; UHF TV; Microwave ovens. | Microwaves |
| 300 MHz | 1 m | VHF—Very high frequency | Police; Fire; Amateur; VHF TV; FM. | Radar |
| 30 MHz | 10 m | HF—High frequency | Citizens band; Amateur; Voice of America broadcast; International communications; Medical diathermy. | |
| 3 MHz | 100 m | MF—Medium frequency | Communications; Radionavigation; Marine Radiophone; Amateur; AM. | Ultrasonics |
| 300 kHz | 1 km | LF—Low frequency | Radionavigation; Marine communications; Long-range communications. | |
| 30 kHz | 10 km | VLF—Very low frequency | Very long-range communications. | |
| 3 kHz | 100 km | VF—Voice frequency | Voice, audio. | |
| 300 Hz | 1,000 km | ELF—Extremely low frequency | Seafarer; Power lines; Audio. | |
| 30 Hz | | | | |

*Cellular One operating frequency = 870-880 MHz

Source: Adopted from Bookin and Epstein (1

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*Cellular One operating frequency = 870-880 MHz

**Figure 2-3. Electromagnetic Spectrum**
Source: Adopted from Bookin and Epstein (1984).

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Power density is the number of watts of power falling on the given area and represents the strength of the transmission. Power density is typically expressed in terms of milliwatts (thousandths of a watt) or microwatts (millionths of a watt ) per square centimeter. (As a reference, a flashlight bulb requires one watt of power and a microwave oven generates approximately 500 watts of power within the oven.)

The proposed station will transmit RF at approximately 870 to 880 MHz and receive transmissions at 825 to 835 MHz. The transmissions will typically be at a power level of 40 to 45 watts and maximum transmissions from the station will be 100 watts.

2.4 Site Description

The proposed site for the Cellular One station will be constructed on land currently owned by Joseph B. and Virginia McMaster. The total parcel of land owned by the McMasters is approximately 104.7 acres, of which approximately 0.13-acre will be leased to Cellular One. The station will be located approximately 600 feet north of Sherwood Road. The proposed site plan is shown in Figure 2-4.

2.5 Land Use

Land use in the area surrounding the proposed site is mixed farmland and residential. Land use adjacent to the site is as follows:

- North: The site is bounded by farmland, beyond which are residential homes. The western arm of the Lock Raven Reservoir is located approximately 1/2-mile northeast of the proposed site.
- South: The McMaster property is bounded by Sherwood Road to the south. There are single-family residential homes on the opposite side of Sherwood Road.
- East: The McMaster property is bounded by farmland, woods, and single-family homes to the east, beyond which are residential developments.
- West: The McMaster property is bounded by single-family residential homes and farmland to the west and York Road (Route 45) is approximately 1 mile to the west.

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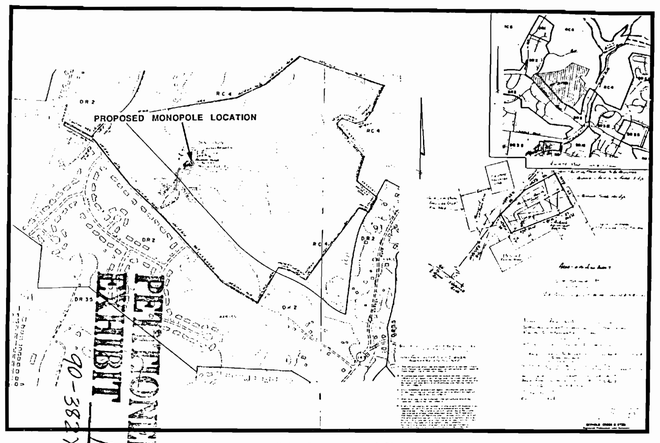



**Figure 2-4. Cellular One Proposed Site Plan for Cockeysville, Maryland.**

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2.6 Topography

The topography of the site and surrounding area is characterized by gently rolling land. The United States Geological Survey Survey (USGS) map of the Cockeysville and Towson, Maryland, Quadrangle show that the average elevation of the site is approximately 590 feet above mean sea level (msl). There is no surface water on the property. The closet surface water is Lock Raven Reservoir, which is approximately 1/2-mile east and north of the McMaster property. See Figure 2-5 for topography and location of property and surrounding area.

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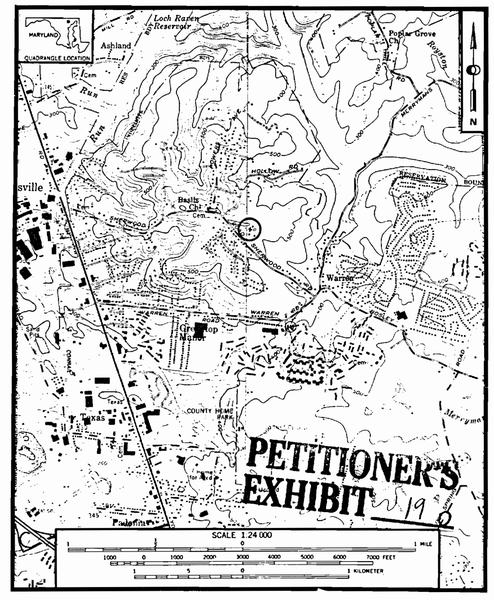



**Figure 2-5. Proposed Tower Location and Topography of the Project Area in Cockeysville, Maryland.**

Source: USGS Topography Maps of Cockeysville and Towson, Maryland Quandrangles.

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3.0 ENVIRONMENTAL IMPACTS OF THE PROPOSED ACTION

3.1 Wildlife

The site is located in a mixed residential/agricultural area in close proximity to Loch Raven Reservoir. The monopole will be sited in a pasture adjacent to livestock paddocks and various out-buildings. This site does not constitute a significant wildlife habitat, although it may be occasionally visited by various small mammals (e.g., squirrels, rabbits, raccoons, etc.) and birds. Impact upon wildlife associated with the construction of the proposed monopole and the construction of an equipment building will be negligible. The proposed monopole will be 100 feet in height and therefore, poses minimal threat to migrating or local birds. Based on existing studies, structures less than 200 feet tall do not constitute a threat to birds.

3.2 Vegetation

The immediate area surrounding the proposed site is mixed farmland and residential. The site will be constructed in a pasture. The proposed construction will not have any adverse effects on area vegetation (e.g., woodlands and grass areas). After construction of the tower and support building, the remaining land around the tower will not be disturbed. A dirt access road already exists on the property, thus further reducing any impact on local vegetation.

3.3 Water Resources

The only potential for short-term impacts upon the area's water resources is during the construction of the tower and its associated support building. Erosion of disturbed soil is the primary potential mechanism of impact. Some grading and filling activities will be necessary during construction. Best management practices for erosion control will be used during construction to assure that no sediment-laden runoff leaves the site. Grass seed will be planted on all disturbed soils as soon as possible to minimize erosion.

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Figure 3-1. Locations of Potential Impacts Within One Mile Radius of the Proposed Site.

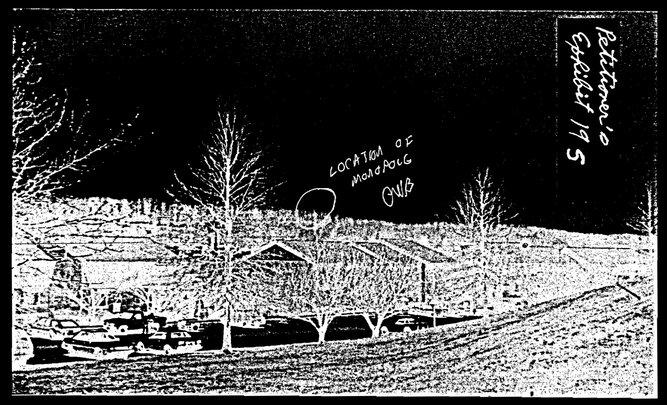
Source: USGS Topography Maps of Cockeysville and Towson, Maryland Quandrangles.

PHOTOGRAPH 1. PROPOSED CELLULAR ONE MONOPOLE AS VIEWED FROM BOSLEY ROAD ADJACENT TO THE SPRINGHILL CLUB.



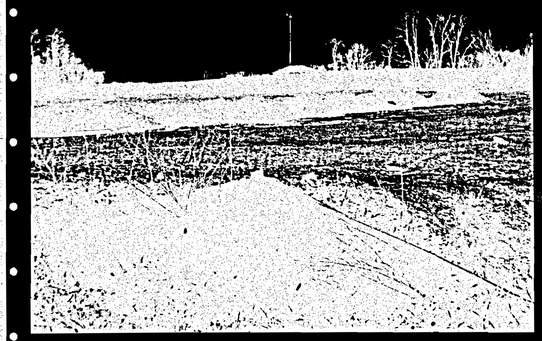

VISIBLE HEIGHT: 100 FT DISTANCE TO TOWER: 4400 FT

PHOTOGRAPH 2. PROPOSED CELLULAR ONE MONOPOLE AS VIEWED FROM CRANBROOK ROAD.




VISIBLE HEIGHT: 90 FT DISTANCE TO TOWER: 4000 FT

PHOTOGRAPH 3. PROPOSED CELLULAR ONE MONOPOLE AS VIEWED FROM HOLLOW ROAD.



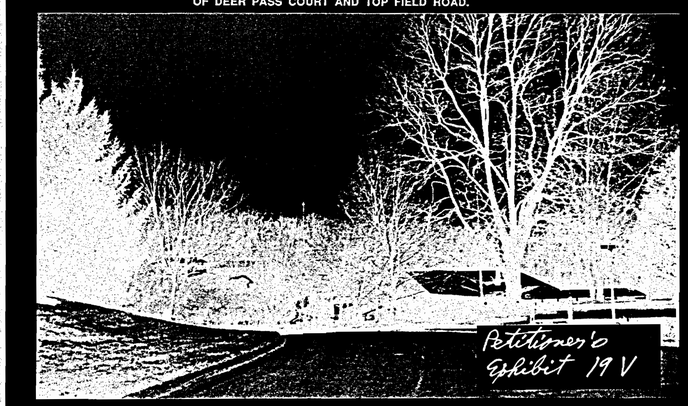

VISIBLE HEIGHT: 79 FT DISTANCE TO TOWER: 900 FT

PHOTOGRAPH 4. PROPOSED CELLULAR ONE MONOPOLE AS VIEWED FROM EAST SIDE OF BLUE BELL WAY.



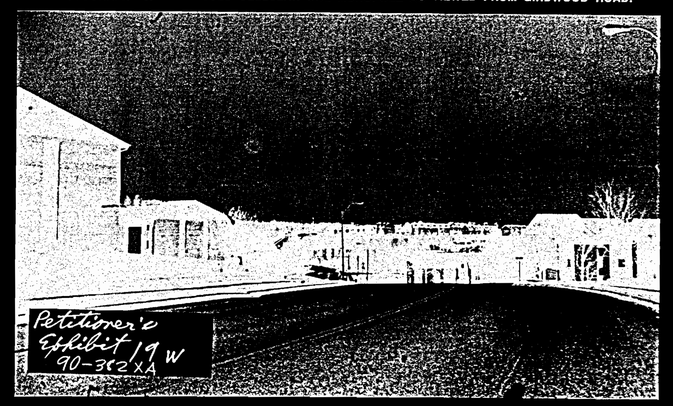

VISIBLE HEIGHT: 80 FT DISTANCE TO TOWER: 1500 FT

PHOTOGRAPH 5. PROPOSED CELLULAR ONE MONOPOLE AS VIEWED FROM INTERSECTION OF DEER PASS COURT AND TOP FIELD ROAD.



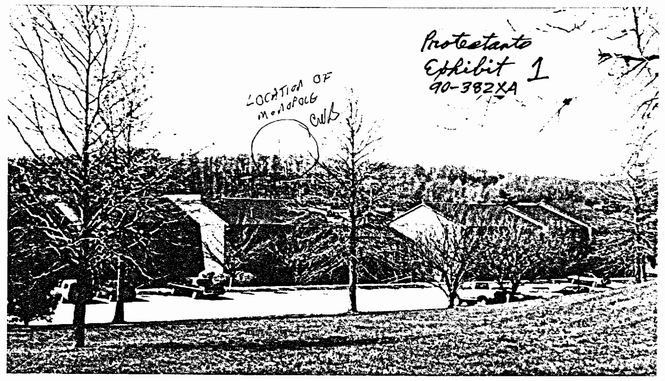

VISIBLE HEIGHT: 80 FT DISTANCE TO TOWER: 1500 FT

PHOTOGRAPH 6. PROPOSED CELLULAR ONE MONOPOLE AS VIEWED FROM GIRDWOOD ROAD.

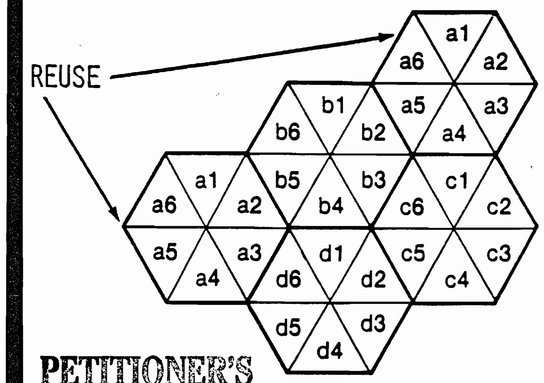



VISIBLE HEIGHT: 70 FT DISTANCE TO TOWER: 10,000 FT

PHOTOGRAPH 2. PROPOSED CELLULAR ONE MONOPOLE AS VIEWED FROM CRANBROOK ROAD.




VISIBLE MONOPOLE HEIGHT: 90 FT DISTANCE TO MONOPOLE: 4000 FT




PETITIONER'S EXHIBIT 12

90-382XA 4-CELL PATTERN

JOHN M. OSEPCHUK
Consulting Scientist

Dr. Osepchuk received his A.B., magna cum laude, and his M.A. in engineering science and applied physics from Harvard University in 1949 and 1950. He received his Ph.D. from Harvard in applied physics in 1957.

Upon joining Raytheon in 1950, Dr. Osepchuk conducted research on ridge-waveguide, magnetrons, and helped develop the first high-power backward-wave oscillator in the United States. During 1956 and 1957, he was technical liaison for Raytheon at the microwave tube research laboratories of Compagnie Generale de Telegraphie san Fils at Paris, France. From 1957 to 1962, Dr. Osepchuk was head of several research projects on crossed-field devices.

From 1962 to 1964, Dr. Osepchuk was chief microwave engineer for Sage Laboratories in Natick, Massachusetts.

In 1964, Dr. Osepchuk rejoined the Raytheon Research Division in Waltham, Massachusetts. He has directed various projects in the field of microwaves (tubes, ferrites, plasmas), image tubes, and physical electronics. In recent years, he has consulted for Amana and other Raytheon Divisions on radiation hazards, and investigated various aspects of Radarange technology, especially those involving leakage and safety. He was appointed Consulting Scientist in December 1974.

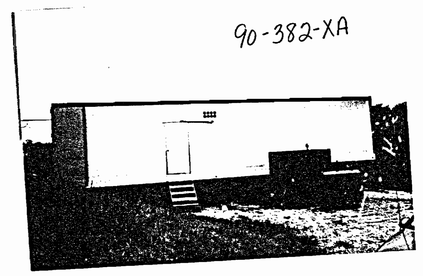
Dr. Osepchuk has published and presented many papers in the fields of microwaves and radiation hazards and holds over ten patents. He was guest editor for the special issue (February 1971) on Biological Effects of Microwaves of the IEEE Transactions on Microwave Theory and Techniques. He was editor of the Journal of Microwave Power (1970-1971) and is the editor of the recent IEEE Press volume of reprints; Biological Effects of Electromagnetic Radiation.

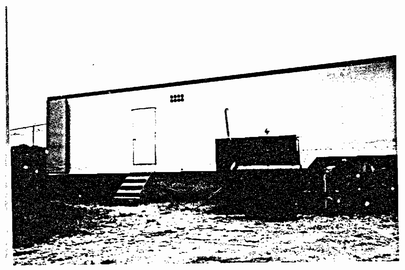
Dr. Osepchuk was National Lecturer (for 1977-1978) of the MTT Society (IEEE) on "Microwave Radiation Hazards in Perspective". In addition, he was General Chairman of the 1978 Symposium on Electromagnetic Fields in Biological Systems which was co-sponsored by IEEE MTT-S and IMPI. He was on the Program Committee and a Session Chairman for a Symposium on "Health

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PETITIONER(S) EXHIBIT (5)

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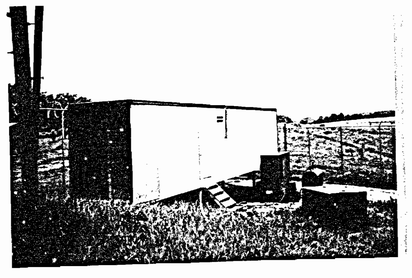




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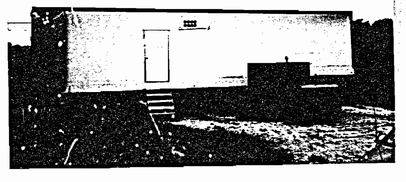
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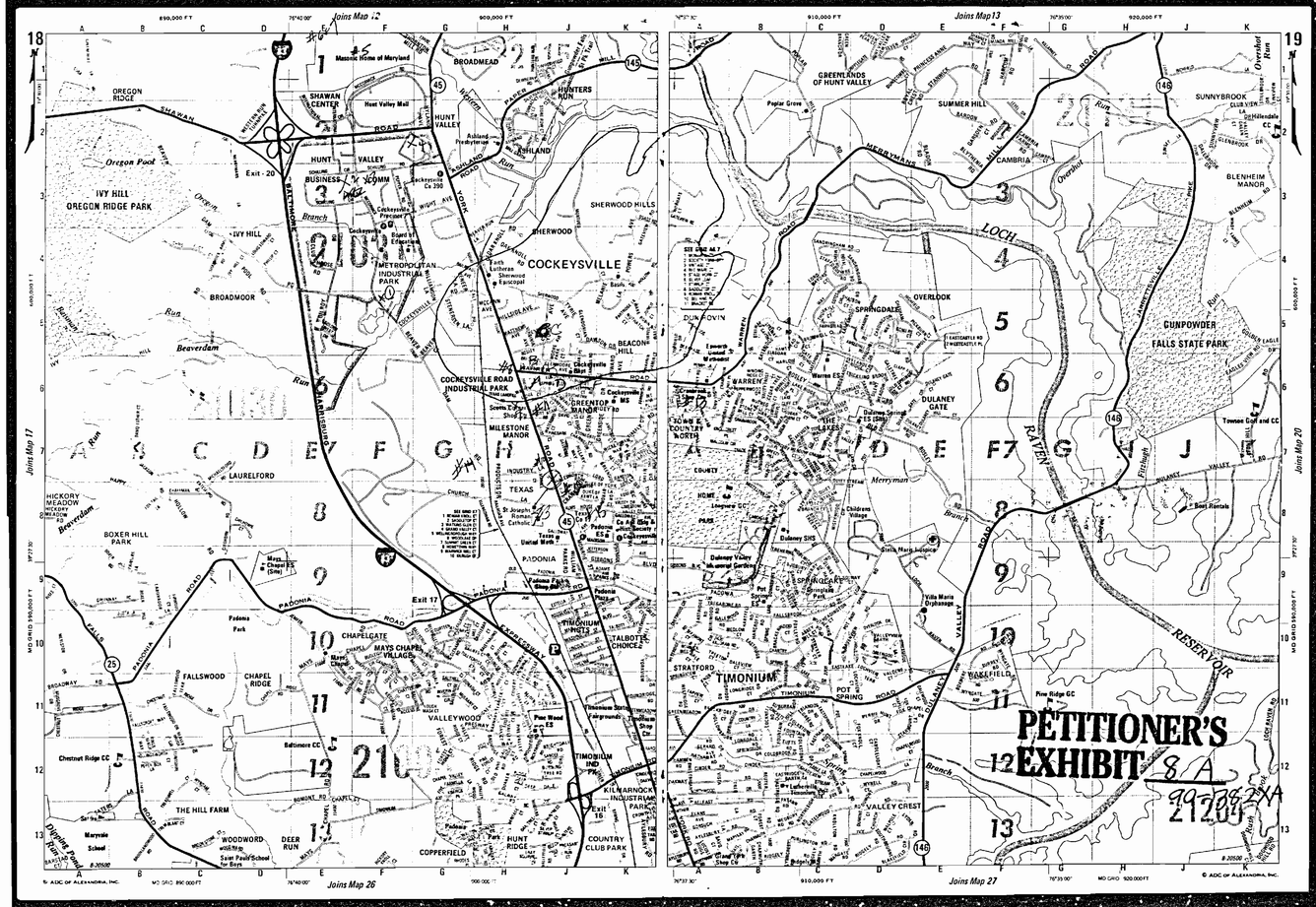




PETITIONER(S) EXHIBIT (5)

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PETITIONER'S EXHIBIT 8 A 90-382-XA

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|---|---|---|---|---|---|---|---|---|---|---|
| 1 2nd | | | | 200' | NO | NO | 2000' WSW | N/A | | NO EQUIV SPACE |
| 2 301 785-2270 | 55 TWR | | | 140' | ? | NO | 1 mi WNW | | | |
| 3 3rd | 111 BASE OPN | | | 85-90' | ? | | | | | |
| 4 | | | | | | | | | | |

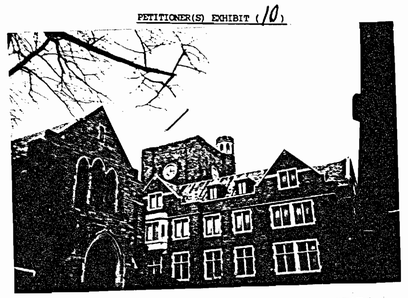
Jim Pembroke - DIST. MGR.
(301) 785-2270
10825 Beaver Dam Rd.

A - Warren dodge
B - High on corner Hunt Valley Rec Ctr
C - York Ave - all single fam homes. 100 yrs old.
D - 1AC VACANT LOT
E - 111 Warren Rd
F - Hunt Meadows - Townhouses. Scodale Rd + Warren Rd Opposite DEF - Single family all steps from back side to Warren Rd
G - Hunt View Development Warren Manor Ct 74 acres. (high on hill) 100 (new) residences (single family dwellings)

from Partridge + 4 trees down on Wake Robin you can't see prop(pos)

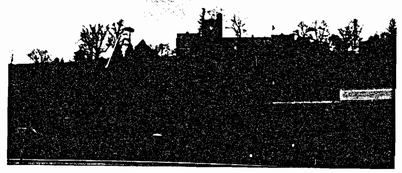
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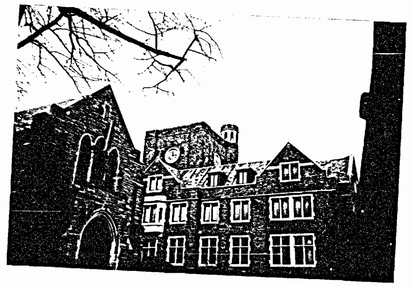
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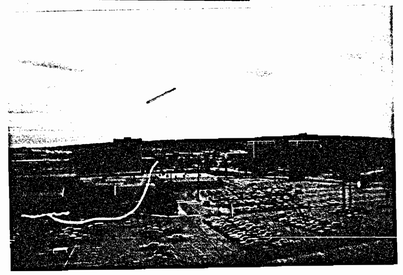


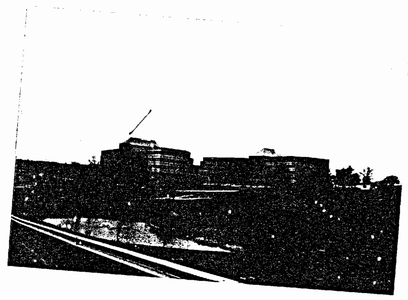
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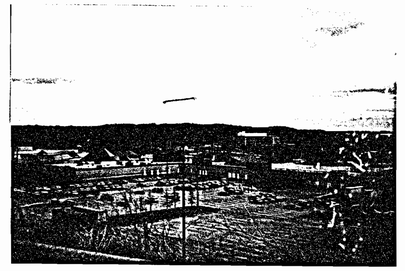


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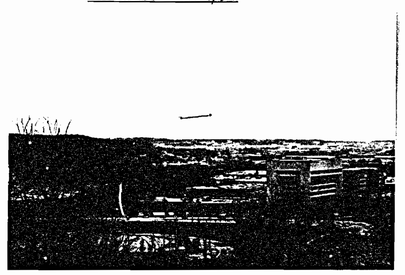


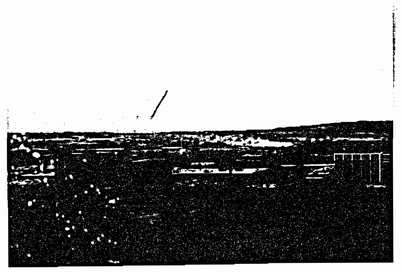
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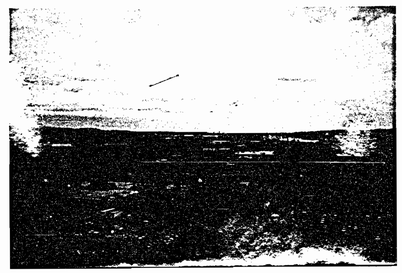


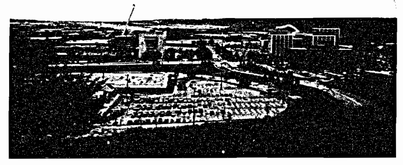
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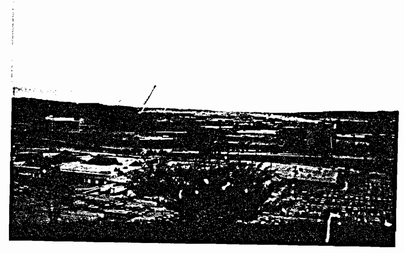
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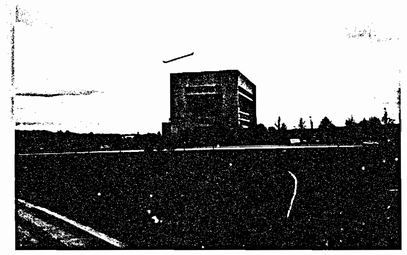


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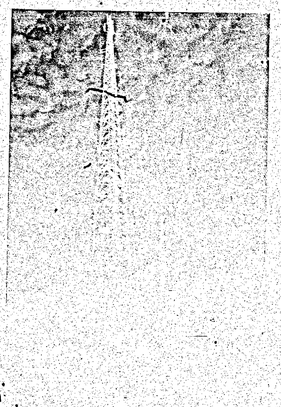
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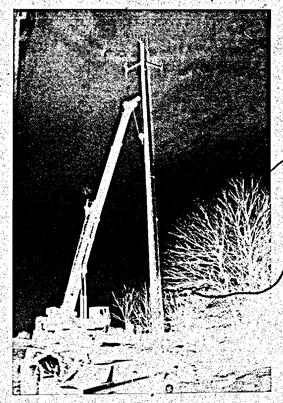


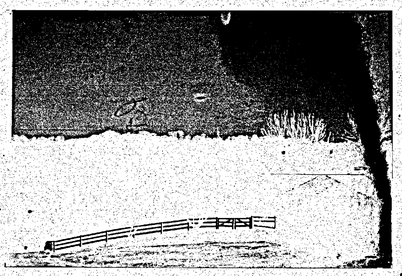
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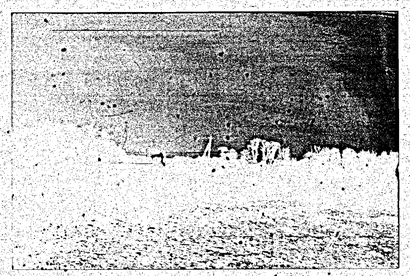


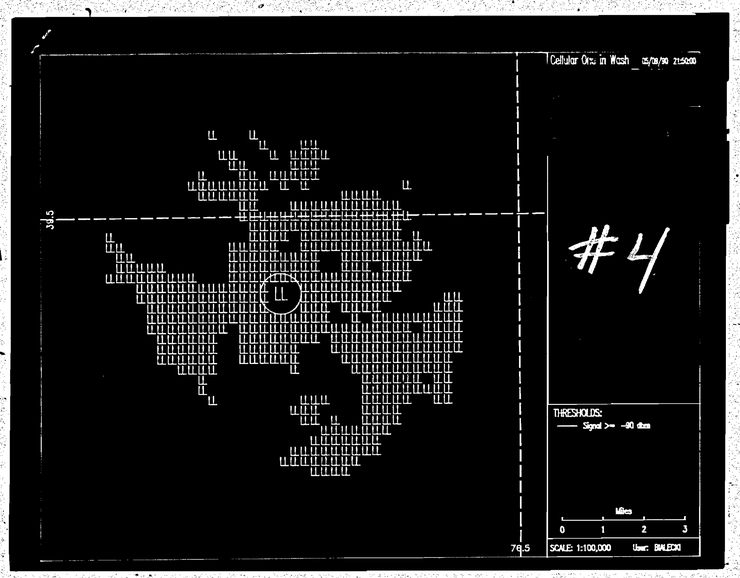


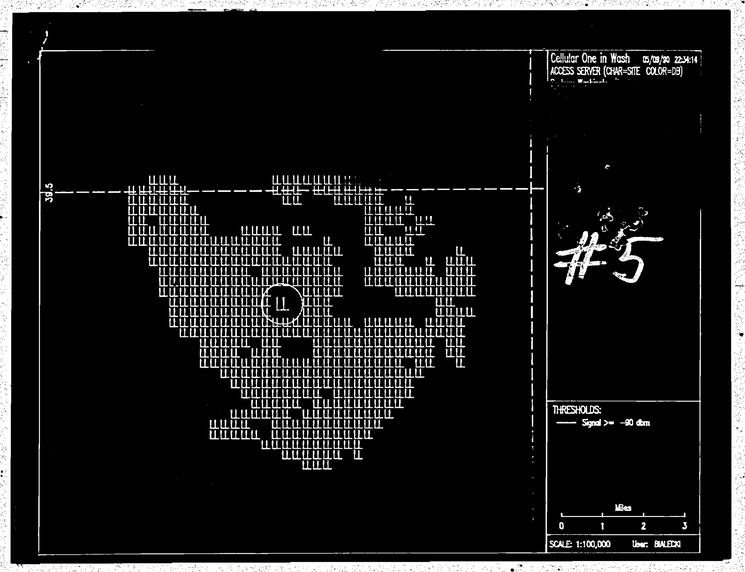


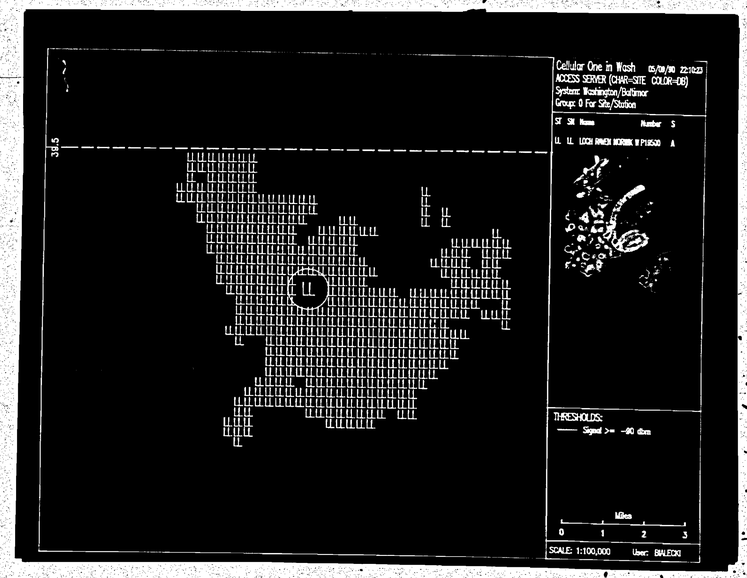


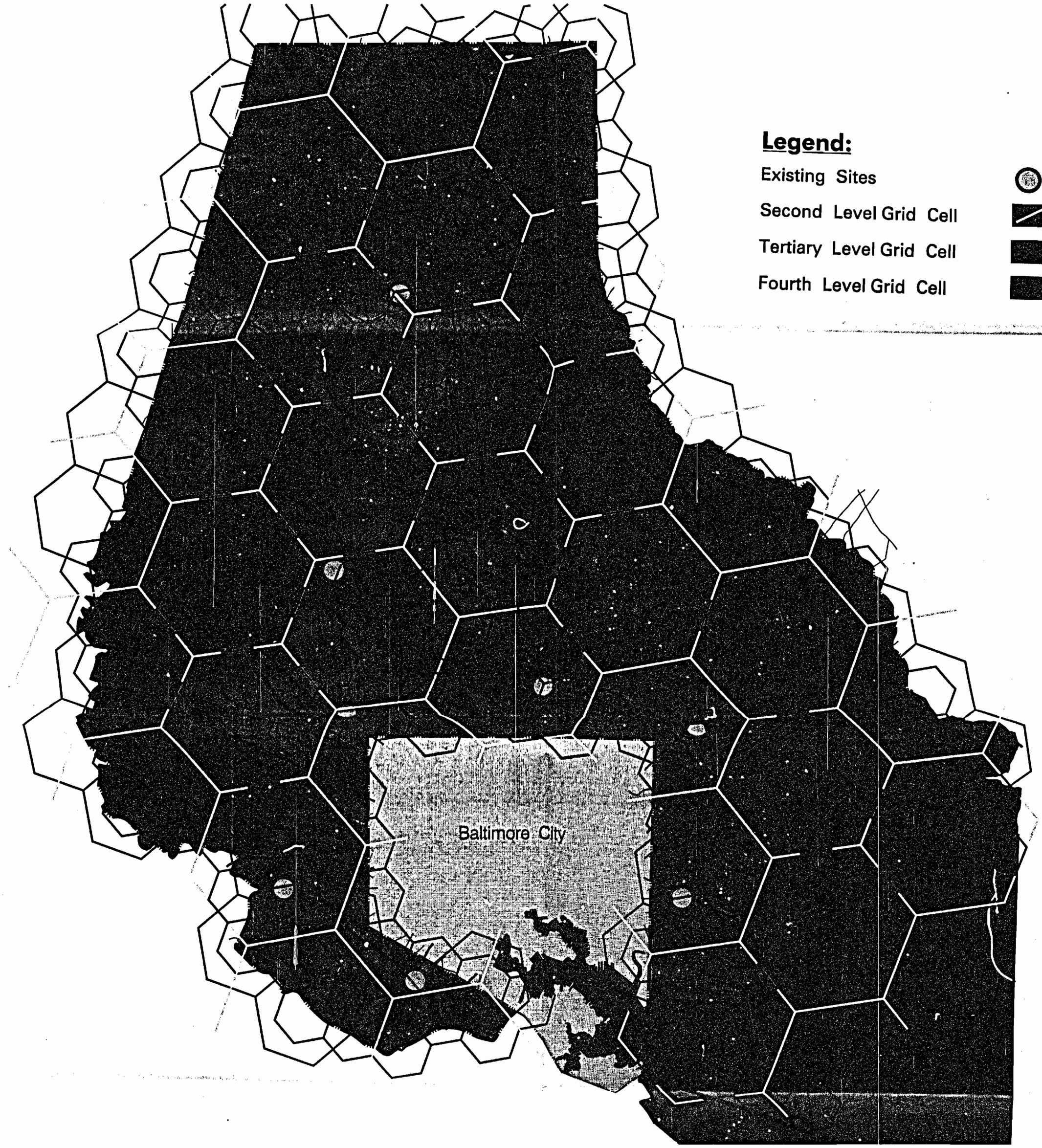









**Legend:**

Existing Sites

Second Level Grid Cell

Tertiary Level Grid Cell

Fourth Level Grid Cell

# Service Area Map

## Baltimore County, Maryland

Pet Ex #8
11/14/91

June 1991

Prepared by:

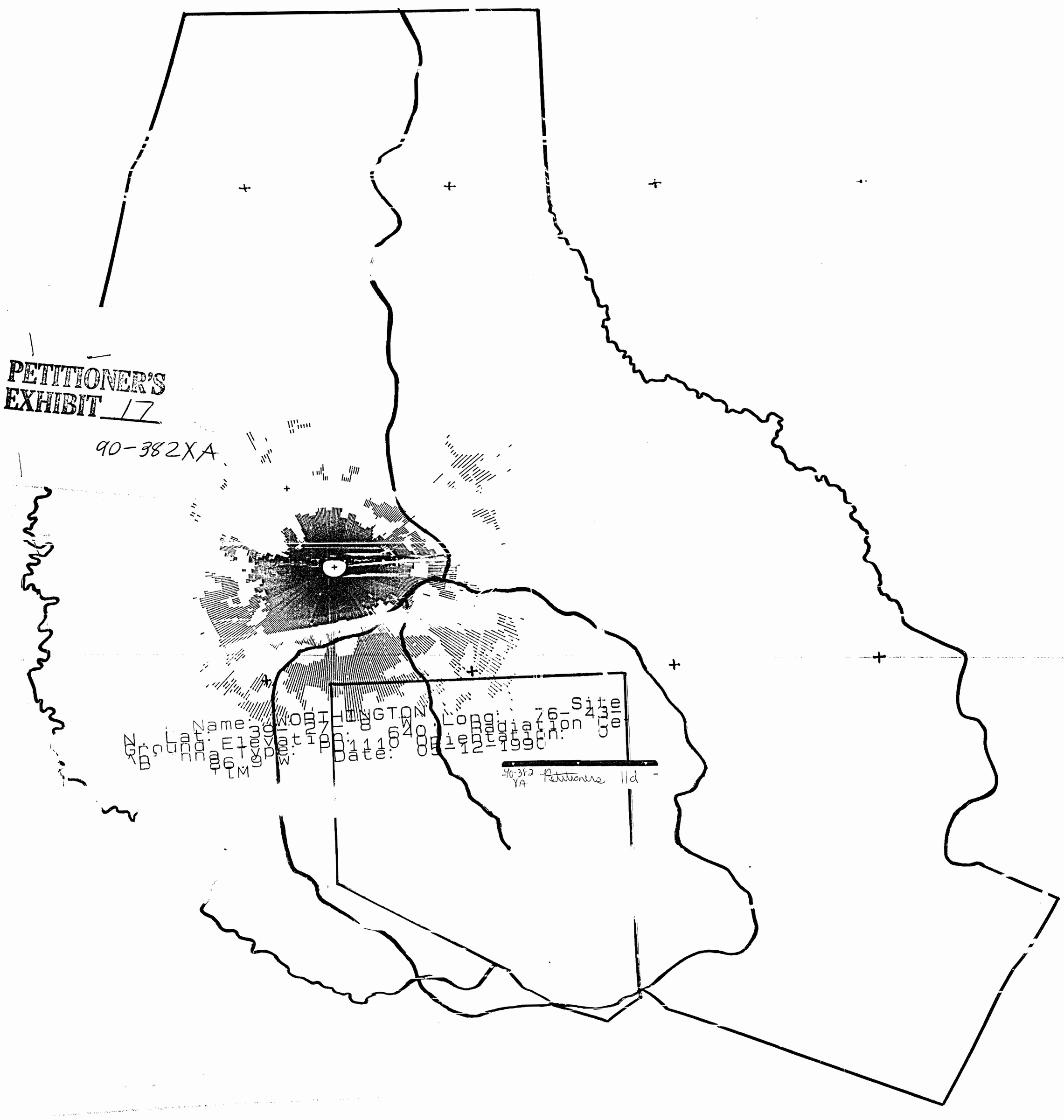
**Daft · McCune · Walker, Inc.**
200 East Pennsylvania Avenue
Towson, Maryland 21204 (301)296–3333

Land Planning · Landscape Architecture · Engineering
Applied Environmental & Computer Sciences

Scale: 1" = 2 miles

0 2 4 6

90-382 XA Petitioners 7




PETITIONER'S EXHIBIT 17

90-382XA

PETITIONER'S EXHIBIT 13

90-382 XA Petitioners 11a

RE: Petition for Special Exception and Zoning Variance * BEFORE THE

Corner NE/S SHERWOOD ROAD, SE/S of HOLLOW ROAD (426 SHERWOOD ROAD), 8th Election District, * ZONING COMMISSIONER

* OF

* BALTIMORE COUNTY

Southwestern Bell Mobile Systems, Inc., t/a Cellular One Petitioners * Case No.: 90-382-XA

* * * * * * * * * * * * *

PROTESTANTS MEMORANDUM

Sherwood Hill Improvement Association, Inc., Powers Avenue Community Association and Montview Improvement Association, Clay M. Barnes, David Baker and Steve Rosen, individuals, Protestants, by J. Carroll Holzer, their attorney, hereby submit this Memorandum in lieu of final argument before the Zoning Commissioner of Baltimore County.

STATEMENT OF CASE

The Petitioner, Southwestern Bell, trading as Cellular One (hereinafter "Bell") has filed a Petition for Special Exception and Variance before the Zoning Commission of Baltimore County to permit the operation of a cellular radio telephone transceiver station on property owned by Joseph B. and Virginia McMasters at 426 Sherwood Road in Cockeysville, Maryland. The variance requests approval for the site to occupy an area of approximately .13 acres. A 100 foot monopole type antenna, mounting structure, a brick veneer building

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14x30x10 feet and a single car parking space will be constructed on the site. The facility will be enclosed by a eight foot high chain link fence topped with barbed wire and the site will remain unmanned except for a visit once every two weeks for routine maintenance. According to the Petitioners, the monopole will have no lights or other beacons.

The Protestants herein, consist of Sherwood Hill Improvement Association, Inc., Powers Avenue Community Association and Montview Improvement Association along with Clay M. Barnes, David Baker and Steve Rosen, individually, residents of the affected communities.

The Petition for Variance requests variances from Sections 502.7.C2 and 102.2 of the Baltimore County Zoning Regulations, as well as from Section 502.7.C3 and 102.2 and from Sections 1A03.4.B.4 and 102.2. The Special Exception is requested pursuant to Section 502 which requires the zoning commissioner to review and apply the criteria set forth in Section 502.1 as well as the additional criteria of Section 502.7 created by Baltimore County Council Bill No. 64-86, permitting wireless transmitting and receiving facilities under certain circumstances.

Protestants submit that the extended testimony presented by Bell in this case, which lasted for all or portions of at least four days, should be examined in the light of whether the preconditions concerning the search area, imposed specially under Section 502.7. C.1 of the Baltimore County Zoning

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Regulations, for wireless transmitting and receiving facilities have been met. Only after a determination by the Zoning Commissioner that those preconditions set forth in that section of the Regulations have been complied with, should the criteria set forth under Section 502.1 be examined. It is also submitted by Protestants that the requirement under Section 307.1 of the Baltimore County Zoning Regulations, relating to the granting of a variance only where the strict compliance of the regulations would result in "practical difficulty or unreasonable hardship", and should be examined and rejected under the facts as presented in this case.

It is submitted that the following examination of the facts presented before the Commissioner, as they relate to both of these important criteria, will result in the conclusion that Bell has not met its burden of establishing that it conducted a dilligent search for an appropriate site under the requirements of Section 502.7, as it relates to the special exception and the hardship as required pursuant to Section 307.1.

It is important to remember that Section 502.7.C.1 requires the following:

> "Petitioner shall have the burden of establishing that it has made a diligent search for a location within a business, office or industrial zone, or for mounting on an existing structure over fifty feet in height and that, due to valid considerations, including but not limited to

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> location, economic, elevation, engineering or technological feasibility, no appropriate location is available."

The key to the issue of whether or not there was a good faith effort to conduct a "diligent search for a location" is two-fold: first, whether the search area to be examined is a legitimate one appropriately defined, upon a reasonable basis, or conversely, whether it is arbitrarily defined, without cause, or with an improper motive of procuring a desired result. The second issue is whether there was a good faith effort to conduct a diligent search for a potential site location within that area. Within the context them of Section 502.7.C.i., one should examine the testimony of the various witnesses presented by Bell.

STATEMENT OF FACTS

A. Petitioner's Case

Bell first called Ms. Amy O'Rourke, a representative of Bell's Real Estate Department, to testify as to her efforts on behalf of Bell to explore the Cockeysville area for a location for the proposed tower.

It is clear that Amy O'Rourke did not in anyway prepare or define the search area map marked as Petitioner's Exhibit Number 1 and that it was developed by others at Bell - and in particular, by a Mr. Dennis Francis. It also is clear from Ms. O'Rourke's testimony that she obtained the search area map and



provided it to Frederick Kruhm, a consultant occasionally hired by Bell, to conduct a search for an appropriate site within the area of Exhibit Number I. Mr. Kruhm never testified, nor is there any evidence before the Zoning Commissioner as to the nature of his search, if any, beyond the limited search area boundary as prescribed to him by Ms. O'Rourke. Ms. O'Rourke testified that long after Mr. Kruhm submitted his recommendation for the McMaster's property, she drove around the rest of the search area and took photos and names and location of property sites for purposes of this hearing. The purpose of Ms. O'Rourke's "search" was to justify Bell's position that the McMaster property was the only possible location for the tower. There was no testimony that any commercial or industrially zoned property was examined within the search area by anyone prior to the signing of a contract with McMasters by Bell on September 22, 1989. Ms. O'Rourke further testified that Kruhm normally provides alternative sites in the search area; however, in this case she admitted he provided only the McMaster site. Ms. O'Rourke testified that Bell limited its search, even originally, to the east side of Interstate 83, based upon a decision of the Zoning Commissioner in the Chestnut Ridge Fire Company Case, (Petitioner's Exhibit 3) as well as upon a Restrictive Covenant Agreement executed with the Valley's Planning Council.

During the cross-examination of Ms. O'Rourke, Petitioner's Exhibit Number 6, the Real Property Lease Agreement was



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discovered and introduced into evidence. It basically establishes a number of significant points: first, it was executed on September 22, 1989, well before the examination of any alternative site locations either contained within the described search area on Petitioner's Exhibit 1, or alternatives even outside of the search area as presented by Bell to bolster this aspect of their case. It is clear that this document establishes that no reasonable or diligent search for a location within a business, office or industrial zone was made by Bell prior to their execution of the lease with McMasters on September 22, 1989.

Secondly, it indicates that an 8.26 acre portion of the McMasters property was the subject of the lease, which would allow the utilization of the entire portion for the purposes of Bell. Paragraph three of the lease allows the McMasters to utilize the balance of these premises for "agricultural development, or any other use that is permitted by the County (including residential development)". Obviously the lease establishes, as does the testimony of Ms. O'Rourke, that McMasters simply wanted the tower to be located on the site at a location where it would be a minimal disadvantage to him personally and where he could gain economic advantage from developing the remainder of the farm. No thought was given to the set backs and requirements of Bill 64-86, providing for the safety of the public. Protestants submit that these objectives are not sufficient to constitute "practical difficulty or



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unreasonable hardship" to support a granting of the variance request.

Ms. O'Rourke further testified that it is the request of Bell that they be allowed to put up a portable cellular site which would consist of a portable one hundred foot tower, as well as a trailer, parked on the approximate location of the parking available to the permanent site. It is the stated intention of Bell to put up the portable tower if the Zoning Commissioner grants the zoning, without waiting and to utilize this tower and the facility during any appeal period. On cross examination of Ms. O'Rourke, it became clear, and later upon a review of the taped proceedings before the Zoning Commissioner it was confirmed, that Ms. O'Rourke, on behalf of Bell, simply found the McMaster's site to be the highest elevation within this arbitrarily defined search area and that she chose it for the location for the tower. She then conducted a search of other locations within and outside of the search area as an after thought, primarily to support the Bell position at the hearing for Special Exception. The following quotes from her taped testimony support this conclusion:

1) "I am the director of real estate for Southwest Bell, my responsibility is to secure locations within the entire service area"...

2) "I obtained the Chestnut Ridge Volunteer Fire Company site so I am familiar with the county law and I have testified



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at the hearing for the special exception for the Chestnut Ridge Fire Company Site"...

3) "I limited my search area to east of Interstate 83 due to the restrictive covenant agreement signed with Valley's Planning Counsel"...

4) "(O'Rourke) acknowledged the precedent in Baltimore County for giving approval to tower locations on County property, but did not check any county locations in the Cockeysville area prior to signing a contract with McMasters"...

5) "(O'Rourke) did not conduct any search in the Cockeysville area to determine whether any county locations were available"...

6) "(O'Rourke) acknowledged that Frederick Kruhm in his report to her of June 8, 1989 provided no other site candidates within the search area other then the McMasters property"...

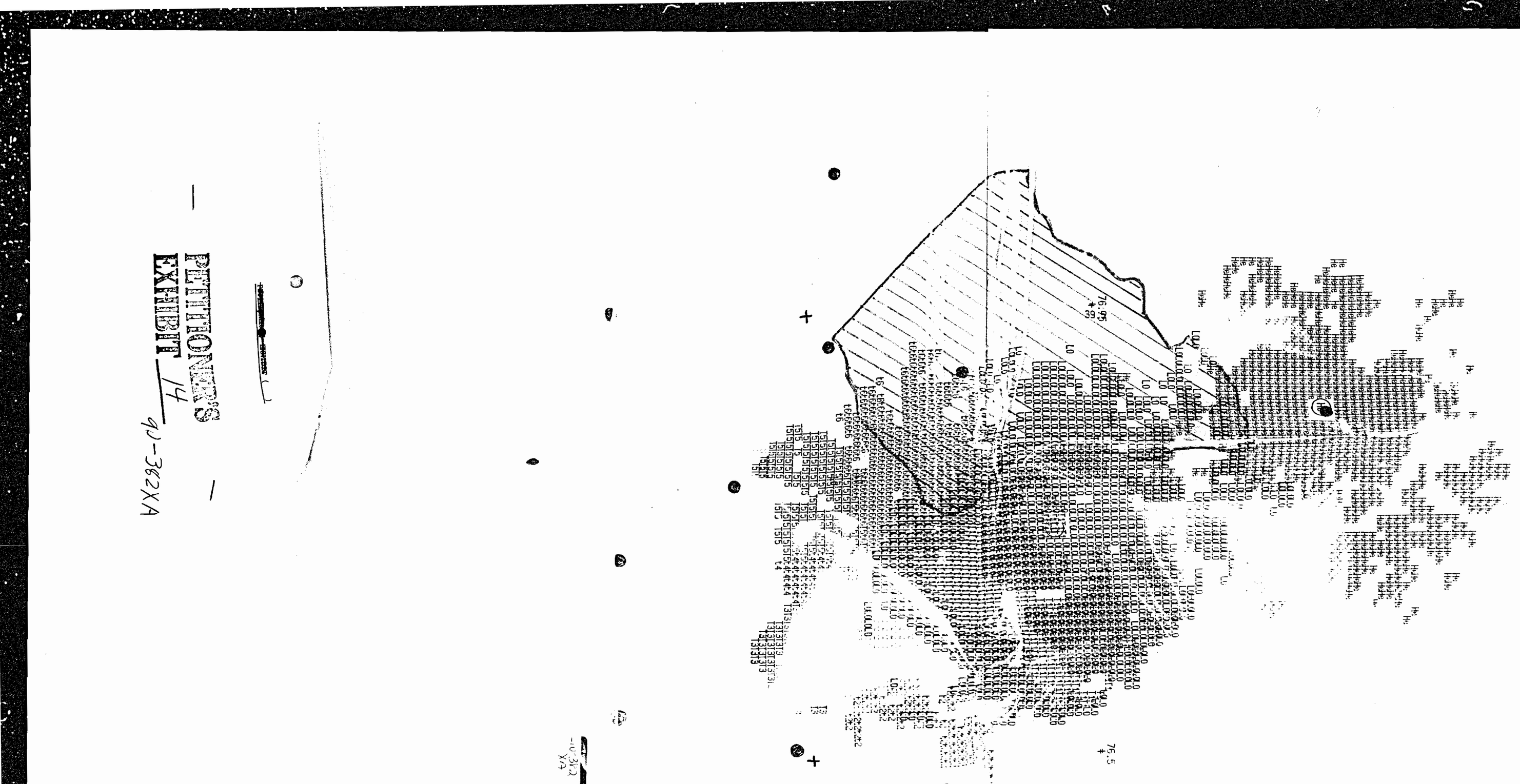
7) "Kruhm mentioned other sites located outside of the search area such as Baltimore Gas & Electric and Southern States and requested whether or not she (O'Rourke) wanted him to pursue those other sites and she indicated him not to proceed that she would handle it"...

8) "(O'Rourke) acknowledged that she followed up on the alternative sites in March 1990, only after the issue was raised by the Protestants, and well after the September 1989 lease was signed between Bell and McMasters"...

9) "(O'Rourke) acknowledged that there was "No



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PETITIONER'S
EXHIBIT 14
90-382XA
PETITIONER'S
EXHIBIT 15
90-382XA
PETITIONER(S) EXHIBIT ( )
PETITIONER'S
EXHIBIT 16
90-382XA

a monopole structure.

L A W

The Special Exception is requested pursuant to Section 502 of BCZR. The Board is required to review and apply the criteria set forth in Section 502.1 of the BCZR as well as the additional criteria of Section 502.7 created by Baltimore County Council Bill No. 64-86, permitting wireless transmitting and receiving facilities in the D.R., R.C. and R-O zones. The additional criteria of Section 502.7C are as follows:

1) petitioner shall have the burden of establishing that it has made a diligent search for a location within a business, office or industrial zone, or for mounting on any existing structure over fifty (50) feet in height and that, due to valid considerations, including but not limited to, location, economic, elevation, engineering or technologic feasibility, no appropriate location is available;

2) the setback of such structure from the nearest property line shall equal or exceed two (2) times its height above grade level;

3) the structure shall be located on a lot of at least five (5) acres;

4) the structure shall be enclosed within a locked, chain-link fence, or comparable wall or structure, at least 8 feet high;

5) a landscape plan, designed to minimize the visual impact of accessory buildings and the lower portion of the structure shall be submitted and approved by the Director of the Office of Planning and Zoning;

6) Environmental Protection Agency standards and guidelines relating to radiation emissions shall be met at all times;

7) when the use is terminated, the structure shall be removed;

8) every five years, or sooner in the event of substantial damage, a certification by a professional engineer registered in Maryland . . . shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure meets all safety requirements. Any upgrading or maintenance required to comply with any



changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification;

9) no white stroboscopic lights are permitted;

10) in order to insure adverse effects on its surroundings, an environmental impact statement, as defined in section 101, shall be submitted to the Zoning Commissioner or, in the event of an appeal, to the County Board of Appeals of Baltimore County. Such environmental impact statements shall include information on emission levels and shall evaluate the impact of the proposed structure on the ecosystem; and based on such environmental impact statement and other evidence produced at the hearing, it must appear that the proposed structure will not have a substantial adverse impact on the environment; and

11) the Zoning Commissioner or, in the event of an appeal, the County Board of Appeals of Baltimore County shall determine that there will not be a substantial adverse impact on surrounding property values, park lands or open space.

Section 102.2 of the BCZR requires that the special exception area be considered a separate "lot" for variance purposes.

Three variances are requested pursuant to Section 102.1 of the BCZR. The first variance requested concerns Section 1A03.4.B.4, which provides that any principal structure constructed in an R.C.4 zone must be at least 50 feet from any lot line other than a street line. The second variance requested concerns Section 502.7.C.2, which provides that the setback of any radio transmitting or receiving structure from the nearest property line "shall equal or exceed two (2) times its height above grade level." The third variance requested concerns Section 502.7.C.3, which requires that a radio transmitting or receiving facility "shall be located on a lot of at least five (5) acres."

Section 307.1 of the BCZR gives the Board power to grant variances from height and area restrictions only in cases where special circumstances or conditions exist that are peculiar to the



land or structure which is the subject of the variance request. Such variances may be granted when strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. Further, the proposed variance must be in strict harmony with the spirit and intent of the height and area regulations and must not pose any injury to public health, safety, and general welfare.

CONCLUSIONS OF LAW

Based on the Board's Findings of Fact and the applicable law, the Board concludes that both Sections 502.1 and 502.7 have been complied with. With respect to Section 502.7.C.1 of the BCZR, the Board concludes that a diligent search for a location within a business, office, or industrial zone was made and that, due to valid considerations, including, but not limited to, location, economic, elevation, engineering or technological feasibility, no such location was appropriate or available.

Cellular One's search for an appropriate cell site validly considered the location of the cell site based on technological feasibility. After defining the Loch Raven search area, Cellular One validly considered the elevations of the land within the Loch Raven search area. The ground level elevation of the proposed cell site is substantially higher than the ground level elevations of the land within the commercially zoned valley west of York Road. Cellular One also validly considered the difference in the cost between constructing a 300 to 400 foot lattice-type tower in the low-lying commercially zoned area west of York Road and a 100-foot monopole structure on the high lands of the proposed cell site. The Board concludes that the different technological factors,



elevations and costs are all valid considerations under Section 502.7.C.1 and that the timing of Cellular One's search for a cell site within the Loch Raven area has no bearing on such considerations.

The Board concludes that a 300 to 400 foot steel lattice-type tower, red and white, with flashing red beacons would be far more obtrusive and less aesthetically pleasing than a 100-foot steel gray monopole with no lights. The Board further concludes that the very nature of the farm and the existing trees will insulate the monopole from adjoining residential properties and that the cell site's relationship with adjoining properties is within the spirit and intent of the applicable regulations.

The Board also concludes that the proposed use will not be detrimental to the health, safety or general welfare of the locality, nor tend to create congestion, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the BCZR.

The Board has given due consideration to the above facts and concludes that the requested variances should be granted.

Further, the Board has considered the above facts with regard to Section 307.1 of the BCZR concerning the Board's authority to grant the requested variances. It is clear from the facts and evidence that special circumstances or conditions do in fact exist with regard to this particular piece of land which is the subject of the variance requests.

Therefore, after reviewing all the testimony, evidence and arguments, the Board is of the opinion that the granting of the variances would do substantial justice to the applicant and that



the spirit of the ordinance will be observed and public safety and welfare will be secured. The Board therefore finds that the requested variances should be granted and will so order.

O R D E R

IT IS THEREFORE this 28th day of May, 1992 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Special Exception be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2) Prior to the issuance of any permits, Petitioners shall obtain CRG approval and/or a waiver.

3) The structure shall be enclosed within a locked, chain-link fence, or comparable wall or structure, at least 8 feet high.

4) A landscape plan, designed to minimize the visual impact of accessory buildings and the lower portion of the structure shall be submitted to and approved by the Director of the Office of Planning.

5) Environmental Protection Agency standards and guidelines reluting to radiation emissions shall be met at all times.

6) when the use is terminated, the structure shall be removed.

7) Every five years, or sooner in the event of substantial damage, a certification by a Maryland registered professional engineer shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure met all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification.

8) No white stroboscopic lights are permitted.



9) Prior to the issuance of any permits, Petitioners shall submit evidence of approval by all applicable Federal and State regulatory agencies and provide an affidavit that all required approvals have been given.

10) Prior to the issuance of any permits, Petitioner shall provide a 1988, 1"=200' scale zoning map, which has been sealed by a civil engineer or land surveyor, with the use area plotted accurately and legibly thereon for inclusion in the case file.

11) When applying for any permits, the site plan and landscaping filed must reference this case and set forth and address the restrictions of this Order.

IT IS FURTHER ORDERED that the Petition for Variance to permit a property line setback of 10 feet in lieu of the required 200 feet be and is hereby GRANTED; and

FURTHER ORDERED that the Petition for Variance to permit a lot area of 0.13 acre in lieu of the required 5.0 acres be and is hereby GRANTED; and

FURTHER ORDERED that the Petition for Variance to permit building setbacks of 12 feet, 7 feet and 8 feet in lieu of the required 50 feet be and is hereby GRANTED.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Michael B. Gauer, Acting Chairman

Judson H. Lipowitz

Harry E. Buchheister, Jr.

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

May 28, 1992

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: Case No. 90-382-XA
Joseph B. McMaster, et ux

Dear Mr. Barhight:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Sincerely,

Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Mr. Joseph B. McMaster
J. Carroll Holzer, Esquire
Emilienne O'Rourke
Ms. Sarah Adams
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of
Zoning Administration

Printed on Recycled Paper

IN THE MATTER OF
JOSEPH B. MCMASTER, et ux.

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF BALTIMORE COUNTY
* Case No. 90-382-XA

* * * * * * * * * * *

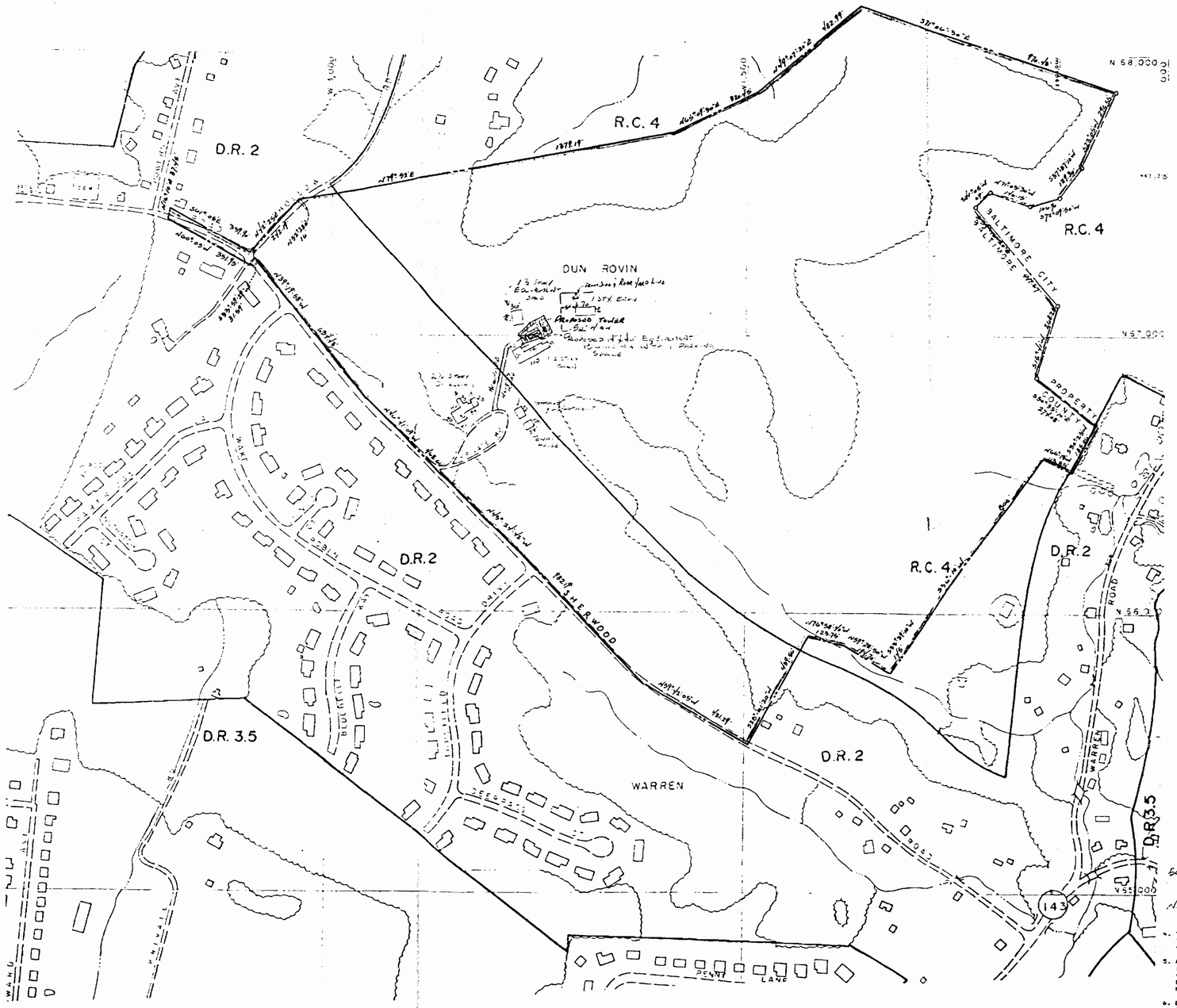
MEMORANDUM IN SUPPORT OF APPELLANTS' PETITIONS FOR SPECIAL EXCEPTION AND VARIANCES

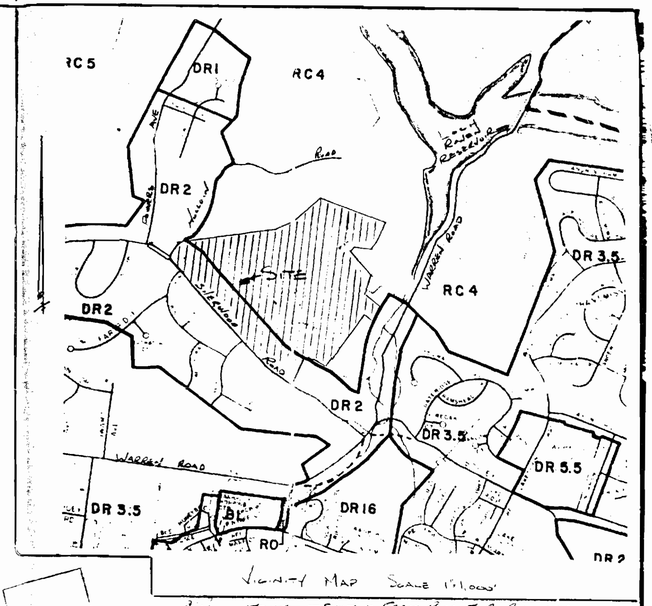
Joseph B. McMaster, et ux., and Southwestern Bell Mobile Systems, Inc., t/a Cellular One, by their attorneys, G. Scott Barhight, Karl J. Nelson, and Whiteford, Taylor & Preston, submit this Memorandum in Support of their Petitions for Special Exception and Variances, and in support thereof state as follows:

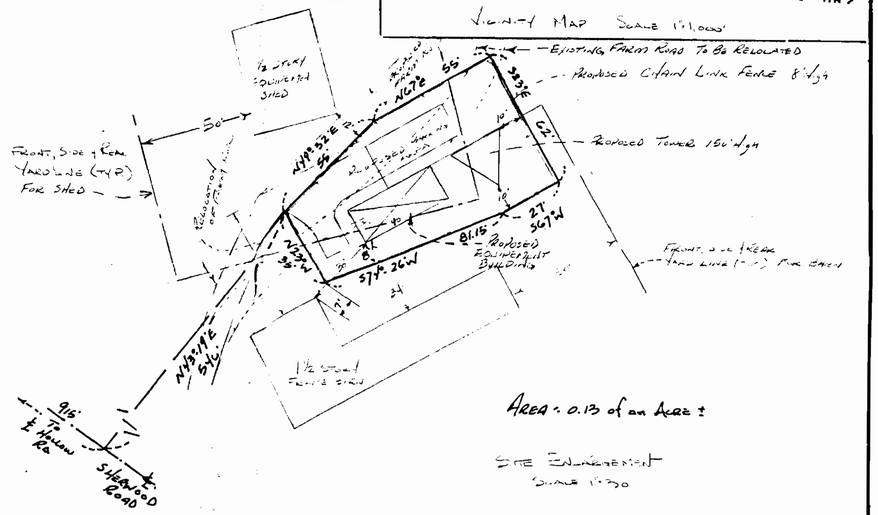
I. INTRODUCTION

This case involves the efforts of Appellants Joseph B. McMaster, et ux. and Cellular One to place a wireless cellular telephone transmitting and receiving facility on Mr. McMaster's farm in the Cockeysville area of Baltimore County. The actual site in question, known as a "cell site", will consist of a one hundred (100) foot monopole tower with attached antennae, as well as a small accessory outbuilding. As is fully explained below, this cell site will form an integral part of Cellular One's cellular telephone network in Baltimore County.

In order to place this cell site on the McMaster farm. Cellular One must obtain a special exception and three variances. Radio transmitting and receiving facilities are allowed in R.C. zones by special exception. See B.C.Z.R. section 1A03.3.B.14. The variances requested concern setback and minimum lot size




AREA = 0.13 of an Acre ±

SITE ENLARGEMENT
SCALE 1"=50'

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Section 502.7.A Does Not Apply Because Tower is Less Than 200' High

Notes From Section 502.7.C. BCZR Incorporated With This Plan

4. The structure shall be enclosed within a locked, chain-link fence, or comparable wall or structure, at least 8 feet high. (Bill No. 64, 1986.)

5. A landscape plan, designed to minimize the visual impact of accessory buildings and the lower portion of the structure shall be submitted to and approved by the Director of the Office of Planning and Zoning. (Bill No. 64, 1986.)

6. Environmental protection agency standards and guidelines relating to radiation emissions shall be met at all times. (Bill No. 64, 1986.)

7. When the use is terminated, the structure shall be removed. (Bill No. 64, 1986.)

8. Every five years, or sooner in the event of substantial damage, a certification by a professional engineer registered in Maryland & certification by a Maryland registered professional engineer shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure meets all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification. (Bill No. 64, 1986.)

9. No white stroboscopic lights are permitted. (Bill No. 64, 1986.)

PLAT TO ACCOMPANY PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCES FOR A COMMUNICATION TOWER LOCATED IN

8TH ELECTION DISTRICT - BALTIMORE COUNTY, MD.
3RD COUNCILMANIC DISTRICT

OWNER: JOSEPH D. McMASTER, JR. & 4216 SHERWOOD ROAD COCKEYSVILLE, MD.

DEED REF: L.L.G. No. 2478/243

PETITIONER: SOUTHEAST CELLULAR MOBILE SYSTEMS INC. T/A CELLULAR ONE, 7025 WALKER DRIVE GREENBELT MD. 20770

GROSS AREA WITHIN TRACT : 0.47 Ac. ±
AREA FOR SPECIAL EXCEPTION : 0.13 Ac. ±
EXISTING ZONING: RC4 & DR2

TOWER: 150' MONOPOLE
BUILDING: 11'H x 16'W x 15'4"D

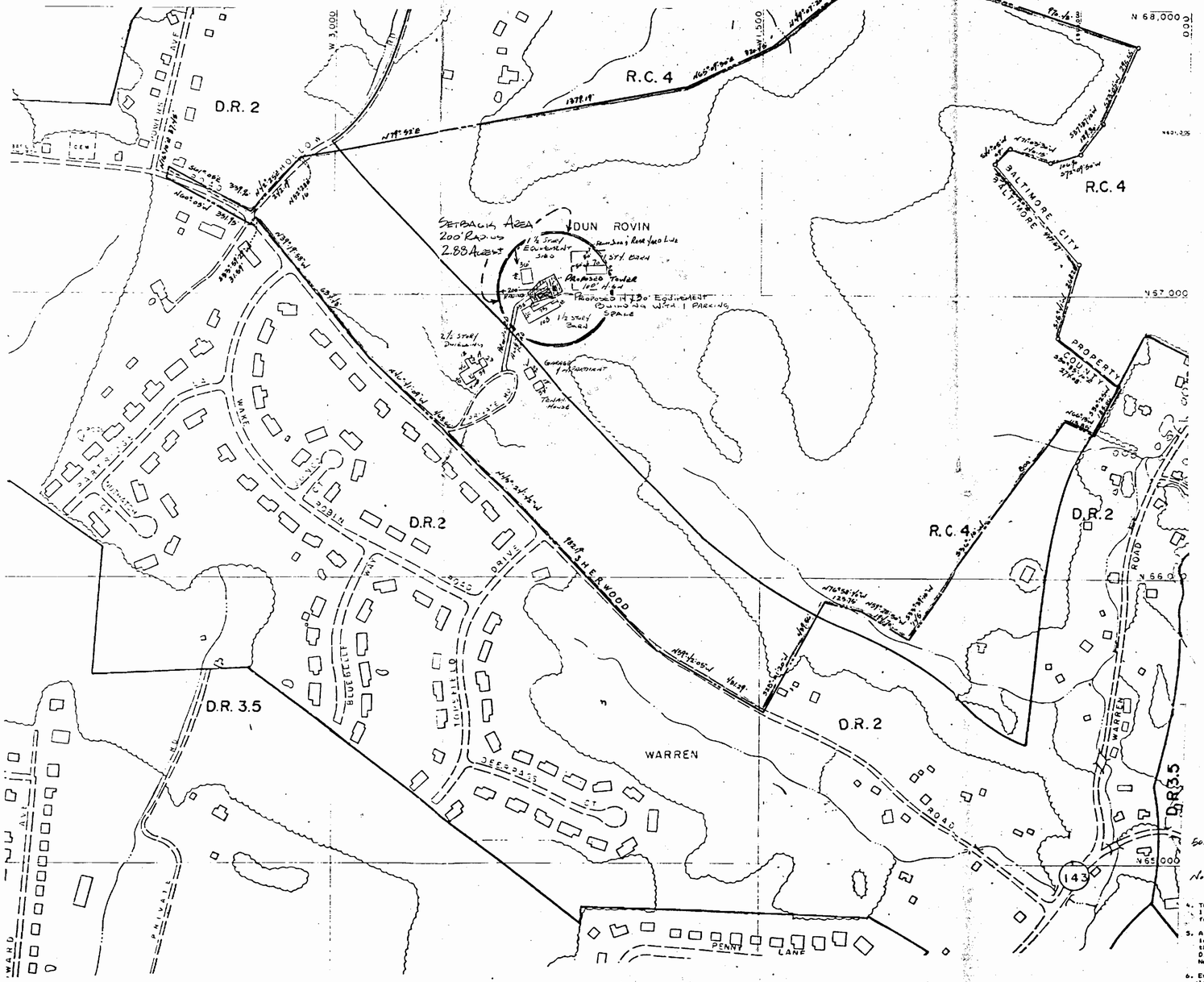
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90-382-XA

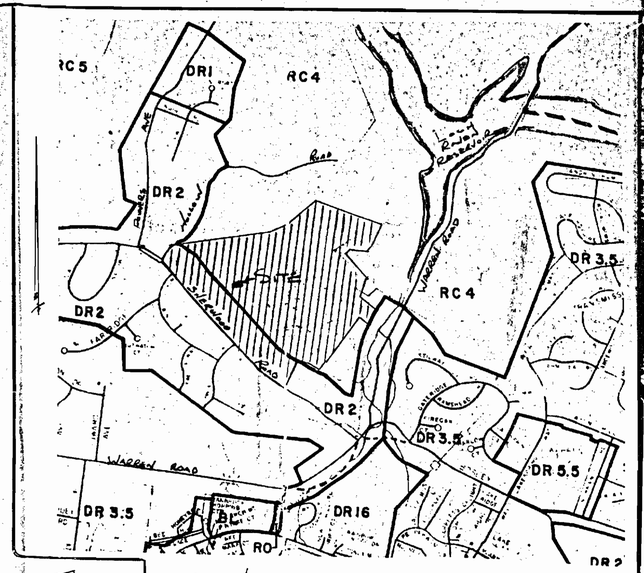
Revised 1-17-90
Revised 1-10-90
Revised 1-08-90
11-14-89

SCALE 1"=200'

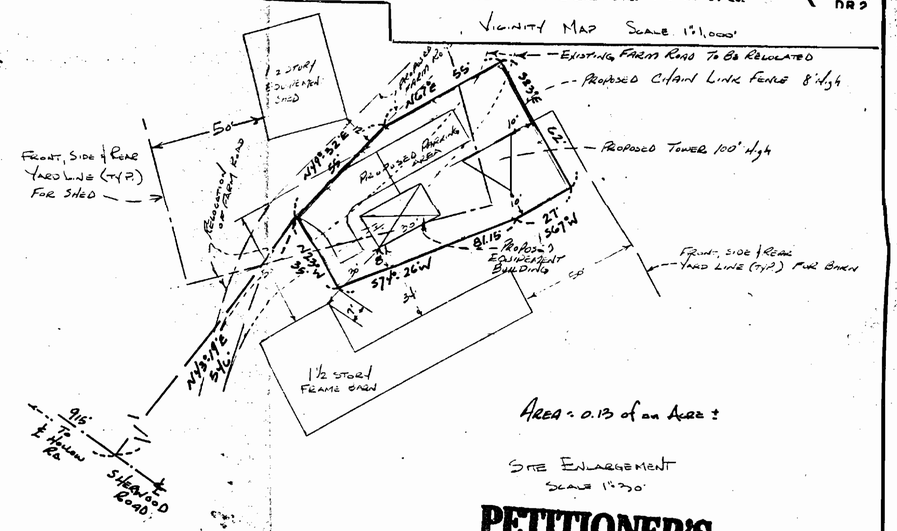
GERHOLD, CROSS & ETZEL
Registered Professional Land Surveyors
412 Delaware Avenue
TOWSON, MARYLAND 21204

SHEET 1 OF 2




VICINITY MAP SCALE 1"=1,000'




AREA = 0.13 of an Acre ±

SITE ENLARGEMENT
SCALE 1"=30'

# PETITIONER'S EXHIBIT 4

'90-382XA

PLAT TO ACCOMPANY PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCES FOR A COMMUNICATION TOWER

LOCATED IN

8TH ELECTION DISTRICT - BALTIMORE COUNTY, MD.
3RD COUNCILMANIC DISTRICT

OWNER: JOSEPH D. McMANUS JR. DEED REF: G.L.B. No. 2076/513
4126 SHERWOOD ROAD
CKEENSVILLE, MD.

PETITIONER: SOUTHERN PACIFIC MOBILE SYSTEMS INC.
T/A CELLULAR ONE, 7855 WALKER DRIVE, GREENBELT MD, 20770

GROSS AREA WHOLE TRACT : 104.7 AC.±
AREA FOR SPECIAL EXCEPTION : 0.13 AC.±
EXISTING ZONING: RC4 & DR2

TOWER: 100' MONOPOLE
BUILDING: 14'x30' (max. 15' H/G4)

ADD SALEABLE AREA OF 2.88 AC. 3-05-90
REVISE BUILDING SIZE 3-27-90
REVISIONS 1-17-90
ADD NOTE 1-10-90
REVISED 1-08-90
11-14-89

SCALE 1"=200'

GERHOLD, CROSS & ETZEL
Registered Professional Land Surveyors
412 Delaware Avenue
TOWSON, MARYLAND 21204

NOTE: PLAT COMPILED

502.7.A. DOES NOT APPLY BECAUSE TOWER IS LESS THAN 350' high

NOTES FROM SECTION 502.7.C. BCZR INCORPORATED WITH THIS PLAN

4. The structure shall be enclosed within a locked, chain-link fence, or comparable wall or structure, at least 8 feet high. [Bill No. 64, 1986.]

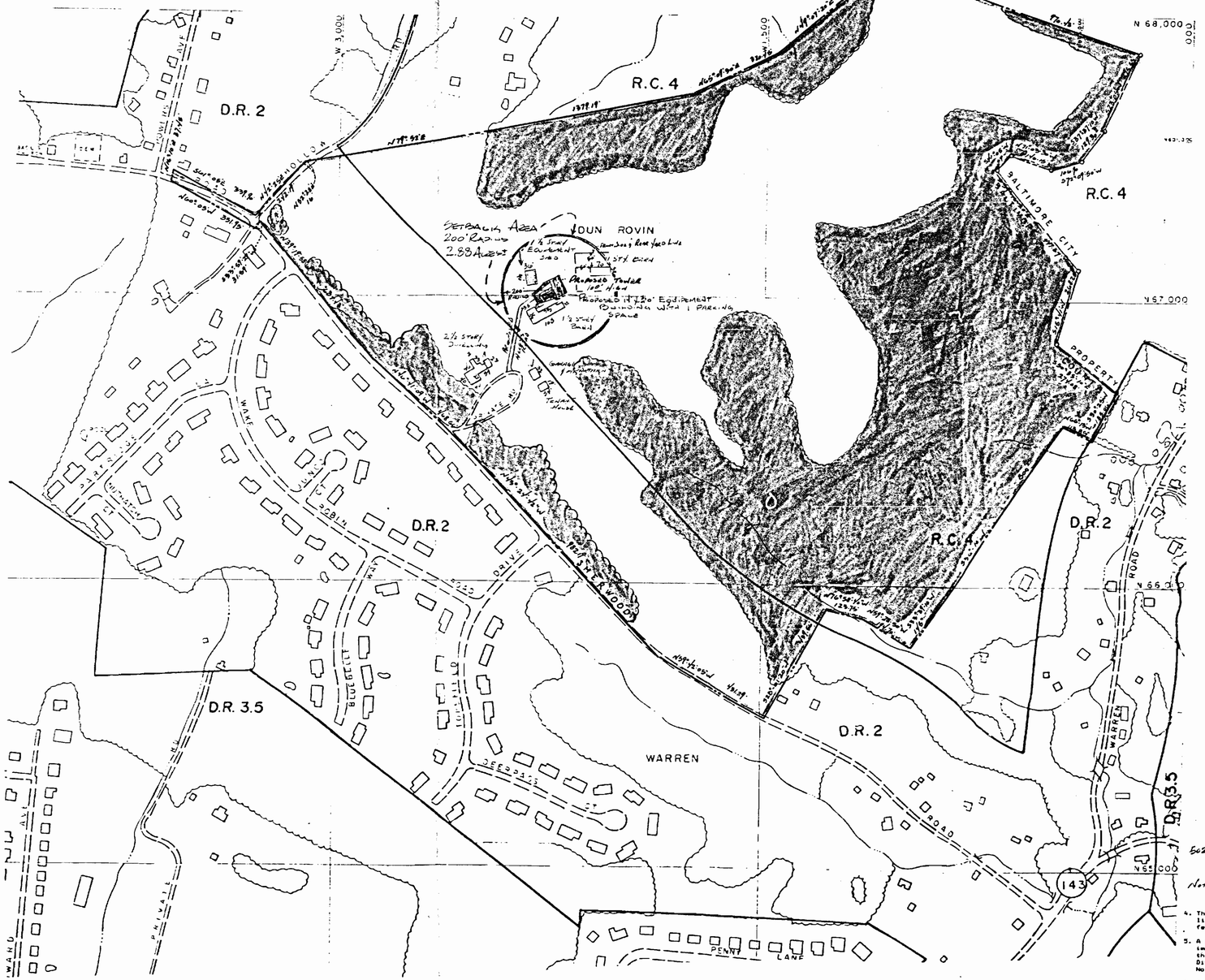
5. A landscape plan, designed to minimize the visual impact of accessory buildings and the lower portion of the structure shall be submitted to and approved by the Director of the Office of Planning and Zoning. [Bill No. 64, 1986.]

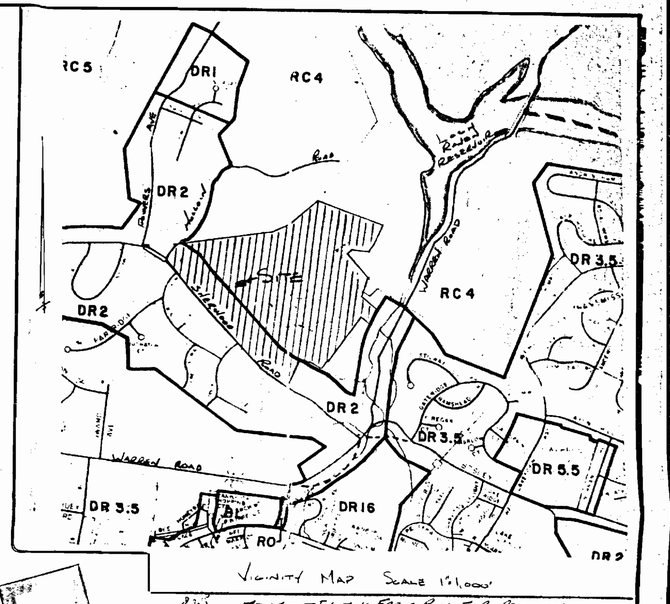
6. Environmental protection agency standards and guidelines relating to radiation emissions shall be met at all times. [Bill No. 64, 1986.]

7. When the use is terminated, the structure shall be removed. [Bill No. 64, 1986.]

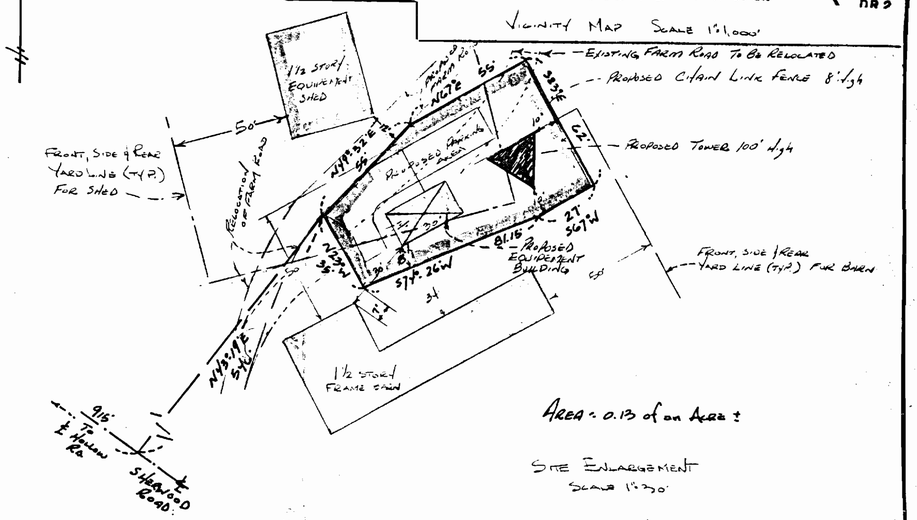
8. Every five years, or sooner in the event of substantial damage, a certification by a professional engineer registered in Maryland a certification by a Maryland registered professional engineer shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure meets all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification. [Bill No. 64, 1986.]

9. No white stroboscopic lights are permitted. [Bill No. 64, 1986.]




VICINITY MAP SCALE 1"=1000'




AREA = 0.13 of an ACRE ±

SITE ENLARGEMENT
SCALE 1"=30'

502.7.A. DOES NOT APPLY BECAUSE TOWER IS LESS THAN 350' HIGH

NOTES FROM SECTION 502.7.C, BCZR INCORPORATED WITH THIS PLAN

4. The structure shall be enclosed within a locked, chain-link fence, or comparable wall or structure, at least 8 feet high. [Bill No. 64, 1986.]
5. A landscape plan, designed to minimize the visual impact of accessory buildings and the lower portion of the structure shall be submitted to and approved by the Director of the Office of Planning and Zoning. [Bill No. 64, 1986.]
6. Environmental protection agency standards and guidelines relating to radiation emissions shall be met at all times. [Bill No. 64, 1986.]
7. When the use is terminated, the structure shall be removed. [Bill No. 64, 1986.]
8. Every five years, or sooner in the event of substantial damage, a certification by a professional engineer registered in Maryland a certification by a Maryland registered professional engineer shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure meets all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification. [Bill No. 64, 1986.]
9. No white stroboscopic lights are permitted. [Bill No. 64, 1986.]

PLAT TO ACCOMPANY PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCES FOR A COMMUNICATION TOWER

LOCATED IN

8TH ELECTION DISTRICT - BALTIMORE COUNTY, MD.
3RD COUNCILMANIC DISTRICT

OWNER: JOSEPH J. McMASTER IV, ESQ. DEED REF: G.L.B. No. 2047/643
426 SHERWOOD ROAD
CLARKSVILLE, MD.

PETITIONER: SOUTHWEST REGIONAL SYSTEMS INC.
T/A CELLULAR ONE, 7855 WALKER DRIVE, GREENBELT MD. 20770

GROSS AREA WHOLE TRACT : 104.7 AC. ±
AREA FOR SPECIAL EXCEPTION = 0.13 AC. ±
EXISTING ZONING: RC4 & DR2

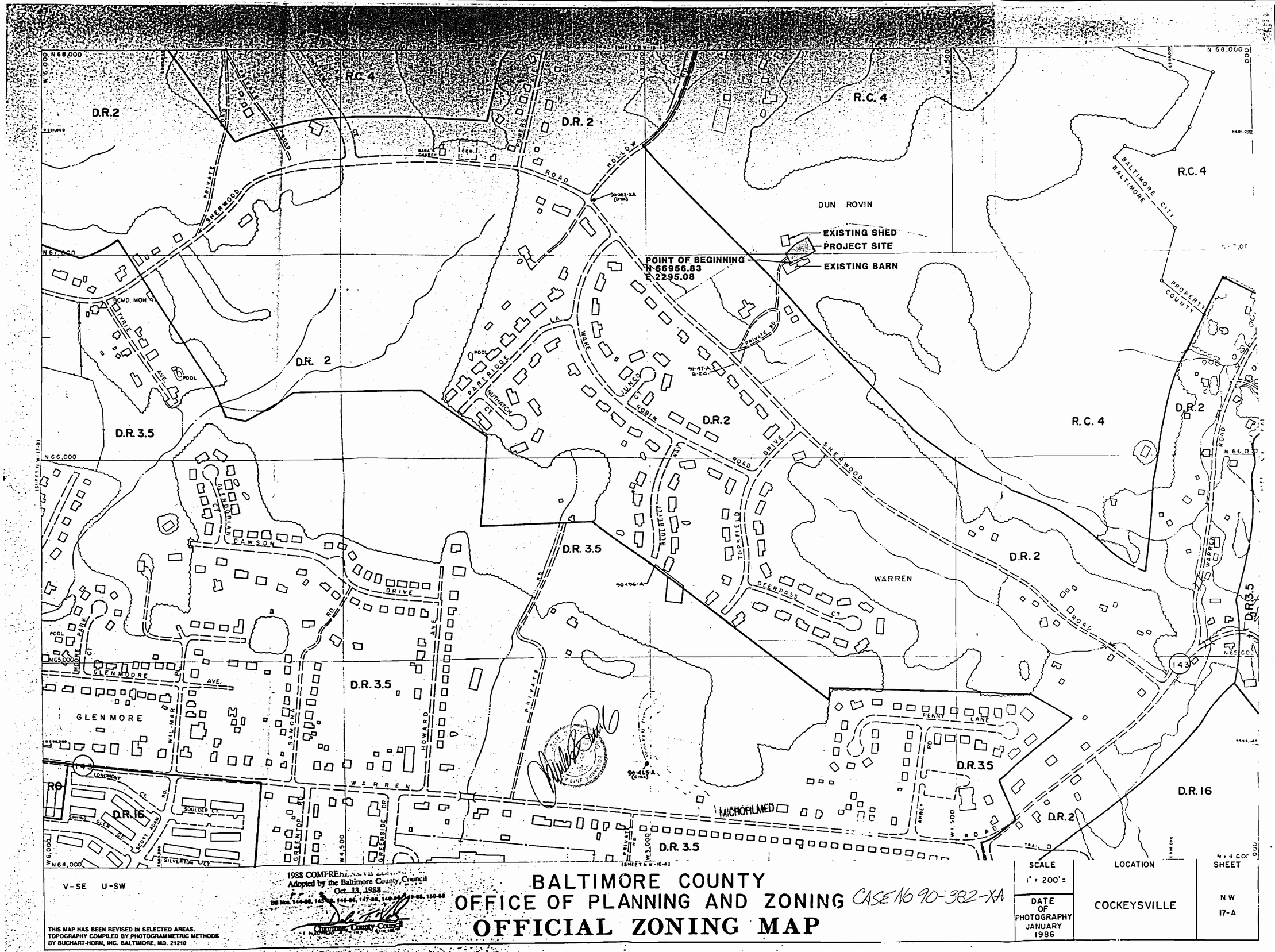
TOWER: 100' MONOPOLE
BUILDING: 14'-4"x30' (MAX. 15' H'GT.)

ADD SPECIAL AREA OF 2.88 AC. 8-03-90
REVISE BUILDING SIZE 3-27-90
REVISIONS 1-17-90
ADD ANTENNA 1-10-90
REVISED 1-08-90
11-14-89

SCALE 1"=200'

GERHOLD, CROSS & ETZEL
Registered Professional Land Surveyors
412 Delaware Avenue
TOWSON, MARYLAND 21204

Pet Ex #1
11/14/91
NOTE: NOT COMPOSED




V-SE U-SW

1988 COMPREHENSIVE ZONING
Adopted by the Baltimore County Council
Oct. 13, 1988
Bill Nos. 144-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88

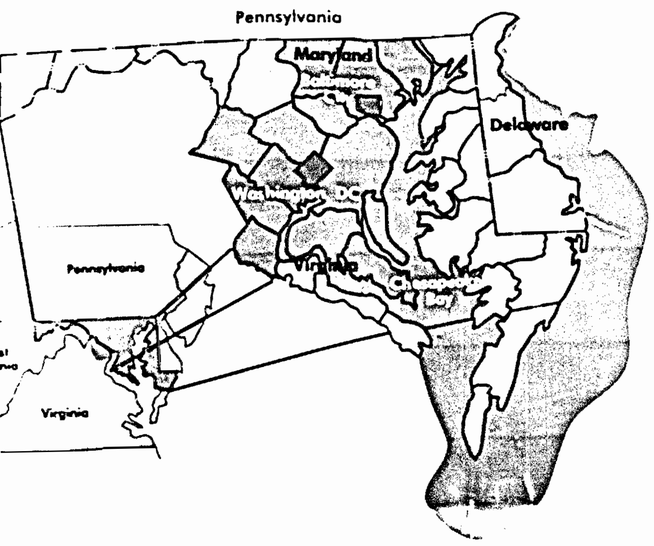
Chairman, County Council

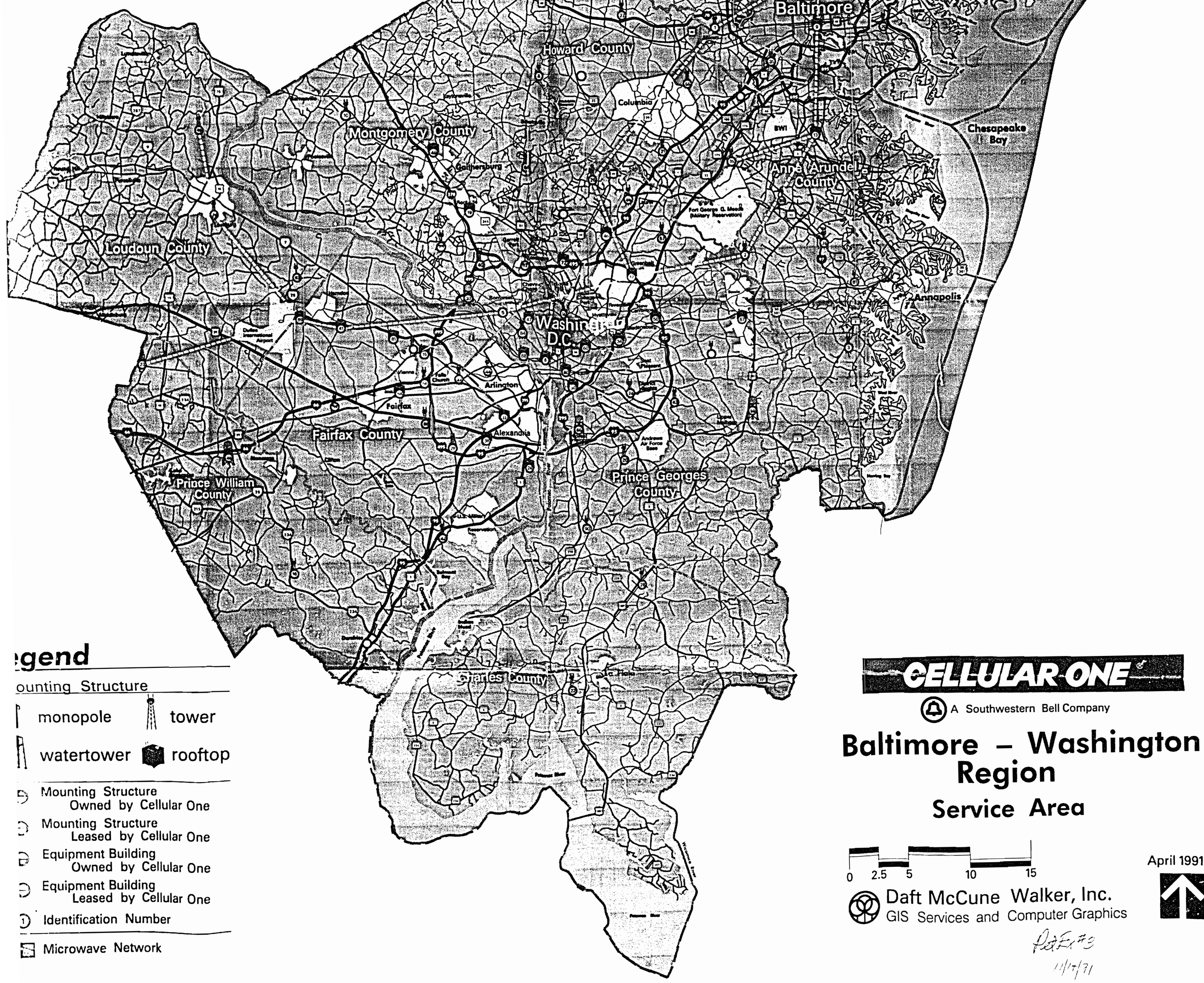
THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

# BALTIMORE COUNTY
# OFFICE OF PLANNING AND ZONING
# OFFICIAL ZONING MAP

CASE NO 90-382-XA

| SCALE | LOCATION | SHEET |
|---|---|---|
| 1" = 200'± | COCKEYSVILLE | N.W 17-A |
| DATE OF PHOTOGRAPHY JANUARY 1986 | | |




## Legend

Mounting Structure

- monopole
- tower
- watertower
- rooftop

- Mounting Structure Owned by Cellular One
- Mounting Structure Leased by Cellular One
- Equipment Building Owned by Cellular One
- Equipment Building Leased by Cellular One
- Identification Number
- Microwave Network

CELLULAR ONE®

A Southwestern Bell Company

# Baltimore – Washington Region

## Service Area

0 2.5 5 10 15

April 1991

Daft McCune Walker, Inc.
GIS Services and Computer Graphics

Pet Ex #3
11/7/91

requirements. Cellular One and Mr. McMaster (hereinafter collectively referred to as "Cellular One" or "Appellants") have applied for the requisite special exception and variances. Appellees in this matter have opposed Cellular One's petitions. After months of negotiation, the matter was heard by the Zoning Commissioner, J. Robert Haines. The Zoning Commissioner denied Cellular One's special exception petition, thereby rendering the proposed variances moot.

Cellular One has brought this timely appeal before the Board of Appeals. A hearing has been conducted before the Board. This hearing lasted for four days and involved numerous witnesses and exhibits. Pursuant to section 501.6 of the Baltimore County Zoning Regulations, this appeal has been heard de novo. Thus, the Zoning Commissioner's findings are not before this Board for consideration. At the conclusion of the hearing, the Board requested that counsel prepare memoranda explaining their relative cases. The following is an explanation of the legal standards applicable to this case, and the factual evidence addressing those standards. Upon reviewing this information, it is patent that Cellular One has met its burden of proof as to both the special exception and the variances. There being no legal justification for impeding Cellular One's petitions, these petitions must be granted.

The following legal discussion is organized as follows. First, brief descriptions of the site and Cellular One's need for such a site are set forth. Next, the legal and factual issues



concerning the proposed special exception are explained. In response to the Board's request, the so-called "diligent search" requirement is addressed in detail. Finally, the legal and factual issues relating to the proposed variances are examined. A copy of the hearing transcript is attached for the Board's review.

**II. THE SITE**

Cellular One has proposed to erect its cell site on the farm of Joseph and Vivian McMaster. This farm is located at 426 Sherwood Road, Cockeysville, Maryland. See the Hearing Transcript, Volume I, at 38, hereinafter cited as "T1-__". The farm has a total acreage of 104.7 acres. (T1-38). The relevant portion of the property rests within an R.C.4 zone. (T1-39).

Currently, the property is a working farm. Thus, it consists of cropland, pastureland, pig farming facilities and some cattle grazing areas. (T1-39). Approximately fifty (50) per cent of the farm is wooded. (T1-39). The majority of the Sherwood Road frontage is tree-lined, thereby naturally camouflaging the proposed cell site.

The proposed special exception site is located on the northeast portion of the farm. (T1-39). This site occupies .13 acres. (T1-45). In the general area of the special exception site are two one and one-half story barns and a one story barn. (T1-40). These farm buildings also serve to obstruct the view of the base of the monopole and the equipment building.



Cellular One plans to locate two structures on the proposed site. The first is a one hundred (100) foot tall, freestanding monopole tower. (T1-43). From the base of this monopole to the nearest property line is approximately six hundred (600) feet. (T1-46). From the base of the monopole to the nearest off-site dwelling is approximately seven hundred (700) feet. (T1-46). In addition to this monopole, Cellular One plans to erect an unmanned equipment building with dimensions of fourteen feet by thirty feet. (T1-43). The farm has a ground elevation of approximately six hundred (600) feet above mean sea level. (T1-22).

Cellular One is currently leasing the special exception area of the McMaster property. (T2-27). This lease agreement was executed on September 22, 1989. (T2-27).

**III. THE CURRENT PROBLEM**

As explained above, Cellular One provides a mobile telecommunications service. It operates under an FCC license which requires it to provide this service to its subscribers. (T1-75). The primary thrust of this service is to provide a system for automobile-based telephones. Cellular One operates its network throughout a 5,000 square mile region consisting of the Baltimore/Washington metropolitan area. (T1-77). The network contains three hotspots: downtown Baltimore, downtown Washington, and greater Towson. On any given day, any of these three areas may be the most heavily-used part of the network. (T1-83).



The "car phone" system is quite simple. Each car phone is capable of both receiving and sending transmissions. These transmissions are sent from the car phone unit itself to antennae which are mounted at cell sites. The antennae, placed at high elevation, then relay the communication throughout the system. As a Cellular One customer travels throughout the Baltimore/Washington area, his signal is "handed off" from cell site to successive cell site. Since each cell site has a limited range, or "coverage", the concept of "hand off" allows the customer to experience an uninterrupted call.

It is easy to envision the cell sites as a network of overlapping umbrellas, which together provide a large area of overall coverage. The diameter of each umbrella would be the "coverage" of each cell site. Of course, an area may lack sufficient coverage if there are not enough "umbrellas". When a driver enters a "hole" in coverage between cell sites, he may experience a deterioration in the quality of his signal. (T1-80-81). This problem may be sufficiently severe to terminate the signal entirely. (T1-81).

Despite the importance of the Towson service area, Cellular One is experiencing coverage problems in that area. Currently, there is insufficient coverage in the area north of Towson and south of Hereford. (T1-82-83). This area is heavily-travelled by commuters who place a substantial demand upon Cellular One's network. Thus, the important areas of Towson proper,



Lutherville, Timonium, Cockeysville, the Loch Raven Reservoir area, and parts of the Parkton/Sparks area are without sufficient coverage. (T1-83).

In addition to coverage problems, the Towson area also suffers from a lack of "capacity". (T1-91-92). Capacity is the measure of how many calls a cell site can handle at any given time. (T1-81). Each call is carried on one "channel". (T1-82). The FCC limits the number of channels per cell site to 395. (T1-82). Thus, each cell site can handle only 395 calls at a given time. (T1-82). Since the Towson area vies with Baltimore and Washington for overall traffic supremacy, the capacity needs of the Towson area are great.

Thus, the Towson/I-83 corridor area provides two separate but related problems concerning coverage and capacity. Cellular One has designed a tripartite solution to these problems. This solution was explained at the hearing by Jerry Bialecki, Cellular One's chief design engineer (T1-70 et seq.). Mr. Bialecki indicated that Cellular One's dilemma will be best resolved by the placement of three cell sites in the northern Baltimore County area. These sites would be located in Cockeysville (toward the Loch Raven Reservoir), Mays Chapel and Ruxton. (T1-91). Each of these three sites will solve one part of the current problem. Since the capacity and coverage problems are so extensive, none of these sites will be acceptable individually to



create sufficient coverage and capacity. (T1-91-93). Thus, the proposed "Loch Raven" site is an integral part of the solution to Cellular One's Towson-area problems.

**IV. THE SPECIAL EXCEPTION**

As explained above, Cellular One seeks to place a wireless transmitting and receiving facility on the McMaster farm. The Baltimore County Zoning Regulations allow "[w]ireless transmitting and receiving structures" to be placed in R.C.4 zones by special exception. See B.C.Z.R. section 1A03.3.B.14.

In order to qualify for a special exception, an applicant must demonstrate the proposed use will not:

1) be detrimental to the health, safety, or general welfare of the locality involved;

2) tend to create congestion in roads, streets or alleys therein;

3) create a potential hazard from fire, panic or other dangers;

4) tend to overcrowd land and cause undue concentration of population;

5) interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;

6) interfere with adequate light and air;

7) be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor

8) be inconsistent with impermeable surface and vegetative provisions of these Zoning Regulations.



See B.C.Z.R. section 502.1.a-h.

In addition to these general provisions, there is a specific section addressing the additional special exception requirements placed upon wireless transmitting and receiving facilities in the D.R., R.C. and R-O zones. This section provides that the following additional requirements apply:

1) petitioner shall have the burden of establishing that it has made a diligent search for a location within a business, office or industrial zone, or for mounting on any existing structure over fifty (50) feet in height and that, due to valid considerations, including but not limited to, location, economic, elevation, engineering or technologic feasibility, no appropriate location is available;

2) the setback of such structure from the nearest property line shall equal or exceed two (2) times its height above grade level;

3) the structure shall be located on a lot of at least five (5) acres;

4) the structure shall be enclosed within a locked, chain-link fence, or comparable wall or structure, at least 8-feet high;

5) a landscape plan, designed to minimize the visual impact of accessory buildings and the lower portion of the structure shall be submitted and approved by the Director of the Office of Planning and Zoning;

6) Environmental Protection Agency standards and guidelines relating to radiation emissions shall be met at all times;

7) when the use is terminated, the structure shall be removed;

8) every five years, or sooner in the event of substantial damage, a certification by a professional engineer registered in Maryland...shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure meets all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification;



9) no white stroboscopic lights are permitted;

10) in order to insure against adverse effects on its surroundings, an environmental impact statement, as defined in section 101, shall be submitted to the Zoning Commissioner or, in the event of an appeal, to the County Board of Appeals of Baltimore County. Such environmental impact statements shall include information on emission levels and shall evaluate the impact of the proposed structure on the ecosystem; and based on such environmental impact statement and other evidence produced at the hearing, it must appear that the proposed structure will not have a substantial adverse impact on the environment; and

11) the Zoning Commissioner or, in the event of an appeal,the County Board of Appeals of Baltimore County shall determine that there will not be a substantial adverse impact on surrounding property values, park lands or open space.

See B.C.Z.R. section 502.7.C.1-11.

While these numerous requirements may appear at first blush to be overwhelming, it is fair to say that they largely address two separate concerns: health issues and public safety issues. Perhaps straddling this dichotomy is the "diligent search" requirement of section 502.7.C.1, which will be addressed separately.

**V. THE LAW APPLICABLE TO SPECIAL EXCEPTIONS**

When considering these various requirements, the purpose of the special exception scheme must be borne in mind. By definition, a special exception use is somehow different from uses permitted as a matter of right. As the Court of Appeals has indicated, however, special exceptions are not freak aberrations to the overall zoning scheme, but rather legislatively-encouraged user. See Schultz v. Pritts, 291 Md. 1, 20-22 (1981). Thus, the legislature has already weighed the advantages and disadvantages

associated with allowing a particular use in a particular zone. Id. at 21. Since the legislature has already weighed these factors, a special exception application may be denied only when there exist "facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects beyond those inherently associated with such a special exception use irrespective of its location within the zone." Id. at 23. (emphasis added).

The rationale underlying Schultz is clear. Simply put, by allowing for a particular use pursuant to a special exception, the legislature has already weighed the advantages and disadvantages associated with placing a certain use in a given zone. Upon considering these factors, the County Council has determined that a special exception use should be allowed, subject to certain restraints. Thus, to avoid acting as a superlegislature, the Board should determine only whether the particular proposed use has drawbacks beyond those inherently associated with such uses.

**A. DILIGENT SEARCH**

**1. Statutory Requisites Concerning Diligent Search**

As explained above, there are certain additional conditions which apply to special exceptions for wireless transmitting and receiving facilities which are located within residential zones. Most notable among these is the so-called "diligent search" requirement. As the Board has expressed particular interest in



this requirement, it will be addressed in detail. The language of the diligent search requirement is straightforward, and provides in pertinent part;

> [p]etitioner shall have the burden of establishing that it has made a diligent search for a location within a business, office or industrial zone, or for mounting on any existing structure over fifty (50) feet in height and that, due to valid considerations, including but not limited to, location, economic, elevation, engineering or technologic feasibility, no appropriate location is available.

B.C.Z.R. section 502.7.C.1.

Clearly, this section does not limit the location of cell sites to business, office or industrial zones. Rather, it merely requires an applicant to place a cell site in a commercial zone unless there are "valid considerations" for not doing so. The section mentions that some valid considerations include "location, economic, elevation, engineering or technologic feasibility". Thus, a petitioner need only prove that such valid considerations render the commercially-zoned properties in the area inappropriate.

Cellular One has met its burden of showing such valid considerations. Specifically, Cellular One has shown that all of the considerations enumerated in section 502.7.C.1 require that the proposed cell site be placed outside of the relevant commercially-zoned areas.

When reviewing this case, the Board must keep the language of section 502.7.C.1 in mind. The statute does not require a petitioner to find the single best location for its proposed use.



Rather, the statute merely requires that a petitioner must investigate the feasibility of locating its cell site within a commercial zone or atop an existing structure. If no such site is feasible, the petitioner may locate its site in an R.C., D.R. or R-O zone.

**2. What Is A Diligent Search**

Section 502.7.C.1 requires a petitioner to make a "diligent search" for viable tower locations in a business, office, or industrial zone or upon an existing structure over fifty feet in height. The section does not define the term "diligent search". Counsel for Cellular One have been unable to locate any judicial interpretation of this term in any relevant context. Thus, the Board may interpret this term from a blank slate.

It is expected that Protestants will offer a narrow interpretation of diligent search. Presumably, they will argue that any "search" conducted by Cellular One ended on the day that Cellular One signed its lease with Joseph McMaster. This analysis, while simple to apply, fails to accomplish the underlying purposes of section 502.7.C.1. The County Council did not create time parameters for the diligent search requirement. The purpose of section 502.7.C.1 is not to establish mechanistic procedures for diligent search, but rather to ensure that a petitioner has not overlooked viable sites which are either pre-existent or outside of residential zoning.



Cellular One asserts that the underlying purposes of section 502.7.C.1 are best served by applying the statute as it is written. Thus, the issue before this Board is whether Cellular One has located and given sufficient consideration to sites outside of the residential area or atop existing structures. This search obligation is ongoing. It does not end at some preconceived point in time. Cellular One has treated the diligent search requirement as ongoing. Although Cellular One located the McMaster site in May of 1989, it has continued to examine and test alternative sites. Cellular One did not rest after it executed the McMaster lease.

Protestant's position fails to appreciate the continuing nature of the diligent search requirement. In essence, Protestants take the formalistic position that Cellular One should be punished because it was fortunate enough to locate a viable site early in the game. This position might possess some merit but for the fact that Cellular One continued to examine and evaluate other sites long after the McMaster lease was signed. Do Protestants suggest that Cellular One should be chastised because it took steps to secure a highly desirable site? Do Protestants suggest that the outcome of this case would be different if Cellular One had followed exactly the same course, but waited six months or a year to sign the McMaster lease? Surely, the diligent search requirement cannot hinge upon such formality.



Protestants cling to this formality, however, since there can be little doubt that Cellular One's search, when viewed as a whole, was "diligent". As is explained below, Cellular One has given ample consideration to commercially zoned areas as well as existing structures. After balancing all of the valid considerations enumerated in section 502.7.C.1, Cellular One has determined that neither the commercial areas nor the existing structures are viable alternatives. Thus, section 502.7.C.1 allows Cellular One to construct its cell site in an R.C. zone.

**3. Technical Limitations On The Location Of The Loch Raven Site**

Mr. Bialecki first determined that a Loch Raven-area site was necessary in September of 1987. (T1-93). Using various tools and methods of calculation, Mr. Bialecki determined where in the Loch Raven area the cell site would need to be placed in order to be successful. On September 10, 1987, Mr. Bialecki depicted this area on a map. (T1-94). Thus, this map outlined the area necessary to meet Cellular One's technological parameters. The map is currently before the Board as Petitioner's Exhibit 5.

The map was to provide a "search area" to guide Cellular One's real estate department in the location of a cell site. (T1-95). Although this first search area map was created in 1987, no actual search was conducted at that time.

In March of 1989, Mr. Bialecki produced a second search area map for the Loch Raven site. This second map was generated by using more advanced computer technology. The 1989 search map is



before the Board as Petitioner's Exhibit 6. The 1989 map provided a more accurate picture of the necessary geographical location of a Loch Raven cell site.

In a continuing effort to refine the site location process, Mr. Bialecki generated a third search area map in the summer of 1990. (T1-99). This 1990 search map was based upon a new tool for calculating the location of cell sites: an integrated grid system. (T1-99 et seq.). Without belaboring the technical issues, suffice it to say that Mr. Bialecki developed a pattern of locating cell sites in interlocking hexagonal grids. This grid system allowed for better planning of site location by ensuring that all potential sites would function efficiently within the overall system. (T1-198). Such greater efficiency will ultimately result in the need for fewer overall sites. Mr. Bialecki first developed the grid system for the Washington area, and then extended the grid outward in all directions. (T1-100). In order for a site to be acceptable, that site would have to be located within a particular grid. Thus, the grid nearest to the Loch Raven area became the search area in the summer of 1990. The proposed site is within this grid. (T1-107). See the search map which displays the grid pattern for the Loch Raven area which is before the Board as Petitioner's Exhibit 9.

The grid system has become the chief planning tool for Cellular One's overall network. It is so important as a planning tool that Cellular One will no longer build sites which do not comport with the grid system. (T1-200 et seq.). This commitment



is so strong that Cellular One has actually terminated two sites which did not satisfy the grid system requirements. (T1-201). Thus, the grid system sufficiently revolutionized the site selection process that Cellular One would not have pursued the McMaster site if it had failed to satisfy the grid requirements. (T1-200, 201).

It is clear, therefore, that Cellular One has continued to perfect the Loch Raven search area. Although the search area has undergone three incarnations, the McMaster farm has remained a viable site. It should be noted, however, that Mr. Bialecki merely provided the technological parameters for the search. He did not actually select the site in question. That task fell to Cellular One's director of real estate, Amy O'Rourke.

**4. The Site Selection Process**

As Cellular One's director of real estate, Amy O'Rourke is charged with the task of locating particular sites for cellular facilities. (T2-7). When searching for a Loch Raven site, Ms. O'Rourke received guidance from several areas. First, Ms. O'Rourke had to stay within the boundaries of the various search area maps provided by Jerry Bialecki. (T2-11). The first map utilized by Ms. O'Rourke was the 1989 map which listed Cellular One's total elevation requirement as approximately 700 feet. (T2-14).

In addition to these technological limitations, Ms. O'Rourke was bound by Cellular One's policy concerning the location of cell sites. This policy consists of a prioritization of



potential cell site locations. Cellular One considers sites in the following order: 1) existing broadcast/communications structures; 2) existing water towers or standpipes; 3) property zoned for commercial, industrial or public utility use; 4) local or county government facilities such as police and fire stations; and 5) property with the least residential density and/or property that will provide natural screening to the public at large. (T2-8).

Ms. O'Rourke began to consider potential sites in April of 1989. (T2-13). The launching point for her actions was the 1989 search map produced by Jerry Bialecki. Ms. O'Rourke initiated her search by examining the overall topography of the search area. Given Cellular One's policy of locating sites within commercial zones, Ms. O'Rourke naturally looked to that part of the search area lying west of York Road. Most of this area is commercially-zoned. Unfortunately, this commercially-zoned land site is in a valley with above-ground elevations ranging from 200 to 400 feet. (T1-122 and T2-14). Since Cellular One requires a total above-ground elevation of approximately 700 feet, low ground elevations require tall structures. In this case, the low elevations of the commercially-zoned areas would have created the need for a 300-400 foot tower. (T2-15).

The differences between a 300-400 foot tower and a 100 foot tower such as that proposed for the McMaster farm are staggering. First, the very shape of the structures is different. For a 100 foot application, Cellular One utilizes a "monopole". (T2-25).

A monopole is a single, self-supporting pole which resembles a tall telephone pole. A tower of 300 feet or more requires significantly greater structural integrity. Thus, rather than erecting a monopole, Cellular One must erect a three-sided lattice-type tower. (T2-15). Lattice-type towers have steel cross-members which are woven through their three legs for structural purposes. (T2-16).

Obviously, a lattice-type tower creates a much greater visual impact than a monopole. The visual impact of a lattice-type tower extends beyond its mere enormity. The FAA requires that all structures in excess of 200 feet in height be lighted with red lights. (T2-17). Additionally, such structures must be painted red and white to further draw attention to themselves. (T2-16).

Given their greatly increased size and stature, lattice-type towers are vastly more expensive than monopoles. A vivid illustration of this cost factor was provided to the Board by Joseph Joyce, who is Cellular One's construction manager. (T2-103). As construction manager, Mr. Joyce is intimately familiar with the costs associated with building towers. (T2-104). Mr. Joyce testified that Cellular One is currently erecting a 300 foot lattice-type tower in Dumfries, Virginia. (T2-104). The total cost of erecting this tower, not including any real estate considerations, will be approximately $159,000.00. (T2-105). Cellular One is also constructing a 350 foot lattice-type tower



in Tapahanac, Virginia. The total cost of this tower, not including any real estate considerations will be approximately $180,000.00. (T2-107).

Mr. Joyce was able to contrast these lattice-tower costs with the costs associated with a 100 foot monopole, such as that proposed for the McMaster farm. Cellular One has already purchased steel for the Loch Raven site at a cost of $20,000.00. (T2-107). By comparing the Loch Raven site to a recently completed 90 foot monopole in Chevy Chase, Mr. Joyce was able to extrapolate the remaining costs of the Loch Raven site to be approximately $20,000.00. Hence, the total estimated cost of the Loch Raven site will be approximately $40,000.00.

The implications of this cost comparison are immense. If Cellular One erects a tower in the commercially-zoned valley west of York Road, that tower must be 300-400 feet tall. The cost of a 300 foot tower will be approximately $159,000.00, thus exceeding the approximate cost of the McMaster monopole ($40,000.00) by $119,000.00. A 350 foot tower, costing approximately $180,000.00, will eclipse the cost of the McMaster monopole by $140,000.00. Although no cost estimates were available for a 400 foot tower, it can only be assumed that such a tower would be even more expensive than a 350 foot tower.

In addition to examining the feasibility of the commercially-zoned areas, Cellular One considered the appropriateness of locating a cell site on an existing tower or other structure. To this end, Cellular One has located all of



the existing towers, tall buildings and government facilities within the area. Most of these sites have been tested using computer models for technological feasibility. Some were not tested due to their proximity to tested sites or obviously insufficient elevation. The tested sites include: the Warren Elementary School water tower; the Dulaney Valley water tower; the Norwich Circle water tower; the Mays Chapel water tower; a building at Halesworth and York Roads; the McCormick Building; the Genstar Quarry; and the existing tower on the Southern States property. Largely due to elevation problems, none of these existing structures within the search area is technologically feasible. (T1-111).

Certainly, Cellular One would utilize an existing tower if possible. Such a use would be consistent with Cellular One's corporate policy, which requires the company to consider existing structures before considering virgin sites. Additionally, the utilization of an existing structure would allow Cellular One to avoid the restrictions of 502.7.C.1. Finally, by utilizing an existing structure, Cellular One could have avoided a long and costly dispute with two powerful community associations.

Despite the many advantages associated with selecting an existing site, Cellular One did not do so. There can be only one explanation for this decision--that the pre-existing structures simply would not do the job. There is no other plausible explanation for Cellular One's decision not to take this easier and less costly path.



In addition to analyzing maps and topographical data, Ms. O'Rourke hired Fred Kruhm, a local real estate consultant, to conduct a field search. Mr. Kruhm was given a copy of the 1989 search area map, and also provided with Cellular One's elevation requirements. (T2-24). Mr. Kruhm was further made aware of Cellular One's corporate policy that commercial/industrial sites be given first priority. (T2-45). Armed with this information, Mr. Kruhm began to physically examine the area. In May of 1989, Mr. Kruhm contacted Ms. O'Rourke with two potential sites. (T2-25). The first site was the McMaster farm. The second site, although not within the then-prescribed search area, was nevertheless tested and found to be technically deficient.

After the McMaster site was located, it was tested by Mr. Bialecki. His conclusion was that the McMaster site would meet Cellular One's needs in the area quite well. (T1-90, 110). Further, given the property's high above-ground elevation of 590 feet, the site would require only a 100 foot monopole tower. Of course, this site was re-evaluated after the grid system was developed in 1990. Since the site did comport with the requirements of the grid system, it remained a viable site candidate. (T1-107-109).

Thus, the ongoing search of the Loch Raven area provided Cellular One with three distinct options. First, Cellular One could erect a 300-400 foot lattice-type tower in the



commercially-zoned valley west of York Road. This option would be at least 300% more expensive than placing a 100 foot monopole on the McMaster property.

The second option would be to utilize an existing tower or other tall structure. This option would have numerous economic and logistical advantages. Despite these advantages, the existing sites are technologically deficient.

The final option was to look toward the surrounding residential areas. Located within the search area, but within an R.C. zone, was the McMaster farm. The farm consisted of 104.7 acres and was heavily wooded. Further, the farm's high elevation necessitated only a 100 foot monopole. Finally, the site met Cellular One's technological needs.

Faced with these three options, Cellular One made the only rational choice--the McMaster farm. This decision was based solely upon the "valid considerations" of "location, economic, elevation, engineering or technologic feasibility". B.C.Z.R. section 502.7.C.1. The instant case provides a clearcut example of how section 502.7.C.1 was intended to work. It is patent from the statutory language that the County Council sought to avoid the placement of towers in residential areas when there exist viable locations for those towers in commercial zones. If, however, the aforementioned "valid considerations" render the commercially-zoned areas untenable, a tower may be placed in an R.C., D.R. or R.O. zone.



Clearly, Cellular One has "searched" the Loch Raven area. This search has continued for several years. It has taken many forms, including topographical analysis, site testing and in-field observation. The simple conclusion of this search is that factors of "location, economic, elevation, engineering [and] technologic feasibility" render the neighboring commercial zones and existing structures in excess of fifty feet untenable. Thus, Cellular One may locate its cell site within an R.C. zone.

**B. THE REMAINING SPECIAL EXCEPTION REQUIREMENTS**

The diligent search requirement of section 502.7.C.1 is but one of many requirements associated with a special exception. These additional requirements are set forth earlier in this Memorandum, and will not be recounted here. The Board has expressed its opinion that the diligent search requirement will be the true battleground for this special exception. Thus, the remaining special exception requirements will be dealt with in summary fashion.

**1. The Special Exception Requirements Of B.C.Z.R. Section 1A03.3.B.14**

In order to expeditiously cover the various requirements contained in section 1A03.3.B.14, the individual requirements will be addressed in question and answer form as follows:

1. Will the proposed use be detrimental to the health, safety, or general welfare of the locality involved?



George Gavrelis testified that the cell site will not create any detrimental affect on the general health, safety, or welfare of the locality. (T2-142). This was particularly true in light of the large nature of the McMaster property. (T2-142).

2. Will the proposed use tend to create congestion in roads, streets, or alleys?

Mr. Gavrelis testified that the site will not create any such congestion since it will be unoccupied and will be visited only twice a month for routine maintenance. (T2-138).

3. Will the proposed use create a potential hazard from fire, panic or other dangers?

Mr. Gavrelis testified that the proposed site will create no such hazards since it will be in compliance with all applicable codes. (T2-138-139).

4. Will the proposed use tend to overcrowd land and cause undue concentration of population?

Mr. Gavrelis testified that, since the site will be visited only twice monthly, it will create no such overcrowding or undue concentration. (T2-139).

5. Will the proposed use interfere with adequate provisions for schools, parks, water, sewerage, transportation, or other public requirements, conveniences or improvements?

Mr. Gavrelis testified that the proposed special exception "will in effect have no impact on the requirements of the county or other public infrastructure". (T2-139). Rather, the proposed cell site will provide a public convenience. (T2-140).



6. Will the proposed site interfere with adequate light and air?

Mr. Gavrelis testified that light and air will not be affected in the instant case as "[t]he monopole will cause a very negligible shadow and on no adjoining property". (T2-140).

7. Will the proposed special exception be inconsistent with the purposes of the property's zoning classification or in any other way inconsistent with the spirit and intent of the zoning regulations?

Mr. Gavrelis testified that no such inconsistency will resolve from the placement of this cell site. (T2-140 et seq.). Mr. Gavrelis noted that the proposed cell site will not be detrimental to the surrounding watershed or to the resources of the public water supply. (T2-140). Further, he noted that radio receiving and transmitting facilities are specifically enumerated special exception uses. (T2-140-141).

8. Will the proposed use be inconsistent with impermeable surface and vegetative provisions of the zoning regulations?

Mr. Gavrelis testified that impermeable surface and vegetative provisions will be virtually unaffected by this site. Given the extremely small area of space taken up by the monopole and the accessory building, there will be little, if any, measurable affect upon impermeable surface or vegetative conditions. (T2-141-142).

examination of alternatives sites between the time Kruhm's report was received and the signing of the lease with McMasters in September 1989"...

10) "(O'Rourke) acknowledged that Kruhm normally would provide more then one (1) site candidate but did not do so in this instance"...

David Ransom-surveyor, was called next by Bell. The Petitioners called Ransom to testify with regard to the variances, the nature of the variances and the proposed reasons why they were needed. Ransom testified that the tower and facility could be moved to the West into the flat area, northeast into another suitable area, southeast of the present site and that the primary purpose for its location was to accommodate Mr. McMasters and his desire to continue farming at the present location and to minimize the effect of the tower on his future ability to use his property.

Bell then called Mr. Frances, as vice-president of network operations of Bell, who testified as to the nature of how the search area was created. It is interesting to note that the search area was created by Bell, with all its stated criteria to serve only Bell's purposes such as; a) Bell's goals to serve the area, b) terrain and elevation, c) tower height, d) consider the use pattern and transmit power, e) coverage of critical areas, f) system integration. He testified that Bell's criteria never included the Baltimore



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County Zoning Regulation requirements in developing the search area.

Mr. Frances further acknowledged that the Valley's Planning Council Agreement, as well as the Zoning Commissioner's decision in the Chestnut Ridge Fire Company case, served to preclude areas west of Interstate 83 from consideration in regard to a location of this tower. He further acknowledged that there were a number of locations along the ridge sites west of Interstate 83, that could have served the goals of the Southwest Bell system.

He presented an analysis of a number of charts entitled Petitioner's Exhibit 13 with base overlay and small charts attached thereto to explore alternative sites such as Genstar quarry, Southern States, Mays Chapel water tank, Warren Elementary School, Dulaney High School Water tank, etc. The thrust of the testimony however, in regard to all of these overlays was that they were conducted and created after the selection of the McMasters property in September 22, 1989. These were done to establish in hindsight that these sites were not appropriate. This analysis, done after the fact, was not in good faith and may not be used as a "boot strap" argument to allow Bell to meet its heavy burden under Section 502.7.C.1.

He also acknowledged that the Cellular One brochure utilized by Bell in their public relations campaign acknowledges the preference by the company of breaking cell sites to include smaller areas to achieve the same objective.



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It is clear from the entirety of his testimony, that Bell could readily achieve all of the goals that it desires simply by establishing a number of smaller cell sites and towers in areas presently zoned commercial, business office or industrial, rather than by selecting a location in a purely residential area, notwithstanding the fact that the cost might be a factor in such a determination. Again, from the testimony of Frances, it is clear that no consideration of the public factors, nor compliance with the Zoning Regulations, played a part in Bell's analyses of the site location. The only concern was in satisfying their own economic and profit objectives.

It is also significant that upon cross examination by the Zoning Commissioner, Mr. Frances acknowledged that at the current time, this system is operational and that it is just the desire to improve this system that results in their proposing this tower on the McMasters property. Given this characterization of Bell's desires, it seems even more appropriate that they comply with the zoning regulations proposed under Section 502.7.C.1. Further, in response to questions from the Zoning Commissioner, Frances acknowledged that multiple small towers could readily solve the problem for Bell and that the corporate decision was made to go with one tower based solely upon economic considerations. He also failed to adequately respond to the Zoning Commissioner's inquiry as to the desirability in using shorter antennae on



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multiple commercial sites to solve Bell's problem.

Bell then called Mr. Birch, representing Versar, Inc. Birch testified in regard to the environmental impact of this project on this site. In testifying in regard to the visual aspects of this tower, on cross examination, it became clear that photographs taken when the Petitioners raised a balloon to the alleged height of the tower were misleading and suspect, especially when one examined the same picture taken on different days from the same location. The height difference was substantial between the alleged height of the balloon versus the alleged height from the previous report as evidenced by Protestant's Exhibit 1. Such visual disparity raises serious doubts on the value of the photographs to establish that this tower will not interfere with the adjacaent neighborhoods.

Mr. Ronald Lippman is an appraiser called by the Petitioners to establish that there would be no economic impact from the tower upon the neighbor property values. While testifying that there would be no negative economic impact on the surrounding property owners, Mr. Lippman did acknowledge that given a home with a tower in the backyard versus one that had no tower, the potential purchaser in his opinion would choose the one without the tower. Whether or not ultimately this affects the values of the comparative sites (which Mr. Lippman testified that he did not believe values would be affected); it is clear that at a minimum, it would take longer



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for the site with the tower to be sold, even if it is sold for the same value as the non-tower site. It is submitted that obviously a delay or any negative factor for the sale of property, has an economic value attached to it even if it is simply that it takes longer to sell the property with a tower. Therefore, the tower does present a negative factor upon those neighboring property owners who are within sight of the tower.

Mr. Jerry Balecki was an engineer for Cellular One who was called by Bell to testify that he prepared the original search area map identified as Petitioner's Exhibit 1. He actually testified that there were two search area maps prepared, one in September of 1987 and one in March of 1989 and indicated as Petitioner's Exhibit 1, The 1987 search area which was submitted as an exhibit in the instant case, indicates a much broader search area. It is clear from the testimony of Mr. Balecki that the determination of a search area was an arbitrary determination from the standpoint of Bell, and that was intentionally narrowed to the present search area based solely upon the fact that the McMasters' property with its height and location, suited the economic and profit purposes of Bell. It is equally clear through the testimony of Balecki, that the search area is one based upon arbitrariness of the Petitioner and in the instant case did not even include any consideration of those living in residental zones or from the zoning standpoint, failing to recognize availability of commercial or industrially zoned property along Interstate 83



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north of Seminary Avenue and south of Hereford. Bell established a high ground designation of McMaster's farm east of Interstate 83 and drew the search area on a geographical line around that farm in order to satisfy their own purpose. Balecki again testified that the considerations for the location of the search area excluded any site west of Interstate 83 (where there were suitable sites) and were based on criteria, all of which benefitted Bell, as opposed to the considerations of the Baltimore County Zoning Regulations, Section 502.7.

Bell called George Gavrellis-Daft McCune & Walker and Dr. John M. Osupchuck. The testimony of Gavrellis in regard to the suitability of this site from a planning standpoint is not relevant to the prerequisite issues which are the paramount concerns in regard to Section 502.7.C.1. and the criteria that the Petitioner must meet and therefore little attention will be given to his testimony as well as that of Dr. Osupchuck who testified basically concerning the health aspects of these towers and microwaves.

### B. PROTESTANT'S CASE

In the Protestant's case Mr. Clay M. Barnes, Steve Rosen and David Baker all testified as individuals, as well as on behalf of the named community associations. They all expressed substantially the same opposition to the proposed tower by Bell to include the fact that this facility was



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located in a residential zone without compliance to the requirements of Section 502.7.C.1. They testified that they believed this location was picked by Bell for height consideration only; that it is a commercial fixture which should not be located in a residential area; and that Bell failed to develop a suitable search area. In addition, they expressed concern for the property value for the surrounding homes as well as the aesthetics of having a tower of this nature located in their neighborhood. Bernard Semon, an appraiser, was called by the Protestants to testify on their behalf and he testified as to his opinion that this tower would have a negative impact on the surrounding properties from an economic standpoint. Mr. Semon further disagreed with the testimony of Mr. Lippman by testifying that this project would be of an economic detriment to the property and the surrounding area.

### LEGAL ARGUMENT

The Petitioner's Petition for Special Exception is filed under the provisions of the Baltimore County Zoning Regulations, Section 502, 502.1 and 502.7. The instant Petition involves not only the typical application of the criteria set forth under Section 501..A through H, but additional ones as established by 502.7. Here, prior to the Zoning Commissioner's determination that this proposed facility does or does not impact Section 502.1, the Zoning Commissioner



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must first determine that the procedural requirements as set forth in 502.7C.1 have been complied with by the Petitioner. The Petitioner has the burden of proving to the Commissioner that it has so complied. Once the determination has been made that the procedural requirements have been satisfied, the Commissioner must then turn to the issue of whether or not there is an impact under Section 502.1 and finally, if he determines that the procedural requirements have been met and the conditions of 502.1A through H have been met, he may then impose the conditions of Section 502.7C.2 through 11. It is submitted that the legislative intent and history before the County Council of Baltimore County in 1986 when they enacted Bill No. 64-86, established that the Council intended that the procedural requirements of the Bill be given as much weight and consideration as the existing criteria under Section 502.1. In addition, they then intended to condition or qualify by statute, the operation of such a wireless transmittirg and receiving by the remaining conditions imposed by 502.7C.2 through 11.

The legislative intent for Bill No. 64-86 finds its origin in a case before the Baltimore County Zoning Commissioner concerning a special exception for a proposed 200' tower in Northern Baltimore County. While the community expressed many concerns regarding the tower, the Deputy Zoning Commissioner finally approved the special exception subject to a number of restrictions. Those restrictions ultimately found their way



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**2. Additional Special Exception Requirements Of Section 502.7.C**

As explained above, section 502.7.C provides certain additional special exception requirements for radio transmitting or receiving facilities. The first of these requirements is the so-called "diligent search" requirement which has previously been discussed herein. The remaining requirements will be discussed in question and answer fashion as follows:

1. Will the setback of such structure from the nearest property line equal or exceed two times its height above grade level?

In reality, the distance from the cell site to the nearest property line is well in excess of the minimum requirement. However, due to the operation of B.C.Z.R. section 102.2, a "yard" must be created around the special exception area from which the setback must be measured. In light of this technicality, Cellular One has requested a variance from this requirement.

2. Will the structure be located on a lot of at least 5 acres?

The actual size of the lot is 104.7 acres. However, like the setback requirement, the acreage requirement comes into play due to the requisites of section 102.2. Since this requirement will not be met, Cellular One has requested a variance.

3. Will the structure be enclosed within a locked, chain-link fence or comparable wall or structure, at least eight feet high?



Ms. O'Rourke testified that this requirement will be met. (T2-33).

4. Will a landscape plan designed to minimize the visual impact of accessory buildings and the lower portion of the structure be submitted to the Office of Planning and Zoning?

Ms. O'Rourke indicated that this requirement will be satisfied. (T2-33).

5. Will all Environmental Protection Agency standards and guidelines relating to radiation emissions be met at all times?

Dr. John Osepchuk, an expert in the field of radio transmissions and radiation, testified that the EPA does not currently regulate environmental radio frequency levels. Despite this fact, the FCC has adopted what is known as the "C-95" standard for measuring radio frequency radiation. Dr. Osepchuk further testified that the proposed cell site will operate well below the C-95 safety standard, and that the operation of a facility below the C-95 standard presents no health risks. (T3-49).

6. Will the structure be removed when the use is terminated?

Ms. O'Rourke testified that the structure will be removed when its use is terminated. (T2-34).

7. Will proper safety certifications be filed with the county every five years?

Ms. O'Rourke indicated that Cellular One will comply with this requirement. (T2-34).



8. Will the proposed use utilize white stroboscopic lights?

The proposed monopole will not be lighted in any way. (T2-26).

9. Has an environmental impact statement been submitted to the county, and if so, does such environmental impact statement indicate that the proposed use will not have a substantial adverse impact on the environment?

An environmental impact statement was prepared for the McMaster farm by Carey W. Burch. (T3-12). At the hearing, Mr. Burch was recognized as an expert in the area of environmental matters and the preparation of environmental impact statements. (T3-11, 12). Mr. Burch concluded that the proposed site would not create any adverse affects upon wildlife, vegetation, or water resources.

10. Will the proposed use have a substantial adverse impact on surrounding property values, parklands or open space?

Ronald Lipman, an expert in the field of real estate appraising, testified that he had conducted studies concerning the effect of various transmitting structures upon property values. The conclusion of Mr. Lipman's research was that such structures had no impact upon property values. (T2-97-100). Additionally, George Gavrelis testified that the proposed use would not in any way affect nearby parklands or open space. (T2-143-144).



**V. THE VARIANCES**

As referenced above, Cellular One has applied for three variances applicable to this site. Unlike the special exception application, which is driven largely by Cellular One's technical and economic needs, the variance applications are driven by Mr. McMaster's need to limit the impact on his farm as well as a general intention to make the site as unobtrusive as possible. These goals have been met by placing the proposed special exception site between existing farm buildings and in an area heavily screened by existing natural vegetation and topography. Given its dual benefits of maximum unobtrusiveness and minimum interference with farming, the proposed site provides an optimum location. Despite these positive attributes, the proposed site requires three variances due to a technicality created by B.C.Z.R. section 102.2.

The first variance requested concerns section 1A03.4.B.4, which provides that any principal structure constructed in an R.C.4 zone must be at least fifty feet from any lot line. The site as currently configured impinges on this requirement in three ways, thus requiring a variance. First, the .13 site is merely seven feet from one of the barns located on the McMaster farm. Second, there is a distance of only eight feet from the cell site's equipment building to the yard line of the .13 acre site. Finally, there is only twelve feet separating one of the McMaster farm sheds from the .13 acre site line.



The second variance requested concerns section 502.7.C.2. This section provides that the setback of any radio transmitting or receiving structure from the nearest property line "shall equal or exceed two (2) times its height above grade level". The proposed monopole will be 100 feet in height. (T1-43). Thus, this section requires a setback of 200 feet. (T1-44). Cellular One has requested a variance from this provision to allow a setback of 10 feet from the monopole base to the .13 acre site yard boundary.

The final variance concerns section 502.7.C.3. This section requires that a radio transmitting or receiving facility "shall be located on a lot of at least five (5) acres". Although the proposed site is actually part of a 105 acre lot, the operation of section 102.2 requires that the .13 acre special exception area be considered as a separate "lot" for variance purposes.

**A. THE LAW CONCERNING VARIANCES**

Section 307.1 of the Baltimore County Zoning Regulations gives this Board power to grant variances from the height and area restrictions contained with the Regulations. Such variances may be granted when strict compliance with the Zoning Regulations will result in practical difficulty or unreasonable hardship. Further, the proposed variance must be in strict harmony with the spirit and intent of the height and area regulations. Finally, the proposed variance must not pose any substantial injury to public health, safety, and general welfare.



**B. ALL OF THE PROPOSED VARIANCES MEET THE REQUIREMENTS OF B.C.Z.R. SECTION 307.1**

The McMaster property is currently a working farm. This farm, one of the largest open areas in the region, covers approximately 105 acres. (T1-38). Although approximately 50 per cent (50%) of the farm is wooded, much of the farm contains cattle grazing areas, pig farming facilities, and cropland. (T1-39). Mr. McMaster wishes to continue operating his farm in an efficient manner. In order to do so, he specifically requested that the cell site be placed in the area that is currently proposed. (T2-29). The reason for Mr. McMaster's request was that the proposed site would provide the least impact upon farming and other activities. (T2-29). The proposed site occupies an area of the farm which contains several outbuildings, thereby rendering that area unusable for farm purposes. (T1-40).

The proposed cell site as currently configured is approximately 600 feet from the nearest non-farm property line. (T1-46). It is approximately 700 feet from the nearest non-farm residential structure. (T1-46). Further, the proposed cell site is more than 200 feet from any residential structure on the McMaster property itself. (T2-131).

Thus, it is apparent that the variances are necessary to accommodate Mr. McMaster's need to continue to operate his property as a farm without undue difficulty. It is further apparent that the proposed variances meet the requirements of section 307.1. Since the farm is almost 105 acres, the cell site could be placed in an area which would not require the proposed



variances. However, as the preceding discussion makes clear, such a siting would unnecessarily interfere with the operation of Mr. McMaster's farm. Examples of this were provided at the hearing by David Ransone, a registered surveyor. Mr. Ransone pointed out that there are at least three areas on the farm where the cell site could be placed which would not require any variances. (T1-47). However, Mr. Ransone indicated that all of these parcels were currently being used either for pasture or crop land. (T1-47). Thus, by definition, a placement of the cell site in one of these areas would disrupt Mr. McMaster's ability to farm his property. It simply makes more sense to place the cell site among the existing outbuildings in an area which is already unusable as farmland.

**1. The Two Hundred Foot Setback Requirement**

As explained above, section 502.7.C.2 requires that the proposed monopole be setback at least 200 feet from the nearest property line. Since section 102.2 requires that the special exception area be considered a separate "lot" for variance purposes, the monopole will be set back only ten feet from the cell site "lot" line.

Initially, it should be pointed out that, but for section 102.2, this variance would not be necessary. The special exception site is more than 200 feet from the nearest non-farm property line. (T1-46). In any event, it is clear that strict compliance with the Zoning Regulations will result in practical difficulty or unreasonable hardship to Mr. McMaster. The reason



for such practical difficulty is obvious. As previously explained, the cell site will be placed in an area on the McMaster farm which is currently unusable for farming purposes. The only areas on the McMaster farm sufficiently large to accommodate the 200 foot setback are currently used for farming purposes. Thus, if the site were moved to one of these areas, it would impede Mr. McMaster's ability to farm his property. Further, as Mr. Gavrelis pointed out in his testimony, the monopole tower would be more visible if it were placed in an area which was cleared for farming. (T2-133).

It is further apparent that the proposed variances are within the spirit and intent of the Zoning Regulations. As Mr. Gavrelis indicated, the spirit of the 200 foot setback requirement is to provide "distance between a proposed radio receiving and transmitting tower...and nearby residential property". (T2-130). This purpose is accomplished, since "the proposed monopole site is more than 200 feet from the nearest residential structure which is a garage/apartment structure near the barn and it's over 300 feet from the tower to the McMaster's house itself". (T2-131). As stated above, the special exception area is more than 600 feet from the nearest non-farm property line. Thus, the proposed variances are well within the spirit and intent of Zoning Regulations.

It is also clear that the proposed variance will not cause substantial injury to the public health, safety, and general welfare. Since the actual tower will be more than 200 feet from any residential structure, there will be no health or safety impact from the proposed variance. (T2-131).

**2. The Five Acre Lot Requirement**

Section 502.7.C.3 requires that a radio transmitting and receiving facility must be located on a lot of at least five acres. As stated previously, section 102.2 requires that each principal structure maintain its own "yard" for zoning purposes. Therefore, the proposed special exception site is .13 acres. Compliance with the five acre requirement would cause practical difficulty and/or unreasonable hardship to Mr. McMaster. Again, to relocate the proposed site to an area of five acres or more would require the use of precious farmland. Such a use would clearly be detrimental to Mr. McMaster and cause him practical difficulty and/or unreasonable hardship. Further, as Mr. Gavrelis observed, it must be borne in mind that the special exception site is merely a small part of a very large farm. Thus, "[i]n the context of the larger property, we have a much larger site". (T2-132). Thus, the very nature of the farm will insulate the monopole from adjoining residential properties. (T2-132).

Further, Mr. Gavrelis explored the possibility of placing the cell site on a five acre parcel of the McMaster property. Mr. Gavrelis' conclusion was that "it would be a more visible



site, would be a more obtrusive site, and have less favorable relationships with the adjoining residential area or even adjoining residences than is the case with the petition before the Board". (T2-133).

For all of the reasons stated above, this proposed variance will not cause substantial injury to the public health, safety, and general welfare. Simply put, but for the fiction of "lot lines" created by section 102.2, the proposed special exception area would comply with all of the relevant area requirements. Thus, the site's relationship with true adjoining properties is well within the parameters of the area regulations.

**3. The Fifty Foot Lot Line Variance**

Section 1A03.4.B.4 requires that any principal building constructed in an R.C.4 zone must be at least fifty feet from any lot lines other than a street line. Again, given the operation of section 102.2, the boundary of the .13 acre special exception area constitutes a "lot line". Since the special exception area is so small, the monopole is less than fifty feet from the lot line. Given the unique nature of the McMaster farm, the proposed placement of the cell site is ideal. First, the site as placed will not impede Mr. McMaster's ability to farm his land. Second, the proposed special exception site is in a heavily wooded area which will help to disguise the monopole. Finally, the proposed cell site is surrounded by farm out-buildings which will further help to mask the site.



As for the variance itself, it must be observed that, but for section 102.2, the fifty foot setback requirement would be satisfied. It is undisputed that the proposed cell site is well in excess of fifty feet from the nearest non-farm property line.

Strict compliance with the fifty foot setback requirement will cause practical difficulties and undue hardship to Mr. McMaster. Clearly, a relocation of the site would affect Mr. McMaster's ability to farm his property. Again, as Mr. Gavrelis pointed out in his testimony, compliance with the fifty foot setback requirement "would result in a site that's more visible in terms of the base facilities, less well-screened, and I think, one, that would have more of an impact on the neighborhood than would be the case here". (T2-136).

The proposed variance is within the spirit and intent of the Zoning Regulations. This is so because the intent of the Zoning Regulations is "to provide [divisions] between adjoining properties and uses", and "[a]ll of these setbacks are internal to the cell site and internal to the McMaster property". (T2-137). Thus, the proposed site does not vitiate the spirit and intent of the Zoning Regulations.

Finally, the proposed variance will not cause substantial injury to the public health, safety, and general welfare. No such harm will result as the proposed variance is internal to the large farm and has no affect on the cell site's relationship to adjoining properties. Further, the proposed site will "utilize



existing structures to better blend the facility into the context of its environs and the neighborhood and there will be no substantial injury or harm to anybody". (T2-137).

**VI. CONCLUSION**

Although this case has been longwinded and time-consuming, its essence is actually quite simple. It is undisputed that Cellular One requires a cell site in the Loch Raven area. It is further undisputed that the McMaster farm will satisfy Cellular One's needs. Finally, it must be observed that the Loch Raven search area contains some low-elevation areas that are commercially zoned. While a cell site in such low-lying areas may be technologically feasible, it would require the construction of a 300-400 foot lattice-type tower bearing various lights and markings. Such a tower, in addition to being enormously obtrusive throughout the valley, will cost at least 300% more than the McMaster site. All of these facts are elevation-driven.

In light of this set of facts, the only real issue before this Board is whether Cellular One's decision not to seek a special exception for a low-lying commercially-zoned site was based on "valid considerations" such as "location, economic, elevation, engineering or technologic feasibility". This question can only be answered in the affirmative. Cellular One has provided voluminous evidence that its search was driven by the exact factors listed is valid considerations in section 502.7.C.1.



Although Protestants clearly do not want this cell site in their collective "backyard", they have presented no evidence which indicates that Cellular One was motivated by anything other than considerations of "location, economic, elevation, engineering or technologic feasibility". Since the requisites of section 502.7.C.1 have been satisfied, Cellular One's special exception petition must be granted.

As for the variances, the plain fact is that the proposed site is the best possible location for such a use. The monopole and equipment building will be shielded by both tall trees and existing buildings. Existing vegetation already provides screening along Sherwood Road. The site is 700 feet from the nearest non-McMaster residence. As for Mr. McMaster, he can continue to operate his farm as usual without undue hardship.

Although Cellular One is not required to so prove, the evidence shows that the McMaster farm is simply the best location within the search area for a cell site. It is the least visually obtrusive option which is also technically feasible. As the site meets all of the requisites necessary for the special exception and the variances, Cellular One respectfully requests that all of



these petitions be granted.

Respectfully submitted,

G. Scott Barhight

Karl U. Nelson
Whiteford, Taylor & Preston
500 Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204
(410) 832-2000

CERTIFICATE OF SERVICE

I Hereby Certify that on this 30th day of December, 1991, a copy of the foregoing Memorandum In Support Of Appellants' Petitions For Special Exception And Variances was mailed, postage prepaid, to **J. Carroll Holzer, Esquire,** 305 W. Chesapeake Avenue, Suite 105, Towson, Maryland, 21204.

Karl J. Nelson



| | | |
|---|---|---|
| RE: Petition for Special Exception and Zoning Variance | * | BEFORE THE |
| | * | BOARD OF APPEALS |
| Corner NE/S SHERWOOD ROAD, SE/S of HOLLOW ROAD (426 Sherwood Road), 8th Election District | * | OF |
| | * | BALTIMORE COUNTY |
| | * | Case No.: 90-382-XA |
| Southwestern Bell Mobile Systems, Inc. t/a Cellular One | * | |
| Petitioners | * | |
| | * | |

* * * * * * * * * * * * * *

**PROTESTANTS MEMORANDUM**

Sherwood Hill Improvement Association, Inc., Powers Avenue Community Association and Montview Improvement Association, Clay M. Barnes, David Baker, Tom Basham and Steve Rosen, individuals, Protestants, by **J. Carroll Holzer**, their attorney, hereby submit this Memorandum in lieu of final argument before the Loard of Appeals of Baltimore County.

**STATEMENT OF CASE**

The Petitioner, Southwestern Bell, trading as Cellular One (hereinafter "Bell") has filed a Petition for Special Exception and Variance before the Board of Appeals of Baltimore County to permit the operation of a cellular radio telephone transceiver station on property owned by Joseph B. and Virginia McMasters at 426 Sherwood Road in Cockeysville, Maryland. The variance requests approval for the site to occupy an area of approximately .13 acres. A 100 foot monopole type antenna, mounting structure, a brick veneer building 14 x 30 x 10 feet

LAW OFFICES
HOLZER, MAHER
& DENGLO
305 W. CHESAPEAKE AVENUE
SUITE 105
TOWSON, MARYLAND
21204
(301) 825-6960

and a single car parking space will be constructed on the site. The facility will be enclosed by an eight foot high chain link fence topped with barbed wire and the site will remain unmanned except for a visit once every two (2) weeks for routine maintenance. According to the Petitioners, the monopole will have no lights or other beacons.

The Protestants herein, consist of Sherwood Hill Improvement Association, Inc., Powers Avenue Community Association and Montview Improvement Association along with Clay M. Barnes, David Baker, Tom Basham and Steve Rosen, individually, residents of the affected communities.

The Petition for Variance requests variances from Sections 502.7.C.2 and 102.2 of the Baltimore County Zoning Regulations, as well as from Section 502.7.C.3 and 102.2 and from Sections 1A03.4.B.4 and 102.2. The Special Exception is requested pursuant to Section 502 which requires the Board of Appeals to review and apply the criteria set forth in Section 502.1 as well as the additional criteria of Section 502.7 created by Baltimore County Council Bill No. 64-86, permitting wireless transmitting and receiving facilities under certain circumstances.

Protestants submit that the extended testimony presented by Bell in this case, should be examined in the light of whether the preconditions concerning the search area, imposed specially under Section 502.7.C.1 of the Baltimore County

into the amended legislation, such as the exterior look of the tower, the set backs, the conditions concerning removal of the tower upon termination of the purpose for which it was erected.

Additionally, it became clear to the Baltimore County Council that these towers presented legitimate concerns for residential areas such as height, appearance, health issues and potential damages to the real estate values for surrounding property owners. Therefore, in the new legislation, it was specifically recognized that while it would not be appropriate to completely eliminate the opportunity for such towers in residential areas, it would be made more difficult to locate a tower in such a residential zone and incentives were provided for prospective towers being located in business, office, or industrial zoned areas. "The Office of Law Report proposing Amendments to the Baltimore County Zoning Regulations concerning Radio Towers and Television Towers and other Wireless Transmission Receiving Facilities," dated August 28, 1985, should be reviewed to determine the legislative intent concerning the significant procedural requirements which were placed in the new legislation. This Report supports the proposition that the drafters of the legislation attached great significance to the procedural requirements for exploring comercially zoned areas before approving a tower in a residential zone. It is stated on page 6 of the report: "An amendment to Zoning Regulations to permit towers by right under specified conditions in certain office,



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business and manufacturing zones, along with more stringent special exception requirements in residential zones would create a situation where non-residential zones would become attractive locations for towers." It is clear that the pre-conditions as set forth in the Baltimore County Zoning Regulations Section 502.7.C.1 be adhered to by the Petitioner.

Therefore, one can conclude that the legislative intent of the County Council and the Council itself were clearly interested in ensuring that the Petitioner, in the case of wireless transmitting and receiving facilities, had the burden of establishing that it made a diligent search for a location within a business, office or industrial zone.

In this case, the evidence in the record before the Zoning Commissioner is devoid of any testimony, exhibit, or other proof which establishes that a diligent search for such a location within a business, office or industrial zone was made. As a matter of fact, by the testimony of Amy O'Rourke and Mr. Balecki, it is very clear that no consideration was given by the Petitioner Bell to developing a suitable search area that would include business, office or industrial zone. Moreover, failure to call Mr. Kruhm by the Petitioner likewise supports the fact and the testimony of O'Rourke upon cross examination, that they selected the McMasters site, signed a lease agreement with McMasters and then looked for appropriate sites only after the issue was raised by the Protestants in March of 1990, that Section 502.7C.1 was not complied with by Bell.



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It is submitted by the Protestants that since the Petitioner has failed to meet the burden that it has made a diligent search for a location within a business, office or industrial zone, the Zoning Commissioner is not required to address the issue of whether or not this project meets the other criteria of 502.1.A through H, nor may the Zoning Commissioner address the issues of a variance or the placing of other conditions upon the Petitioners under Section 502.7.C2 through 10.

While it is not necessary for the Protestants to address the point, it will be noted here that a Petitioner for Variance under Section 307.1 must establish "practical difficulty or unreasonable hardship". In the instant case, the testimony in evidence is clear that there is no undue hardship or burden on the Petitioner; as a matter of fact, the Petitioner has actually leased an amount of ground which would satisfy the zoning regulations and there is no reason why it could not and can not comply with the appropriate setbacks as required by the Baltimore County Zoning Regulations, but for the fact that Mr. McMasters desires to minimize the amount of land surrounding the proposed facility in order that he can continue to farm or develop that area. It is more troublesome in the instant case when one examines the variance issue to find that under the Agreement between Bell and McMasters, that McMasters can utilize the remaining portion of the leased premises for



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whatever purpose would be allowed by the Baltimore County Development Regulations. If that is the case, it is very clear that development could take place on this leased premises which could place the homes to be developed on said site extremely close to the proposed facility and tower. To do that, would clearly circumvent the requirements as imposed in Bill No. 64-86 and codified in Sections 502.7C.2 and 3.

One final comment in this Memorandum. In normal cases involving Section 502.1, the Petitioner customarily cites the case of Schultz v. Pritts, 291 Maryland 1 (1981), for the proposition that before a special exception can be denied, the requested use must have an adverse affect above and beyond those inheritently associated with the use, regardless of its location. While it is submitted by the Protestants that such case is frequently over used by the Petitioners, in the instant case the Zoning Commissioner should not even be guided by this particular decision. The issue before the Commissioner is whether or not Section 501.7.C.1 has been complied with and is a procedural prerequisite to the consideration of the other issues in this case.

Wherefore, it is respectfully submitted by the Protestants, individually and on behalf of the community associations that the Zoning Commissioner find that the procedural aspect of Section 502.7C.1 has not been complied with by the Petitioners and that it has not met the burden of establishing that it has made a diligent search for a location



within business, office or industrial zone and therefore the petition must be denied.

Respectfully submitted,

J. Carroll Holzer,
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September, 1990, a copy of the foregoing Protestants Memorandum was mailed postage pre-paid to G. Scott Barhight, WHITEFORD, TAYLOR & PRESTON, 500 Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland 21204-4515.

J. Carroll Holzer

MICROFILMED



*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

*Dennis F. Rasmussen*
*County Executive*

October 12, 1990

G. Scott Barhight, Esquire
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE
NE/Corner Sherwood Road and Hollow Road
(426 Sherwood Road)
8th Election District - 3rd Councilmanic District
Joseph B. McMaster, et ux - Petitioners
Case No. 90-382-XA

Dear Mr. Barhight:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Exception has been denied and the Petition for Zoning Variance dismissed in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH:bjs

cc: All Protestants

People's Counsel

File

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# PETITION FOR SPECIAL EXCEPTION

I-Sc. 242

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-382-XA

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for a wireless transmitting and receiving facility pursuant to Sections 1A03.3.B.14 and 502.7.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

LESSEE:

~~Contract Purchaser~~

Southwestern Bell Mobile Systems, Inc. (Type or Print Name) t/a Cellular One

By: Emilienne O'Rourke (Signature)

7855 Walker Drive, Suite 100 (Address)

Greenbelt, Maryland 20770 (City and State)

Attorney for Petitioner:

G. Scott Barhight (Type or Print Name)

(Signature)

500 Court Towers
210 W. Pennsylvania Avenue (Address)

Towson, Maryland 21204 (City and State)

Attorney's Telephone No.: 832-2050

Legal Owner(s):

Joseph B. McMaster (Type or Print Name)

Joseph B. McMaster (Signature)

Vivian Baker McMaster (Type or Print Name)

Vivian Baker McMaster (Signature)

426 Sherwood Road (Address) Phone No.

Cockeysville, Maryland 21030 (City and State)

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

G. Scott Barhight (Name)

210 W. Pennsylvania Avenue
Towson, MD 21204 (Address) 832-2050 (Phone No.)

ORDERED By The Zoning Commissioner of Baltimore County, this 21 day of Feb. 1990, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Town, Baltimore County, on the 3 day of April, 1990, at 9:30 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County

Z.C.O.—No. 1

(over)

ORDER RECEIVED FOR FILING
Date 3/2/90
By

3/2/90 - on 4/3/90 ea. item @ 1 hr. each sign item

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# PETITION FOR ZONING VARIANCE

242

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-382-XA

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) (see attached Page)

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

Hardship or practical difficulty to be presented at the hearing.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

LESSEE:

~~Contract Purchaser~~

Southwestern Bell Mobile Systems, Inc. (Type or Print Name) t/a Cellular One

By: Emilienne O'Rourke (Signature)

7855 Walker Drive, Suite 100 (Address)

Greenbelt, Maryland 20770 (City and State)

Attorney for Petitioner:

G. Scott Barhight (Type or Print Name)

(Signature)

500 Court Towers
210 W. Pennsylvania Avenue (Address)

Towson, Maryland 21204 (City and State)

Attorney's Telephone No.: 832-2050

Legal Owner(s):

Joseph B. McMaster (Type or Print Name)

Joseph B. McMaster (Signature)

Vivian Baker McMaster (Type or Print Name)

Vivian Baker McMaster (Signature)

426 Sherwood Road (Address) Phone No.

Cockeysville, Maryland 21030 (City and State)

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

G. Scott Barhight (Name)

210 W. Pennsylvania Avenue
Towson, MD 21204 (Address) 832-2050 (Phone No.)

ORDERED By The Zoning Commissioner of Baltimore County, this 21 day of Feb. 1990, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 3 day of April, 1990, at 9:30 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County

(over)

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242

PETITION FOR ZONING VARIANCE (continued)

Petitioner: Southwestern Bell Mobile Systems, Inc.
t/a Cellular One

The Petitioner hereby petitions for a variance from Sections 502.7.C.2 and 102.2 to permit a setback to the nearest property line of 10 ft. in lieu of the required 300 ft., from Sections 502.7.C.3 and 102.2 to permit a lot area of 0.13 acres in lieu of the required 5 acres, from Sections 1A03.4.B.4 and 102.2 to permit building setbacks of 12 ft., 7 ft. and 8 ft., respectively, as shown on the plat, in lieu of the required 50 ft.

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242

PHILIP K. CROSS
JOHN F. ETZEL
WILLIAM S. ULRICH
GORDON T. LANSDON
DAVID K. RANSOME

GERHOLD, CROSS & ETZEL
*Registered Professional Land Surveyors*
412 DELAWARE AVENUE
TOWSON, MARYLAND 21204
823-4470

EMERITUS
PAUL G. DOLLENBERG
FRED H. DOLLENBERG
CARL L. GERHOLD

90-382-XA

January 8, 1990

Zoning Description

All that piece or parcel of land situate, lying and being in the Eighth Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at a point situate the two following lines from the intersection of the centerline of Sherwood Road with the centerline of Hollow Road viz: Southeasterly, measured along the center of Sherwood Road, 915 feet, more or less and North 43 degrees 19 minutes East, measured at a right angle from Sherwood Road, 546 feet thence running from the said point of beginning the six following courses and distances viz: North 49 degrees 32 minutes West 55 feet, North 67 degrees East 55 feet, South 23 degrees East 62 feet, South 67 degrees West 27 feet, South 74 degrees 26 minutes West 81.15 feet and North 23 degrees West 35 feet to the place of beginning.

Containing 0.13 of an Acre of Land, more or less.

STATE OF MARYLAND — DAVID LEONARD RINGENBERG — No. 1948 — REGISTERED — PROPERTY LINE SURVEYOR

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**CERTIFICATE OF POSTING**
**ZONING DEPARTMENT OF BALTIMORE COUNTY**
**Towsen, Maryland**

90-382-XA

District 8th
Date of Posting 3/16/90
Posted for: Special Exception & Variance
Petitioner: Gerard B. Mallon, Esq. & Southwestern Bell Mobile Systems
Location of property: Cor. NE/S Sherwood Rd., SE/S Hollow Rd.
1426 Sherwood Rd.
Location of Signs: Facing Sherwood Rd., approx. 20' Ft. Hollow, on property of Petitioner
Remarks:
Posted by [signature] Signature
Date of return: 3/16/90
Number of Signs: 2

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$122.89

**NOTICE OF HEARING**

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Petition for Special Exception and Zoning Variance
Case number: 90-382-XA
Corner NE/S Sherwood Road, SE/S of Hollow Road
(426 Sherwood Road)
8th Election District
3rd Councilmanic
Legal Owner(s): Joseph B. McMaster, et ux
Lessee/Petitioner: Southwestern Bell Mobile Systems, Inc., t/a Cellular One
Hearing Date: Tuesday, Apr. 3, 1990 at 9:30 a.m.

**Special Exception:** for a wireless transmitting and receiving facility. **Variances:** to permit a setback to the nearest property line of 10 ft. in lieu of the required 300 ft.; to permit a lot area of 0.13 acres in lieu of the required 5 acres; to permit building setbacks of 12 ft., 7 ft., and 8 ft., respectively, in lieu of the required 50 ft.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

T/3/115 Mar. 8

**CERTIFICATE OF PUBLICATION**

TOWSON, MD., March 8, 1990

THIS IS TO CERTIFY, that the annexed advertisement was published in the TOWSON TIMES, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on March 8, 1990.

TOWSON TIMES,
S. Zeke Orlan
Publisher

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PAGE 4—SEC. B—THURSDAY, MARCH 8, 1990 — THE JEFFERSONIAN

**SALES & LEGAL NOTICES**

Michael P. Mey, Atty.
210 E. Lexington Street
Suite 200
Baltimore, MD 21202

NOTICE OF APPOINTMENT
and
NOTICE TO CREDITORS
and
NOTICE TO UNKNOWN HEIRS

TO ALL PERSONS INTERESTED IN THE ESTATE OF
GRACE VINCI
A/K/A MARY GRACE VINCI
A/K/A MARY GRACE BERGIN

This is to give notice that the undersigned, Karen Bergin, whose address is 241 Whitfield Road, Towson, Maryland 21204 on February 15, 1990 appointed personal representative of the estate of Mary Vinci a/k/a Mary Grace Vinci a/k/a Mary Grace Bergin who died on July 14, 1989 with a will.

Notice is also given to unknown heirs of an will to heirs whose whereabouts are unknown to appear for appointment to be made in the proceeding.

All persons having any objection to the appointment to be made in the proceeding of the decedent's will shall file the same with the Register of Wills for Baltimore County, on or before six months from the date of such appointment.

All persons having claims against the decedent shall file their claims with the Register of Wills and shall serve a copy of the instrument to the Personal Representative on or before the earlier of the following dates:

(1) Nine months from the date of the decedent's death; or

(2) Two months after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that his claim will be barred unless the creditor presents the claim within two months after the mailing or other delivery of the notice.

Any claim not filed on or before that date, or any extension provided by law, is unenforceable thereafter.

KEVIN BERGIN
Personal Representative
Date of first publication:
February 22, 1990
True Copy—Test
PETER J. BASLONE
Register of Wills for
Baltimore County
2-22 Feb. 22—March 1, 8

F. Kirk Kunsdorf, Atty.
20 Crossroads Drive
Suite 315
Owings Mills, Maryland 21117

NOTICE OF APPOINTMENT
and
NOTICE TO CREDITORS
and
NOTICE TO UNKNOWN HEIRS

Frank W. Bernstein, Jr., Atty.
300 Cathedral Street
Suite 206
Baltimore, MD 21201

NOTICE OF APPOINTMENT
and
NOTICE TO CREDITORS
and
NOTICE TO UNKNOWN HEIRS

TO ALL PERSONS INTERESTED IN THE ESTATE OF
ELIZABETH M. WINTERSON

This is to give notice that the undersigned, John P. Winterson, whose address is 607 Hastings Road, Towson, Maryland 21204 was, on February 15, 1990 appointed personal representative of the estate of Elizabeth M. Winterson, who died on May 9, 1989, with a will.

Notice is also given to unknown heirs of an will to heirs whose whereabouts are unknown to appear for appointment to be made in the proceeding.

All persons having any objection to the appointment to be made in the proceeding of the decedent's will shall file the same with the Register of Wills for Baltimore County, on or before six months from the date of such appointment.

All persons having claims against the decedent shall file their claims with the Register of Wills and shall serve a copy of the instrument to the Personal Representative on or before the earlier of the following dates:

(1) Nine months from the date of the decedent's death; or

(2) Two months after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that his claim will be barred unless the creditor presents the claim within two months after the mailing or other delivery of the notice.

Any claim not filed on or before that date, or any extension provided by law, is unenforceable thereafter.

JOHN P. WINTERSON
Personal Representative
Date of first publication:
February 22, 1990
True Copy—Test
PETER J. BASLONE
Register of Wills for
Baltimore County
2-22 Feb. 22—March 1, 8

Frank, Bernstein, Conaway & Goldman
300 E. Lombard Street
Suite 1405
Baltimore, Maryland 21202

NOTICE OF APPOINTMENT
and
NOTICE TO CREDITORS
and
NOTICE TO UNKNOWN HEIRS

TO ALL PERSONS INTERESTED IN THE ESTATE OF
ROSA FIELDS

This is to give notice that the undersigned, Theodore Fields a/k/a Theodore R. Fields, whose address is 2125 Ruxton Avenue, Catonsville, MD 21228 was, on February 23, 1990 appointed personal representative of the estate of Rosa Fields, who died on July 31, 1961, with a will.

Notice is also given to unknown heirs of an will to heirs whose whereabouts are unknown to appear for appointment to be made in the proceeding.

All persons having any objection to the appointment to be made in the proceeding of the decedent's will shall file the same with the Register of Wills for Baltimore County, on or before six months from the date of such appointment.

All persons having claims against the decedent shall file their claims with the Register of Wills and shall serve a copy of the instrument to the Personal Representative on or before the earlier of the following dates:

(1) Nine months from the date of the decedent's death; or

(2) Two months after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that his claim will be barred unless the creditor presents the claim within two months after the mailing or other delivery of the notice.

Any claim not filed on or before that date, or any extension provided by law, is unenforceable thereafter.

ANA THEODORE FIELDS
Personal Representative
Date of first publication:
March 1, 1990
THEODORE FIELDS
PETER J. BASLONE
Register of Wills for
Baltimore County
3-1 Mar. 1, 8, 15

Frank, Bernstein, Conaway & Goldman
300 E. Lombard Street
Suite 1405
Baltimore, Maryland 21202

NOTICE OF APPOINTMENT
and
NOTICE TO CREDITORS
and
NOTICE TO UNKNOWN HEIRS

TO ALL PERSONS INTERESTED IN THE ESTATE OF
WOLFE H. ADLER

This is to give notice that the undersigned, Irvin H. Adler, whose address is 1710 Eastern Boulevard, Baltimore, Maryland 21221 was, on February 23, 1990 appointed personal representative of the estate of Wolfe H. Adler, who died on January 24, 1990, with a will.

Notice is also given to unknown heirs of an will to heirs whose whereabouts are unknown to appear for appointment to be made in the proceeding.

All persons having any objection to the appointment to be made in the proceeding of the decedent's will shall file the same with the Register of Wills for Baltimore County, on or before six months from the date of such appointment.

All persons having claims against the decedent shall file their claims with the Register of Wills and shall serve a copy of the instrument to the Personal Representative on or before the earlier of the following dates:

(1) Nine months from the date of the decedent's death; or

(2) Two months after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that his claim will be barred unless the creditor presents the claim within two months after the mailing or other delivery of the notice.

Any claim not filed on or before that date, or any extension provided by law, is unenforceable thereafter.

SUSAN J. ADLER
Personal Representative
Date of first publication:
February 22, 1990
PETER J. BASLONE
Register of Wills for
Baltimore County
2-22 Feb. 22—March 1, 8

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

NOTICE IS HEREBY GIVEN, NOTICE THAT ARTHUR GLESS, TRUSTEE OF GLESS SAWKS ENTERPRISES, INC. were received for record on Feb. 2, 1990 in accordance with the provisions of Sec. 3-407 of the Corporations and Associations

**SALES & LEGAL NOTICES**

Irvin H. Caplan, Atty.
1750 Eastern Boulevard
Baltimore, Maryland 21221

CHANGE OF NAME OF
JOHN FRANKLIN CLARK, JR.
2637 Dunmar Court
Baltimore, Maryland 21222

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
Case No. 90-CC-1735

Upon the aforegoing Verified Petition of John Franklin Clark, Jr. it is ORDERED by the Court this 6th day of March, 1990, that the change of name as aforesaid be and is hereby granted, effective with the date of this Order; and it is further

ORDERED, by the Court that a copy of this Order be published in the Jeffersonian, a newspaper of general circulation in Baltimore County, once a week for three successive weeks before the 3rd day of April, 1990; that the aforesaid publication shall constitute sufficient notice to all persons interested to show cause why the prayer of the Petitioner should not be granted.

SUZANNE MENSH, Clerk
True Copy—Test
SUZANNE MENSH, Clerk
3/156 March 8, 15, 22

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Petition for Special Exception and Zoning Variance
Case number: 90-382-XA
Corner NE/S Sherwood Road, SE/S of Hollow Road
(426 Sherwood Road)
8th Election District
3rd Councilmanic
Legal Owner(s): Joseph B. McMaster, et ux
Lessee/Petitioner: Southwestern Bell Mobile Systems, Inc., t/a Cellular One
Hearing Date: Tuesday, Apr. 3, 1990 at 9:30 a.m.

**Special Exception:** for a wireless transmitting and receiving facility. **Variances:** to permit a setback to the nearest property line of 10 ft. in lieu of the required 300 ft.; to permit a lot area of 0.13 acres in lieu of the required 5 acres; to permit building setbacks of 12 ft., 7 ft., and 8 ft., respectively, in lieu of the required 50 ft.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

3/156 March 8

**SALES & LEGAL NOTICES**

BALTIMORE COUNTY
PUBLIC SCHOOLS
Towson, Maryland 21204

ADVERTISEMENT

The Board of Education of Baltimore County announces the following STUDENT DETAIL AND CHAIRS-ANNUAL BID

Bid Number: 3-719-90
Bid Due: 3/22/90
AT 1:00 P.M.

VARIOUS SHAPE AND SIZE TABLES-ANNUAL BID

Bid Number: 3-317-90
Bid Due: 3/22/90
AT 1:15 P.M.

VARIOUS TEACHER AND OFFICE FURNITURE/ANNUAL BID

Bid Number: 3-718-90
Bid Due: 3/22/90
AT 1:30 P.M.

VARIOUS PHYSICAL EDUCATION EQUIPMENT
JOPPA VIEW

Bid Number: 3-719-90
Bid Due: 3/22/90
AT 1:45 P.M.

MISCELLANEOUS FURNITURE/JOPPA VIEW

Bid Number: 3-320-90
Bid Due: 3/22/90
AT 2:00 P.M.

FOOTBALL SUPPLIES & EQUIPMENT

Bid Number: 3-325-90
Bid Due: 3/22/90
AT 1:15 P.M.

Specifications and proposal sheets may be obtained at the Purchasing Department, Room 313, Purchasing Department and Supply Building, 6901 North Charles Street, Towson, Maryland 21204.

Bid proposals shall be accepted by the Purchasing Department at the above address until the time of the above scheduled times.

Special Exceptions: for a wireless transmitting and receiving facility. Variances: to permit a setback to the nearest property line of 10 ft. in lieu of the required 300 ft.; to permit a lot area of 0.13 acres in lieu of the required 5 acres; to permit building setbacks of 12 ft., 7 ft., and 8 ft., respectively, in lieu of the required 50 ft.

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J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

3/156 March 8

**SALES & LEGAL NOTICES**

BALTIMORE COUNTY
PUBLIC SCHOOLS
Towson, Maryland 21204

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J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

3/156 March 8

MICROFILMED

**CERTIFICATE OF POSTING**
**ZONING DEPARTMENT OF BALTIMORE COUNTY**
**Towsen, Maryland**

90-382-XA

District 8th
Date of Posting Mar 4
Posted for: Performance of Hearing
Petitioner: Joseph B. McMaster, et ux & Sw. Bell Mobile Systems
Location of property: 1426 Sherwood Rd.
Location of Signs: Facing Sherwood Rd. at location of prop.
Remarks: Mark 4 post arrival date of Feb hearing
Posted by [signature] Signature
Date of return: 4/6/90
Number of Signs: 1

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt
Account: R-001-6150
№ 1105
Number

Date

1-24-90

PUBLIC HEARING FEES — QTY — PRICE
020 -ZONING VARIANCE (OTHER) — 1 X — $175.00
050 -SPECIAL EXCEPTION — 1 X — $175.00
LAST NAME OF OWNER: NOMASTER — TOTAL: $350.00

MICROFILMED

B B114*****35010:a 2258F
Please make checks payable to: Baltimore County

Cashier Validation:

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt
Account: R-001-6150
№ 2499
Number

Date

90-382-XA

MICROFILMED

Signature

B -B.00*****1978:a 01tcF
Please make checks payable to: Baltimore County

Cashier Validation:

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

DATE March 20, 1990

*Dennis F. Rasmussen*
*County Executive*

Southwestern Bell Mobile Systems, Inc., t/a
Cellular One
7855 Walker Drive Suite 100
Greenbelt, Maryland 20770

ATTN: EMILIENNE O'ROURKE

Re: Petitions for Special Exception and Zoning Variance
CASE NUMBER: 90-382-XA
Corner NE/S Sherwood Road, SE/S of Hollow Road
(426 Sherwood Road)
8th Election District - 3rd Councilmanic
Legal Owner(s): Joseph B. McMaster, et ux
Leesee/Petitioner: Southwestern Bell Mobile Systems, Inc., t/a Cellular One
HEARING: TUESDAY, APRIL 3, 1990 at 9:30 a.m.

Please be advised that $ 172.89 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.

Be advised that should you fail to return the sign & post set(s), there will be an additional $50.00 added to the above amount for each such set not returned.

Very truly yours,
J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

cc: G. Scott Barhight, Esq.

JRH:gs

MICROFILMED

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

April 5, 1990

*Dennis F. Rasmussen*
*County Executive*

Southwestern Bell Mobile Systems, Inc., t/a
Cellular One
7855 Walker Drive, Suite 100
Greenbelt, Maryland 20770

ATTN: EMILIENNE O'ROURKE

Re: Petitions for Special Exception and Zoning Variance
CASE NUMBER: 90-382-XA
Corner NE/S Sherwood Road, SE/S Hollow Road
(426 Sherwood Road)

Gentlemen:

Please be advised that $197.89* is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign and post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.

Be advised that should you fail to return the sign and post sets, there will be an additional $50.00 added to the above amount for each set not returned.

Very truly yours,
/s/
J. ROBERT HAINES
Zoning Commissioner

cc: G. Scott Barhight, Esq.

*Includes charges for the April 3, 1990 hearing date and the reporting charges rescheduled hearing.

MICROFILMED

WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 West Pennsylvania Avenue
Towson, MD 21204

HAND DELIVERY/PICK UP FORM

DATE: 8/24/90 FROM: Sandy Thomson /GSB FLOOR: 5
CLIENT/MATTER NO: 62330/00108
MESSENGER SERVICE BY:
DELIVERY TO BE ACCOMPLISHED BY: 11:00 A.M.
SUPPORT STAFF (WT&P) HAND: _____ PICK UP: X
NAME: Charlotte FLOOR/ROOM NO.: _____
FIRM: Office of Planning + Zoning BUILDING: County Office Bldg
ADDRESS: 111 W. Chesapeake Avenue
CITY: Towson STATE: MD ZIP: 21204
DESCRIPTION OF DELIVERY: LETTER ___ PACKAGE X OTHER: ___
SPECIAL INSTRUCTIONS: Pick up hearing tapes for Scott Barhight. Case No. 90-382. One clip envelope

MICROFILMED

RECEIPT NEEDED: YES ___ NO ___

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number № 3273

Date

90-382-XA

8/24/90 C9100496

| COPIES: | QTY | | PRICE |
|---|---|---|---|
| 780 -AUDIO TAPE | 06 | X | $15.00 |
| TOTAL: | | | $90.00 |

04A04#0047MICHRC $90.00
BA C008:57AM08-28-90

Please make checks payable to: Baltimore County

Cashier Validation:

---

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number № 2576

Date

V C9000383

| COPIES: | QTY | | PRICE |
|---|---|---|---|
| 780 -AUDIO TAPE | 02 | X | $15.00 |
| TOTAL: | | | $30.00 |

B B107******3000:a 3239F

Please make checks payable to: Baltimore County

Cashier Validation:

---

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number № 3903

Date

MICROFILMED

11/15/90 A9100027

| APPEAL FEES | QTY | | PRICE |
|---|---|---|---|
| 120 -OF A SPECIAL EXC. ORDER | 1 | X | $175.00 |
| 140 -OF ALL OTHER ORDERS | 1 | X | $125.00 |
| 150 -POSTING SIGNS / ADVERTISING | 1 | X | $25.00 |
| TOTAL: | | | $325.00 |

LAST NAME OF OWNER: MCMASTER

04A04#0021MICHRC $325.00
BA C003:25PM11-15-90

Please make checks payable to: Baltimore County NEXT BUSINESS DAY

Cashier Validation:

---

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number № 2555

Date

90-382-XA

B B107******3000:a 3239F

Please make checks payable to: Baltimore County

Cashier Validation:

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**CERTIFICATE OF POSTING**
**ZONING DEPARTMENT OF BALTIMORE COUNTY** 90-382-XA
**Towson, Maryland**

District 8th Date of Posting 11/2/90
Posted for: Appeal
Petitioner: Joseph B. McMaster, et ux
Location of property: NE/cor Sherwood Rd. & Hollow Rd.
2126 Sherwood Rd.
Location of Signs: Facing Sherwood Rd. approx. 25' Fm
roadway on property of P.D. Fields
Remarks:
Posted by [signature] Date of return: 11/20/90
Signature
Number of Signs: 4

---

CASE NO. 92-CV-6036
IN THE MATTER OF JOSEPH B. MCMASTER, ET UX
-v-

RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS, BOARD'S RECORD EXTRACT & TRANSCRIPT FILED IN THE ABOVE-ENTITLED CASE, AND ZONING COMMISSIONER'S FILE & EXHIBITS.

[signature]
Clerk's Office

Date: 7/9/93

---

Form CA4

**CIRCUIT COURT FOR BALTIMORE COUNTY**
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21285-6754

Irene Summers — 887-2660
Civil Assignment Commissioner

Kathy Rushton — 887-2660
Jury Assignments—Civil
General Settlement Conferences

— 887-2661
Non-Jury Assignments—Civil
Special Settlement Conferences

July 30, 1992

TO:

J. Carroll Holzer, Esq.

County Board of Appeals
of Balto. Co.

Office of Law

RECEIVED
JUL 31 1992
OFFICE OF LAW

RE: Non-Jury 92-CV-6036 Matter of Joseph B. McMaster

HEARING DATE: Friday, October 23, 1992, @ 9:30 a.m.

ON THE FOLLOWING: Appeal: 2 to 3 hours

Please see the below notations.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

If the above Hearing Date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 30 DAYS OF TRIAL should be directed to the attention of Irene Summers. POSTPONEMENTS WITHIN 30 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments-Joyce Grimm-887-3497.

SETTLEMENTS: If a settlement if reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

---

Form CA4

**CIRCUIT COURT FOR BALTIMORE COUNTY**
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21285-6754

Irene Summers — 887-2660
Civil Assignment Commissioner

Kathy Rushton — 887-2660
Jury Assignments—Civil
General Settlement Conferences

— 887-2661
Non-Jury Assignments—Civil
Special Settlement Conferences

July 30, 1992

TO:

J. Carroll Holzer, Esq.

County Board of Appeals
of Balto. Co.

Office of Law

RE: Non-Jury 92-CV-6036 Matter of Joseph B. McMaster

HEARING DATE: Friday, October 23, 1992, @ 9:30 a.m.

ON THE FOLLOWING: Appeal: 2 to 3 hours

Please see the below notations.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

If the above Hearing Date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 30 DAYS OF TRIAL should be directed to the attention of Irene Summers. POSTPONEMENTS WITHIN 30 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments-Joyce Grimm-887-3497.

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*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

*Dennis F. Rasmussen*
*County Executive*

February 16, 1990

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petitions for Special Exception and Zoning Variance
CASE NUMBER: 90-382-XA
Corner NE/S Sherwood Road, SE/S of Hollow Road
(426 Sherwood Road)
8th Election District - 3rd Councilmanic
Legal Owner(s): Joseph B. McMaster, et ux
Lessee/Petitioner: Southwestern Bell Mobile Systems, Inc., t/a Cellular One
HEARING: TUESDAY, APRIL 3, 1990 at 9:30 a.m.

Special Exception for a wireless transmitting and receiving facility.
Variance to permit a setback to the nearest property line of 10 ft. in lieu of the required 300 ft.; to permit a lot area of .13 acres in lieu of the required 5 acres; to permit building setbacks of 12 ft., 7 ft., and 8 ft. respectively, in lieu of the required 50 ft.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. Robert Haines

J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

cc: Mr. & Mrs. McMaster
Southwestern Bell
G. Scott Barhight, Esq.

---

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

Hearing Room -
Room 301, County Office Bldg. April 24, 1991

**AMENDED NOTICE OF ASSIGNMENT**

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. MCMASTER, ET UX
NE/cor Sherwood & Hollow Rds.
(426 Sherwood Rd.)
8th Election District
3rd Councilmanic District

SE-Wireless transmitting/receiving structure;
SPH-to amend prior SE;
VAR-Setbacks/lot area

10/12/90 -Z.C.'s Order DENYING in part and dismissing in part.

which is scheduled to be heard on June 25, 1991 has been ASSIGNED two additional hearing days and will now be heard as follows:

DAY #1 ASSIGNED FOR: TUESDAY, JUNE 25, 1991 AT 10:00 a.m.

DAY #2 ASSIGNED FOR: TUESDAY, AUGUST 20, 1991 AT 10:00 a.m.

DAY #3 ASSIGNED FOR: WEDNESDAY, AUGUST 21, 1991 AT 10:00 a.m.

cc: G. Scott Barhight, Esquire Counsel for Petitioners/Appellants
Mr. and Mrs. Joseph McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Nancy C. West, Asst. County Attorney
Arnold Jablon, Chief Deputy County Attorney

LindaLee M. Kuszmaul
Legal Secretary

---

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

Hearing Room -
Room 301, County Office Bldg. June 26, 1991

**AMENDED NOTICE OF ASSIGNMENT**

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. MCMASTER, ET UX
NE/cor Sherwood & Hollow Rds.
(426 Sherwood Rd.)
8th Election District
3rd Councilmanic District

TIME CHANGE ONLY AS INDICATED AT 6/25/91 HEARING — SE-Wireless transmitting/receiving structure;
SPH-to amend prior SE;
VAR-Setbacks/lot area

(Cont.'d from 6/25/91)

10/12/90 -Z.C.'s Order DENYING in part and dismissing in part.

which was heard on June 25, 1991 has been REASSIGNED a new start time as discussed at said hearing for day nos. 2 and 3 as follows:

DAY #2 ASSIGNED FOR: TUESDAY, AUGUST 20, 1991 AT 9:00 a.m.

DAY #3 ASSIGNED FOR: WEDNESDAY, AUGUST 21, 1991 AT 9:00 a.m.

cc: G. Scott Barhight, Esquire Counsel for Petitioners/Appellants
Mr. and Mrs. Joseph McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
P. David Fields
Pat Keller
J. Robert Haines
Deputy Zoning Commissioner
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning

LindaLee M. Kuszmaul
Legal Secretary

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

Hearing Room -
Room 301, County Office Bldg. August 13, 1991

NOTICE OF REMOVAL FROM ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. MCMASTER, ET UX
NE/cor Sherwood & Hollow Rds.
(426 Sherwood Rd.)
8th Election District
3rd Councilmanic District

SE-Wireless transmitting/receiving structure;
SPH-to amend prior SE;
VAR-Setbacks/lot area

10/12/90 -Z.C.'s Order DENYING in part and dismissing in part.

The purpose of this Notice is to inform Counsel and all other interested parties in these proceedings that the above-captioned matter scheduled for hearing on August 20 and and August 21, 1991 has been removed from the hearing assignment. This matter will not proceed on the above dates.

cc: G. Scott Barhight, Esquire Counsel for Petitioners/Appellants
Mr. and Mrs. Joseph McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
P. David Fields
Pat Keller
J. Robert Haines
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of
Zoning Administration

Kathleen C. Weidenhammer
Administrative Assistant

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

Hearing Room -
Room 301, County Office Bldg. August 21, 1991

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. MCMASTER, ET UX
NE/cor Sherwood & Hollow Rds.
(426 Sherwood Rd.)
8th Election District
3rd Councilmanic District

SE-Wireless transmitting/receiving structure;
SPH-to amend prior SE;
VAR-Setbacks/lot area

10/12/90 -Z.C.'s Order DENYING in part and dismissing in part.

ASSIGNED FOR: WEDNESDAY, NOVEMBER 13, 1991 AT 9:00 AM TO 4:00 PM
THURSDAY, NOVEMBER 14, 1991 AT 9:00 AM TO 4:00 PM
TUESDAY, NOVEMBER 19, 1991 AT 9:00 AM TO 4:00 PM
WEDNESDAY, NOVEMBER 20, 1991 AT 9:00 AM TO 4:00 PM
(OR UNTIL CONCLUDED)

cc: G. Scott Barhight, Esquire Counsel for Petitioners/Appellants
Mr. and Mrs. Joseph McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
P. David Fields
Pat Keller
J. Robert Haines
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of
Zoning Administration
Ms. Sarah Adams - Added to file 8/22/91

LindaLee M. Kuszmaul
Legal Secretary

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

Hearing Room -
Room 301, County Office Bldg. September 11, 1991

** REVISED NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. MCMASTER, ET UX, NE/cor Sherwood & Hollow Rds. (426 Sherwood Rd.) 8th E; 3rd C

** REVISED NOTICE TO INCLUDE DAY #5 — SE-Wireless transmitting/receiving structure; SPH-to amend prior SE; VAR-Setbacks/lot area

10/12/90 -Z.C.'s Order DENYING in part and dismissing in part.

ASSIGNED FOR: WEDNESDAY, NOVEMBER 13, 1991 AT 9:00 AM TO 4:00 PM
THURSDAY, NOVEMBER 14, 1991 AT 9:00 AM TO 4:00 PM
TUESDAY, NOVEMBER 19, 1991 AT 9:00 AM TO 4:00 PM
WEDNESDAY, NOVEMBER 20, 1991 AT 9:00 AM TO 4:00 PM
WEDNESDAY, FEBRUARY 5, 1992 AT 9:00 AM TO 4:00 PM
(OR UNTIL CONCLUDED)

cc: G. Scott Barhight, Esquire Counsel for Petitioners/Appellants
Mr. and Mrs. Joseph McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
Ms. Sarah Adams
P. David Fields
Pat Keller
J. Robert Haines
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of
Zoning Administration

10/7/91 - Day #1 omitted at req. of Counsel for Protestants

LindaLee M. Kuszmaul
Legal Secretary

4/25/91

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

Hearing Room -
Room 301, County Office Bldg. October 17, 1991

** REVISED NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. MCMASTER, ET UX, NE/cor Sherwood & Hollow Rds. (426 Sherwood Rd.) 8th E; 3rd C

** REVISED NOTICE TO OMIT 11/13/91 DATE — SE-Wireless transmitting/receiving structure; SPH-to amend prior SE; VAR-Setbacks/lot area

10/12/90 -Z.C.'s Order DENYING in part and dismissing in part.

which was scheduled for November 13, 1991 (Day #1) will now be heard on the previous Day Nos. 2 through 5 as Day Nos. 1 through 4 at the request of Counsel for Protestants due to a Court of Special Appeals conflict

ASSIGNED FOR: THURSDAY, NOVEMBER 14, 1991 AT 9:00 AM TO 4:00 PM
TUESDAY, NOVEMBER 19, 1991 AT 9:00 AM TO 4:00 PM
WEDNESDAY, NOVEMBER 20, 1991 AT 9:00 AM TO 4:00 PM
WEDNESDAY, FEBRUARY 5, 1992 AT 9:00 AM TO 4:00 PM
(OR UNTIL CONCLUDED)

cc: G. Scott Barhight, Esquire Counsel for Petitioners/Appellants
Mr. and Mrs. Joseph McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
Ms. Sarah Adams
P. David Fields
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of
Zoning Administration

LindaLee M. Kuszmaul
Legal Secretary

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

DEC 20 1990

Hearing Room -
Room 301, County Office Bldg. December 17, 1990

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). nO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. McMASTER, ET UX
NE/cor Sherwood & Hollow Rds.
(426 Sherwood Road)
8th Election District
3rd Councilmanic District

SE-Wireless transmitting/receiving structure;
SPH-to amend prior SE;
VAR-Setbacks/lot area

ASSIGNED FOR: TUESDAY, JUNE 25, 1991 at 10:00 a.m.

cc: G. Scott Barhight, Esquire-Counsel for Petitioners/Appellants
Mr. Joseph B. McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
People's Counsel for Baltimore County
P. David Fields
Pat Keller
Public Services
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

No

LindaLee M. Kuszmaul
Legal Secretary

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

Hearing Room -
Room 301, County Office Bldg. December 17, 1990

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). nO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. McMASTER, ET UX
NE/cor Sherwood & Hollow Rds.
(426 Sherwood Road)
8th Election District
3rd Councilmanic District

4/24/91 Amended Notice sent for 273 days

SE-Wireless transmitting/receiving structure;
SPH-to amend prior SE;
VAR-Setbacks/lot area

ASSIGNED FOR: TUESDAY, JUNE 25, 1991 at 10:00 a.m.

cc: G. Scott Barhight, Esquire-Counsel for Petitioners/Appellants
Mr. Joseph B. McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
~~People's Counsel for Baltimore County~~ out per Shirley Hess 1/25/91
P. David Fields
Pat Keller
~~Public Services~~ out per Paula 1/2/91
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

LindaLee M. Kuszmaul
Legal Secretary

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

*Dennis F. Rasmussen*
*County Executive*

March 22, 1990

G. Scott Barhight, Esquire
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Item No. 242, Case No. 90-382-XA
Petitioner: Joseph B. McMaster, et ux
Petition for Special Exception and
Zoning Variance

Dear Mr. Barhight:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,
James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: Mr. & Mrs. Jospeh B. McMaster
Southwestern Bell Mobile Systems, Inc.

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

*Dennis F. Rasmussen*
*County Executive*

Your petition has been received and accepted for filing this

21st day of February, 1989.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Received By:
James E. Dyer
Chairman,
Zoning Plans Advisory Committee

Petitioner: Joseph B.McMaster, et ux

Petitioner's Attorney: G. Scott Barhight

MICROFILMED

COPY

LAW OFFICES

WHITEFORD, TAYLOR & PRESTON

SUITE 1600
SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 410-347-8700
FAX 410-752-7092

500 COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410-832-2000
FAX 410-832-2015

SUITE 800
888 17TH STREET, NW
WASHINGTON, D.C. 20006-3939
TELEPHONE 202 659-6800
FAX 202 331-0573

1101 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703-836-5742
FAX 703-836-0265

NATALIE C. MAGDEBURGER
DIRECT NUMBER
410-832-2024

July 21, 1992

Suzanne Mensh, Clerk
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, MD 21204

RE: Appeal of Sherwood Hill Improvement Association
Case No. 26/147/92-CV-6036

Dear Madame Clerk:

Enclosed please find an Answer to Petition on Appeal to be filed on behalf of the Appellees in the above-captioned matter.

Thank you for your assistance in this matter.

Very truly yours,

Karl J. Nelson

KJN/kat
Enclosure
cc: J. Carroll Holzer, Esquire (with enclosure)
County Board of Appeals (with enclosure)

FILED
92 JUL 22 PM 3:00

7-7-92

| | | |
|---|---|---|
| IN THE MATTER OF THE APPLICATION OF JOSEPH B. McMASTER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCES ON PROPERTY LOCATED ON THE NORTHEAST CORNER OF SHERWOOD AND HOLLOW ROADS (426 SHERWOOD ROAD) 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT | * | IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CG Doc. No. 26 Folio No. 147 File No. 92-CV-6036 |
| SHERWOOD HILL IMPROVEMENT ASSOCIATION, ET AL, PLAINTIFFS | * | |

* * * * * * * * * * * * * *

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Michael B. Sauer, Judson H. Lipowitz and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Office of the Zoning Commissioner and the Board of Appeals of Baltimore County:

No. 90-382-XA

| | |
|---|---|
| February 21, 1990 | Petition for Special Exception for a wireless transmitting and receiving facility filed by G. Scott Barhight, Esquire on behalf of Mr. and Mrs. McMaster. Petition for Variances as to property line setbacks, building setbacks and lot area also filed. |
| March 8 | Publications in newspapers. |
| March 22 | Comments of Baltimore County Zoning Plans Advisory Committee. |
| April 6 | Certificate of Posting of property - new hearing date. |
| | Hearing held on Petition by the Zoning Commissioner subsequent to postponement of hearing originally scheduled for April 3, 1990. |



| | |
|---|---|
| October 12, 1990 | Order of the Zoning Commissioner DENYING Peittion for Special Exception and DISMISSING Petition for Variances as moot. |
| November 13 | Notice of Appeal received from G. Scott Barhight, Esquire on behalf of Petitioners. |
| June 25, 1991 | Motion to Separate Issues filed by J. Carroll Holzer, Esquire on behalf of Protestants. |
| November 14 | Hearing before the Board of Appeals. |
| November 19 | Continued hearing before the Board of Appeals. |
| November 20 | Hearing concluded before the Board of Appeals. |
| December 30 | Memorandum in Support of Appellants' Petitions for Special Exception and Variances filed by G. Scott Barhight, Esquire and Karl J. Nelson, Esquire on behalf of Petitioners/Appellants. |
| December 30 | Protestants Memorandum filed by J. Carroll Holzer, Esquire. |
| May 28, 1992 | Opinion and Order of the Board GRANTING Petition for Special Exception with restrictions and GRANTING requested Variances. |
| June 25 | Order for Appeal filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire on behalf of Protestants. Petition to accompany appeal also filed in the Circuit Court for Baltimore County by Mr. Holzer. |
| June 30 | Certificate of Notice sent to interested parties. |
| July 9 | Transcript of testimony filed. |

Petitioners' Exhibit No.
1 -Plat of site 11/14/89.
2 -Aerial Photo of McMaster farm
3 -Cellular One service area
4 -Five transparency overlays of Towson, N. Balto. County area 1" = 1 mile
5-Map 9/10/87 of Search area for calls
6-Map 3/89 of Search area for calls
7-Four Cell Pattern of reuse
8-Grid of Service area map of B a l t o . C o .
9-Proposed Monopole location map
10-Cellular One Booklet p.6, Nos. 1-5
11-Photo of a self-supporting tower



Petitioners' Exhibit No.
12-Photo of Monopole of 150' by Cell One
13-Real Property Lease Agreement - McMasters and Cellular One.
14-Agreement with McMasters as to restrictions.
15-A-D-Photos of crane lifting monopole and crane lifting pole from Bosley Avenue and across field.
16-Video tape of Loch Raven site area
17-Environ. Impact Assess. 7/16/90

Protestants' Exhibit No.
1 - Montview Improvement Assoc.
2 - Sherwood Hill Impr. Assoc.
3 - Sherwood Hill Assoc. Listing of opponents.
4 - A-Report of Office of Planning and Zoning 8/8/85
B-Office of Law report 5/85
C-Report of Balto. Co. Planning Board 7/18/85

July 9, 1992 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals office and upon request of the parties or the Court will be transmitted to the Court by whomever institutes the request.

Respectfully submitted,

Linda Lee M. Kuszmaul

LindaLee M. Kuszmaul, Legal Secretary,
County Board of Appeals, Room 49
400 Washington Avenue - Basement
Towson, Maryland 21204 (410) 887-3180

cc: J. Carroll Holzer, Esquire
Sherwood Hill Improvement Association, et al
G. Scott Barhight, Esquire
Mr. and Mrs. Joseph B. McMaster
Ms. Emilienne O'Rourke-Southwestern Bell Mobile Systems, Inc.

| | | |
|---|---|---|
| IN THE MATTER OF THE APPLICATION OF JOSEPH B. McMASTER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCES ON PROPERTY LOCATED ON THE NORTHEAST CORNER OF SHERWOOD AND HOLLOW ROADS (426 SHERWOOD ROAD) 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT | * | IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CG Doc. No. 26 Folio No. 147 File No. 92-CV-6036 |
| SHERWOOD HILL IMPROVEMENT ASSOCIATION, ET AL, PLAINTIFFS | * | |

* * * * * * * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Michael B. Sauer, Judson H. Lipowitz, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, J. Carroll Holzer, Esquire, Holzer, Maher, DeMilio & Lee, 305 W. Chesapeake Avenue, Suite 105, Towson, Maryland 21204, Counsel for Plaintiffs; Sherwood Hill Improvement Association, et al, c/o J. Carroll Holzer, Esquire, Holzer, Maher, DeMilio & Lee, 305 W. Chesapeake Avenue, Suite 105, Towson, Maryland 21204, Plaintiffs; G. Scott Barhight, Esquire, Whiteford, Taylor and Preston, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204-4515, Counsel for Defendants; Mr. and Mrs. Joseph B. McMaster, 426 Sherwood Road, Cockeysville, Maryland 21030, Defendants; Ms. Emilienne O'Rourke - Southwestern Bell Mobile Systems, Inc., 7855 Walker Drive, Suite 100, Greenbelt, Maryland 20770, Contract Lessee; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.



Linda Lee M. Kuszmaul

LindaLee M. Kuszmaul, Legal Secretary,
County Board of Appeals, Room 49, Old Courthouse, 400 Washington Avenue,
Towson, Maryland 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to J. Carroll Holzer, Esquire, Holzer, Maher, DeMilio & Lee, 305 W. Chesapeake Avenue, Suite 105, Towson, Maryland 21204, Counsel for Plaintiffs; Sherwood Hill Improvement Association, et al, c/o J. Carroll Holzer, Esquire, Holzer, Maher, DeMilio & Lee, 305 W. Chesapeake Avenue, Suite 105, Towson, Maryland 21204, Plaintiffs; G. Scott Barhight, Esquire, Whiteford, Taylor and Preston, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204-4515, Counsel for Defendants; Mr. and Mrs. Joseph B. McMaster, 426 Sherwood Road, Cockeysville, Maryland 21030, Defendants; Ms. Emilienne O'Rourke - Southwestern Bell Mobile Systems, Inc., 7855 Walker Drive, Suite 100, Greenbelt, Maryland 20770, Contract Lessee; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 on this 30th day of June, 1992.

Linda Lee M. Kuszmaul

LindaLee M. Kuszmaul, Legal Secretary,
County Board of Appeals, Room 49, Old Courthouse, 400 Washington Avenue,
Towson, Maryland 21204 (410) 887-3180

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

June 30, 1992

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, Maryland 21204-4515

Re: Case No. 90-382-XA (Joseph B. McMaster, et ux)

Dear Mr. Barhight:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda Lee M. Kuszmaul

LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: Mr. and Mrs. Joseph B. McMaster
Ms. Emilienne O'Rourke - Southwestern Bell Mobile Systems, Inc.
Ms. Sarah Adams
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk -Zoning
Arnold Jablon, Director of Zoning Administration

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

June 30, 1992

J. Carroll Holzer, Esquire
HOLZER, MAHER & DEMILIO
305 W. Chesapeake Avenue
Suite 105
Towson, Maryland 21204

Re: Case No. 90-382-XA (Joseph B. McMaster, et ux)

Dear Mr. Holzer:

In accordance with Rule B-7(a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within thirty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you file in Court, in accordance with Rule B-7(a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Linda Lee M. Kuszmaul

LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: Sherwood Hill Improvement Association, et al

within a business, office or industrial zone. Ms. O'Rourke testified that Cellular One hired Fred Kruhm, a real estate consultant, to locate a site within the search area that would be appropriate for the proposed tower. Mr. Kruhm never testified in this matter and there is no evidence submitted indicating Petitioners diligent search prior to the selection of the McMasters property. In fact, testimony clearly indicated that the search for alternative sites occurred after the selection and contractual commitment between Cellular One and the McMasters. There was no testimony or evidence indicating that any commercial or industrial zoned property was examined within the search area prior to the signing of a contract between the McMasters and Cellular One on September 22, 1989."

The evidence is no different before this Board than it was as summarized by the Zoning Commissioner in his decision. The only additional factor since the Zoning Commissioner's hearing is that a third search area has been plotted by Mr. Balecki in terms of the "red tertiary grid cell" pattern as testified before this Board. That search area again, was developed in the summer of 1990 and had no application to this case whatsoever.

The Statute as passed by the Baltimore County Council indicates that a diligent search must be made. The legislative intent and logic behind the Statute implies a search **before** a location of a tower, not after the site is picked to merely justify the selection. To interpret the Statute otherwise, would be to emasculate the intent of the Statute and the effort behind the County Council's enactment of Bill No. 64-86. To



reward the Petitioner's effort of selecting the site first and then conducting multiple searches after the site is selected to create a justification for the purposes of the Statute would produce an absurd result.

There are other areas of the law which are analogous to what the Petitioner is attempting to do before this Board:

First, in the area of criminal law, it is well recognized in search and seizure law that the "fruit of the poisonous tree" doctrine applies. That is, future evidence obtained from an illegal search or seizure is tainted. Here, there has been a tainting of the initial search as conducted by Ms. O'Rourke and Mr. Kruhm and no amount of effort or subsequent searches can justify the proposition that they failed to properly conduct an appropriate search.

Secondly, also in the area of criminal law, this effort by the Petitioner is analogous to the situation of a police officer knowing that contraband is located in a particular house, enters the house and obtains the contraband illegally then goes to a Judge to get a warrant for a search of the house because he has "probable cause" to believe that contraband is located therein.

Again, in the area of criminal law, having once obtained an illegal confession without the advice of rights to the accused, it is a general proposition that such confession is precluded from being entered into evidence.



While these three analogies are in a different field of law from the Zoning Regulations of Baltimore County, the basic principles are consistent with an analysis of our Zoning Statute. The Petitioner cannot be allowed to pick a site without adherence to the rules and regulations and then justify the selection upon the basis of a subsequent search.

Even if one were to assume that the Petitioner Bell through its multiple efforts over the years to devise a search area and explore various alternatives was valid, the evidence before this Board clearly reflects that Bell never made the effort to significantly contact Baltimore County to obtain locations on water towers owned by the County until the Protestants appeared on the scene. Even now, when they have obtained permission to utilize the Mays Chapel Tower, they have failed to consider to consider a Warren Elementary School Tower or the new tower being proposed on Sherwood Road itself in the near future.

Secondly, an analysis of the business and industrially zoned property in the corridor between Interstate 83 and York Road North to Schwann Road has clearly never been explored sufficiently by Bell and when it was, they obtained a temporary cell site on Padonia Road on an office building located on Padonia Road. Clearly, a similar site could be located on the high ground north of Schwann Road to satisfy Bell's requirements north to Hereford. A simple fact, after all the



evidence is analyzed, is that Bell desires to place this tower where it has a contract with McMasters and that any other location will be rejected out of hand if it is not that location. It is also clear, based on the testimony of Mr. Balecki, that Bell will grab as many locations as it can on the basis of potential future use for its "tertiary cell system." If that is the case, then this Board should send the message to Bell that it must comply with the Baltimore County Zoning Regulations Section 502.7.C.1 in its selection process in the future to protect other communities from the same type of activity that has occurred at the McMasters site.

It is submitted by the Protestants that since the Petitioner has failed to meet the burden that it has made a diligent search for a location within a business, office or industrial zone, the Board is not required to address the issue of whether or not this project meets the other criteria of 502.1.A through H, nor may the Board address the issues of a variance or the placing of other conditions upon the Petitioners under Section 502.7.C2 through 10.

While it is not necessary for the Protestants to address the point, it will be noted here that a Petitioner for Variance under Section 307.1 must establish "practical difficulty or unreasonable hardship." In the instant case, the testimony in evidence is clear that there is no undue hardship or burden on the Petitioner; as a matter of fact, the Petitioner has



actually leased an amount of ground which would satisfy the zoning regulations and there is no reason why it could not and cannot comply with the appropriate setbacks as required by the Baltimore County Zoning Regulations, **but for the fact that Mr. McMasters desires to minimize the amount of land surrounding the proposed facility in order that he can continue to farm or develop that area**. It is more troublesome in the instant case when one examines the variance issue to find that under the Agreement between Bell and McMasters, that McMasters can utilize the remaining portion of the leased premises for whatever purpose would be allowed by the Baltimore County Development Regulations. If that is the case, it is very clear that development could take place on this leased premises which could place the homes to be developed on said site extremely close to the proposed facility and tower. To do that, would clearly circumvent the requirements as imposed in Bill No. 64-86 and codified in Sections 502.7C.2 and 3. McMasters submitting an Affidavit that he will not do so does not provide the Protestants or the County any degree of comfort in protection in the future.

One final comment in this Memorandum. In normal cases involving Section 502.1, the Petitioner customarily cites the case of Schultz v. Pritts, 291 MD 1 (1981), for the proposition that before a special exception can be denied, the requested use must have an adverse affect above and beyond those



inheritently associated with the use, regardless of its location. While it is submitted by the Protestants that such case is frequently overused by the Petitioners, in the instant case, the Zoning Commissioner should not even be guided by this particular decision. The issue before the Commissioner is whether or not Section 501.7.C.1 has been complied with and is a procedural prerequisite to the consideration of the other issues in this case.

**WHEREFORE**, it is respectfully submitted by the Protestants, individually and on behalf of the community associations that the Board find that the procedural aspect of Section 502.7C.1 has not been complied with by the Petitioners and that it has not met the burden of establishing that it has made a diligent search for a location within business, office or industrial zone and therefore the petition must be denied.

Respectfully submitted,

J. CARROLL HOLZER
Attorney for Protestants



**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 30th day of December, 1991, a copy of the foregoing Protestants Memorandum was mailed postage prepaid to G. Scott Barhight, Whiteford, Taylor & Preston, 500 Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland 21204.

J. CARROLL HOLZER

c:\wp\memo\sherwood.mem



IN RE: AND ZONING VARIANCE - NE Corner Sherwood Road and Hollow Road (426 Sherwood Road) 8th Election District 3rd Councilmanic District
Joseph B. McMaster, et ux Petitioners

* BEFORE THE
* BOARD OF APPEALS
* OF BALTIMORE COUNTY
* Case No.: 90-382-XA

* * * * * * * * * * * *

MOTION TO SEPARATE ISSUES

Protestants, by J. Carroll Holzer of Holzer, Maher and Demilio, herein request that this Honorable Board limits its consideration of evidence to the sole issue of whether or not the Petitioners "made a diligent and reasonable search for a location" to support the above captioned request, as required in Section 502.7.c.1 of the Baltimore County Zoning Regulations for the following reasons:

1) That the Petitioners must establish as a prerequisite that they conducted a diligent search as required by Section 502.7.c.1 of the Baltimore County Zoning Regulations and;

2) That taking testimony on all of the issues as presented in a request for Special Exception, concerning 502.1 criteria would consume hours and days of this Board's time and cost the Petitioners as well and the Protestants a substantial sum of money to present experts and witnesses; Protestants recognize that if the Board finds that the Petitioners did not meet the criteria of this Section 502.7.c.1 that determination ends the case without the need for additional testimony.

LAW OFFICES
HOLZER, MAHER
& DEMILIO
305 W. CHESAPEAKE AVENUE
SUITE 105
TOWSON, MARYLAND
21204
(301) 825-6960

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines DATE: February 22, 1990
Zoning Commissioner

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Joseph B. McMaster, Item 242

The Petitioner requests a Special Exception for a wireless transmitting and receiving facility; and a Variance for relief from area and setback requirements.

Should the Petitioner's request be granted, staff offers the following comments:

- A CRG meeting or waiver be required for the proposed project. The approved zoning plan should conform to the approved CRG plan and the final landscape plan.
- A landscape plan must be submitted for approval prior to the issuance of any building permits.
- A wrought iron fence (minimum of 6 ft. high) should be installed with dark brick columns at 10-15 ft. intervals along the perimeter of the enclosed area of the tower.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/cmm

FEB 2 3 1990

*Baltimore County*
*Department of Public Works*
*Bureau of Traffic Engineering*
*Courts Building, Suite 405*
*Towson, Maryland 21204*
*(301) 887-3554*

March 9, 1990

*Dennis F. Rasmussen*
*County Executive*

J. Robert Haines
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 193, 241, 242, 243, 244, and 245.

Very truly yours,

Michael S. Flanigan
Traffic Engineer Assoc. II

MSF/lab

MAR 2 1 1990

MICROFILMED

*Baltimore County*
*Department of Permits & Licenses*
*111 West Chesapeake Avenue*
*Towson, Maryland 21204*
*(301) 887-3610*

*Ted Zaleski, Jr.*
*Director*

FEBRUARY 8, 1990

*Dennis F. Rasmussen*
*County Executive*

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

Location: CORNER OF NE/S OF SHERWOOD ROAD

Item No.: 242 Zoning Agenda: FEBRUARY 20, 1990

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: Capt. Joseph Kelly 2-9-90 Noted and Approved
Planning Group / Special Inspection Division
Fire Prevention Bureau

JK/KEK

FEB 1 3 1990

MICROFILMED

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Zoning Advisory Committee DATE: March 5, 1990

FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting
for February 20, 1990

The Developers Engineering Division has reviewed the subject zoning items and we have no comments for Items 193, 224, 241, 242, 243, 244, and 245

Robert W. Bowling

ROBERT W. BOWLING, P.E., Chief
Developers Engineering Division

RWB:s

MAR 0 1990

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO J. Robert Haines, Zoning Commissioner Date May 11, 1990

FROM Phyllis Cole Friedman, People's Counsel for Baltimore County

SUBJECT Joseph B. McMaster, et ux, Owner - Zoning Case No. 90-382-XA
Southwestern Bell Mobile Systems, Inc., T/A Cellular One, Lessee

When I entered our appearance in this matter, we intended to participate, not being aware that there was counsel representing Protestants. In view of this fact, we have decided that whatever issues there are will be adequately represented and we will not appear in person.

Phyllis Cole Friedman

Phyllis Cole Friedman
People's Counsel for Baltimore County

cc: G. Scott Barhight, Esquire
J. Carroll Holzer

PCF:sh

CPS-008

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

March 28, 1990

*Dennis F. Rasmussen*
*County Executive*

G. Scott Barhight, Esq.
210 W. Pennsylvania Avenue
Towson, Maryland 21204

J. Caroll Holzer, Esq.
305 W. Chesapeake Avenue, #110
Towson, Maryland 21204

Re: Case Number: 90-382-XA
Legal Owner(s): Joseph B. McMaster
Lessee: Southwestern Bell Mobile Systems, Inc.
Location: NE/S of Sherwood Road, SE/S of Hollow Road

Gentlemen:

This will confirm that due to community interest generated, the above captioned case, which was scheduled to be heard on April 3, 1990, has been postponed.

It further confirms the new hearing schedule as follows:

8:30 a.m. - 12:00 noon - Monday, May 7, 1990
8:30 a.m. - 12:00 noon - Monday, May 14, 1990
9:30 a.m. - Completion - Wednesday, May 16, 1990.

If you need further information, please do not hesitate to call.

Very truly yours,

G. G. Stephens
(301) 887-3391

cc: Steve Rosen
Clay M. Barnes
David W. Baker
James Riffin
John Massar
Joseph B. McMaster
Southwestern Bell Mobile Systems, Inc.

MICROFILMED

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

May 22, 1990

*Dennis F. Rasmussen*
*County Executive*

G. Scott Barhight, Esq.
210 W. Pennsylvania Avenue
500 Court Towers
Towson, Maryland 21204

J. Carroll Holzer, Esq.
305 W. Chesapeake Avenue
Suite #110
Towson, Maryland 21204

Re: Case Number: 90-382-XA
McMaster/Southwestern Bell Mobile Systems
(426 Sherwood Road)

Gentlemen:

This will confirm the hearing schedule of the above captioned matter. This case will continue as follows:

| | | |
|---|---|---|
| Friday | June 01, 1990 | 9:30 a.m. |
| Tuesday | July 17, 1990 | 9:30 a.m. |
| Tuesday | July 31, 1990 | 9:30 a.m. |
| Wednesday | August 01, 1990 | 9:30 a.m. |

Very truly yours,

G. G. Stephens

except: June 1 O.K.
~~July 10 ???~~
July - 17 O.K.
July - 31 O.K.
Aug. 1 - O.K.
825-6160
C. Holzer O.K.

MICROFILMED

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

June 8, 1990

*Dennis F. Rasmussen*
*County Executive*

J. Carroll Holzer, Esq.
305 W. Chesapeake Avenue
Suite 110
Towson, Maryland 21204

G. Scott Barhight, Esq.
210 W. Pennsylvania Avenue
500 Court Towers
Towson, Maryland 21204

Re: Case Number: 90-382-XA
McMaster/Southwestern Bell Mobile Systems

Gentlemen:

Confirming the rescheduling of the above captioned matter, the July 31st and August 1st dates are no longer valid; the case will continue as follows:

TUESDAY.....JULY 17, 1990 at 9:30 a.m.
TUESDAY.....AUGUST 14, 1990 at 9:30 a.m.
WEDNESDAY.....AUGUST 15, 1990 at 9:30 a.m.
THURSDAY.....AUGUST 16, 1990 at 9:30 a.m.

Very truly yours,

G. G. Stephens
(301) 887-3391

MICROFILMED

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

*Dennis F. Rasmussen*
*County Executive*

November 14, 1990

Baltimore County Board of Appeals
County Office Building, Room 315
Towson, Maryland 21204

RE: Petition for Special Exception and Zoning Variance
NE/Corner Sherwood Road and Hollow Road
(426 Sherwood Road)
8th Election District, 3rd Councilmanic District
JOSEPH B. MCMASTER, ET UX - Petitioner
Case No. 90-382-XA

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on November 13, 1990 by G. Scott Barhight, Attorney on behalf of the Petitioners. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

J. ROBERT HAINES
Zoning Commissioner

JRH:cer

cc: Joseph B. McMaster, 426 Sherwood Road, Cockeysville, MD 21030

Emilienne O'Rourke - Southwestern Bell Mobile Systems, Inc.
7855 Walker Drive, Suite 100, Greenbelt, MD 20770

G. Scott Barhight - Whiteford, Taylor & Preston
500 Court Towers, 210 W. Pennsylvania Ave., Towson, MD 21204

J. Carroll Holzer - Holzer, Maher & Demilio
305 W. Chesapeake Avenue, Suite 105, Towson, MD 21204

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

91 NOV 14 AM 10:06

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**APPEAL**

Petition for Special Exception and Zoning Variance
(426 Sherwood Road;
(426 Sherwood Road)
8th Election District - 3rd Councilmanic District
JOSEPH B. MCMASTER - Petitioner
Case No. 90-382-XA

Petitions for Special Exception and Zoning Variance

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments

Petitioner's Exhibits:
1. Yellow outlined map of Sherwood Road
2. Photograph of Site (14" x 16")
3A - 3F - DZC's Decision for Chestnut Ridge
4. Plat to accompany Petitions
5. Photographs of Trailer, fence, and tower
6. Lease Agreement
7. Phone Messages and Business Card
8A. ADC Map of Cockeysville
8B. Handwritten notes with name of Jim Pembroke
9. Site Acquisition Information (Print out)
10. Photographs of surrounding businesses
11. Search Area Site Candidates Data Sheet
12. 4-Cell Pattern
13 - 17 - Overlay (Board)
18. Seven small overlays of Loch Raven Genstar
19A - 19W Environmental Impact Assessment
20. Affidavit
21. Resume of John Osepchuk

MICROFILMED

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Appeal Checklist - Case No. 90-382-XA
November 14, 1990
Page 2

Protestant's Exhibits:
1. Photograph - Cell. One Monopole
2. Yellow Outlined Map
3A - 3B - Opposition List
4. Notice dated 3/16/90 with Site Map
5. Opposition Petition from Montview Residents
6. Notice of reasons from opposition

Zoning Commissioner's Order dated October 12, 1990 (Denied in part; Dismissed in part)

Notice of Appeal received November 13, 1990, from G. Scott Barhight, Attorney on behalf of the Petitioners

cc: Joseph B. McMaster, 426 Sherwood Road, Cockeysville, MD 21030

Emilienne O'Rourke - Southwestern Bell Mobile Systems, Inc.
7855 Walker Drive, Suite 100, Greenbelt, MD 20770

G. Scott Barhight - Whiteford, Taylor & Preston
500 Court Towers, 210 W. Pennsylvania Ave., Towson, MD 21204

J. Carroll Holzer - Holzer, Maher & Demilio
305 W. Chesapeake Avenue, Suite 105, Towson, MD 21204

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning
Patrick Keller, Office of Planning & Zoning
J. Robert Haines, Zoning Commissioner
Ann M. Nastarowicz, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
W. Carl Richards, Jr., Zoning Coordinator
Docket Clerk
Arnold Jablon, County Attorney

MICROFILMED

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JOSEPH B. McMASTER, ET UX
NE/cor Sherwood & Hollow
Rds. (426 Sherwood Road)
8th Election District
3rd Councilmanic District

#90-382-XA

SE-Wireless transmitting & receiving facility
VAR-setbacks

| | |
|---|---|
| February 21, 1990 | Petition for Special Exception for a wireless transmitting and receiving facility filed by G. Scott Barhight, Esquire on behalf of Mr. and Mrs. McMaster. Petition for Variances as to property line setbacks, building setbacks and lot area also filed. |
| October 12, 1990 | Order of the Zoning Commissioner DENYING Peittion for Special Exception and DISMISSING Petition for Variances as moot. |
| November 13 | Notice of Appeal received from G. Scott Barhight, Esquire on behalf of Petitioners. |
| June 25, 1991 | Motion to Separate Issues filed by J. Carroll Holzer, Esquire on behalf of Protestants. |
| May 28, 1992 | Opinion and Order of the Board GRANTING Petition for Special Exception with restrictions and GRANTING requested Variances. |
| June 25 | Order for Appeal filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire on behalf of Protestants. Petition to accompany appeal also filed in the Circuit Court for Baltimore County by Mr. Holzer. |
| June 30 | Certificate of Notice sent to interested parties. |
| July 9 | Transcript of testimony filed; Record of Proceedings filed in the Circuit Court for Baltimore County. |
| January 4, 1993 | Order of the CCt,BCo AFFIRMING C.B. of A. (Hon. John G. Turnbull, II). |

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12/17/90 - Following parties notified of hearing set for June 25, 1991 at 10:00 a.m.:

G. Scott Barhight, Esquire
Mr. Joseph B. McMaster
Emilienne O'Rourke - Southwestern Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
People's Counsel for Baltimore County
P. David Fields
Pat Keller
~~Public Services~~
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

4/24/91 - Above parties sent Amended Notice advising of Day Nos. 2 and 3 set for August 20 and 21, 1991 as well as retaining June 25, 1991 for Day #1.

6/26/91 - Above parties sent Amended Notice advising start time of 9:00 a.m. for Days 2 and 3 (August 20 and 21, 1991).

8/09/91 -T/C from S. Barhight -concern that case can be finished in scheduled two hearing days and problem faced with departure of Lynn Moreland as member of Board effective 8/31/91. Meeting set up for Tuesday, August 13 at 9:00 w/S. Barhight, C. Holzer, M. Sauer (chairman for this matter) and W. Hackett, Chairman of the Board to discuss alternatives.

8/13/91 -A/agreement of S. Barhight and C. Holzer, matter will be pulled from docket; to be assigned for hearing in November 1991, if nothing can be had sooner, for 5 hearing days, to be started at day #1 with new 3rd Board member assigned to case. Notice of Removal from Assignment sent to all parties. Notice of Assignment to follow. kcw

8/27/91 - Above parties notified of hearing dates November 13, 14, 19 & 20, 1991 all to begin at 9:00 a.m. and continue until 4:00 p.m. each day.

9/11/91 - Above parties sent REVISED NOTICE OF ASSIGNMENT adding Day #5, February 5, 1992 at 9:00 a.m.

10/17/91 - Above parties sent REVISED NOTICE OF ASSIGNMENT omitting Day #1 at the request of Counsel for Protestants. Original Day Nos. 2-5 will now be 1-4. (Court of Special Appeals conflict)

11/20/91 - Case completed. MEMOS DUE 12/30/91

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County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

October 17, 1991

J. Carroll Holzer, Esquire
HOLZER, MAHER & DEMILIO
305 W. Chesapeake Avenue, Suite 105
Towson, MD 21204

RE: Case No. 90-382-XA
Joseph B. McMaster, et ux

Dear Mr. Holzer:

The Board is in receipt of your letter of September 30, 1991 requesting a postponement for Wednesday, November 13, 1991 due to a conflict at the Court of Special Appeals. The Board has also received and considered correspondence dated October 3 from G. Scott Barhight, Counsel for Petitioner, objecting to same, and your follow-up letter of October 10.

After due consideration, this Board has no alternative but to grant your requested postponement. Thursday, November 14, 1991, will therefore be the first of four scheduled hearing days for this case. A fifth hearing day in place of November 13 will not be scheduled at this time, but rather will be set in, if necessary, as the Board's docket permits.

Very truly yours,

William T. Hackett

William T. Hackett, Chairman
County Board of Appeals

Enclosure

cc: Ms. Emilienne O'Rourke
G. Scott Barhight, Esquire
Karl J. Nelson, Esquire
Dr. Cyril Byron
Mr. Jerome Goodman

---

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

September 11, 1991

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: Case No. 90-382-XA
Joseph B. McMaster, et ux

Dear Mr. Barhight:

The Board is in receipt of your letter of September 5, 1991 requesting a fifth hearing day for the subject matter.

Since the Board's docket has already been set, the first available date at this time is February 5, 1992, which we are now scheduling as Day #5 for Case No. 90-382-XA. This case is now scheduled for five hearing days as indicated on the enclosed Amended Notice of Assignment.

Very truly yours,

Michael B. Sauer

Michael B. Sauer
County Board of Appeals

Enclosure

cc: Ms. Emilienne O'Rourke
J. Carroll Holzer, Esquire
Karl J. Nelson, Esquire

---

Baltimore County Government
County Executive's Office

Roger B. Hayden
County Executive

400 Washington Avenue
Towson, Maryland 21204
887-2450

September 12, 1991

Ms. Saran Adams
11424 York Road
Cockeysville, MD 21030

Dear Ms. Adams:

Thank you for caring enough to stop by the Executive Office and also to write. Your kind words about Mr. Louis Waidner were noted and appreciated, and I will pass those along to him. As you know, the new dates for the Board of Appeals Hearing are November 13, 14, 19, and 20, 1991. Please call the Board of Appeals, at 887-3180, if you have any additional questions or comments in this matter. You may also write to them at the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland, 21204.

In closing, I would like to thank you for participating in the Appeals Process. Too often, citizens are apathetic and are not concerned with the affairs of their government.

Respectfully yours,

Roger B. Hayden
County Executive

RBH:mas

cc: William T. Hackett, Chairman, Board of Appeals
Louis P. Waidner, Executive Assistant

91 SEP 20 AM 8:44

8/13/91

Michael:

Scott Barhight telephoned.

- Spoke w/Don Mason. He's not interested in extending Lynn's term for any length of time; is sticking with appointment of Levero effective 9/01/91.

- Scott has spoken w/Carroll Holzer; Carroll suggested starting over, with you selecting a third member to complete the Board. Scott agrees with this suggestion.

- Further suggestion --selecting 5 new days (if that has to be in November, that would have to be in November) and letting the two days next week (8/20 and 8/21) go.

  Reason for this suggestion -he has legal problems with picking up next Tuesday on what is perceived as Day #2 continued from June date. Would prefer that a new Notice be sent to all parties, clearly indicating that this case is starting over on 5 given dates, separate and apart from any previously scheduled dates (believes this will also avoid appellate problems later down the road).

Carroll is waiting to go out of town; both would sincerely appreciate knowing what the Board's decision is in this matter (Carroll will only be available until 3:15 p.m.).

One further comment --since this would be starting again before new member, Scott and Carroll both feel case would have to be started again from Day #1, and this would not be possible at this point if the 2 dates in August are used.

Scott has left a number where he can be reached, and Kolzer will be in touch with him before going out of town.

Kathi

OK → We will start over - give them 5 new dates.

Contacted Scott @ 3:30 — 8/20 & 8/21 pulled; still keeping 5 dates (beginning at Day #1) — notice to be sent. Scott to notify Carroll.
K.

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

August 24, 1993

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: Case No. 90-382-XA
JOSEPH B. MCMASTER, ET UX - Petitioner

Dear Mr. Barhight:

As no further action has been taken regarding the subject matter since the January 4, 1993 decision from The Circuit Court for Baltimore County, we have returned the Board's copy of the subject zoning file to the office of Zoning Administration and Development Management.

Anyone interested in this case can contact the Zoning Office at 887-3391 upon receipt of this letter. By copy of this letter, all parties of record that may have an interest in this file have been notified.

Sincerely,
Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

cc: Joseph B. McMaster
Emilienne O'Rourke
J. Carroll Holzer
Sarah Adams

Printed with Soybean Ink on Recycled Paper

August 28, 1985

OFFICE OF LAW REPORT
PROPOSED AMENDMENTS TO THE BALTIMORE COUNTY ZONING REGULATIONS
CONCERNING
RADIO TOWERS AND TELEVISION TOWERS AND OTHER
WIRELESS TRANSMISSION OR RECEIVING FACILITIES

MICROFILMED

LEGISLATION PROJECT #85-04

PROPOSED AMENDMENTS TO THE BALTIMORE COUNTY ZONING REGULATIONS
CONCERNING
RADIO AND TELEVISION TOWERS AND OTHER WIRELESS TRANSMISSION OR RECEIVING FACILITIES

Discussion

Radio and television antennas and transmission and receiving towers are currently permitted as a principal use by special exception in every zone of the County except M.R., R.A.E. and O.T. zones. According to Subsection 502.1 before any special exception is granted it must appear that the use will not:

a. Be detrimental to the health, safety, or general welfare of the locality involved;

b. Tend to create congestion in roads, streets or alleys therein;

c. Create a potential hazard from fire, panic or other dangers;

d. Tend to overcrowd land and cause undue concentration of population;

e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;

f. Interfere with adequate light and air;

g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor

h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

The design of radio and television antennas and wireless transmitting and receiving towers is dependent upon the number of stations anticipated to use the tower, the type of waves being transmitted and received, the intended operating power, the size of the service area, and the terrain of the surrounding area. The most common types of transmission are land mobile radio, A.M., F.M., television, and fixed-point microwave. Land mobile radio and common carrier systems, (i.e., cellular telephone systems) are the fastest growing segment of the communications industry.

With the exceptions of A.M. and land mobile radio, nearly all radio frequencies require a clear line-of-sight path between transmitter and receiver. This is especially true for fixed-point microwave. Because of the line-of-sight requirement transmission facilities must be elevated sufficiently above the average terrain to beam signals past obstructions. Optimum line of sight path is therefore usually achieved on hilltops or on tall buildings. In areas where few tower sites are available, towers may compete with residential





development for prime hilltop sites. Residents of neighborhoods where towers are proposed argue that towers are unattractive and adversely effect property values. If a tower is to serve several station facilities at a particular height, the tower is likely to be a candelabra structure, such as the WBAL tower on T.V. Hill in Baltimore City. On the other hand, if a tower is anticipated to serve only one or two stations with the receivers and transmitters located vertically along the tower, the tower is likely to be a pencil structure. Both candelabra towers and pencil towers require numerous guy wires for anchoring. Freestanding towers are also common and are frequently shaped similar to the Eiffel Tower. Whether freestanding or not, most large towers are of an open grid, structural steel construction, with lights placed intermittently for sighting by planes.

As previously mentioned, cellular telephone systems is one of the fastest growing segments of the communication industry. Cellular telephone systems are intended to serve the mobile communications demands of a metropolitan region. The Federal Communication Commission (FCC) permits and licenses two systems in any one region. In order to prevent communication gaps, the system consists of an integrated grid network of towers, each interdependent upon others. Thus, when the location of one tower is significantly shifted, one or more towers may also have to be shifted. Because the system specifically addresses mobil communications, it is oriented to the expressways and interstates, their primary demand source. The towers themselves are generally 150 to 200 feet in height when freestanding, and they usually are of a monopole design. The distance between towers can vary significantly dependent upon the height of the tower, demand, and somewhat on terrain or obstructions. Because the number of transmissions a tower can serve at any one moment is limited (technologically) to approximately 100, as demand increases more towers may become necessary. These additional towers will in all likelihood be smaller than those of the initial system.

Proposed transmission towers are also viewed as an undesirable use in residential zones because of a fear of potential health hazards posed by long-term exposure to nonionizing electromagnetic radiation (NIER) emitted by these facilities. NIER sources are those frequencies in the lower two-thirds of the electromagnetic spectrum and include all radio, television and microwave frequencies as well as ordinary household current and radar. NIER is distinguished from ionizing electromagnetic radiation (IER)- cosmic, atomic and X-ray - by its lack of energy to ionize, or alter, the molecular structure of living tissue. Although the short and long-term damage to humans resulting from exposure to even low levels of IER is well documented, potential health hazards associated with NIER exposure is a subject of controversy among health scientists.

The problems discussed above associated with the siting of transmission towers are encountered by many jurisdictions around the country. A survey of 15 jurisdictions was conducted by the American Planning Association in a report on "Regulating Radio and Television Towers" (Bookin and Epstein. PAS Report No. 384 American Planning Assoc. 1984). The survey revealed that nearly all jurisdictions consider transmission facilities as conditional uses. Some jurisdictions allow transmission towers outright in non-residential zones



subject to special lot size, height, security and landscaping requirements. The American Planning Association report also suggested several ways to regulate towers. In communities where there is a shortage of tower sites the report suggested that the community take action to identify and protect sites (i.e., adopt a plan) that may be needed in the future. Other alternatives included a ban on transmission towers or permitting them only when no suitable sites in non-residential areas are available.

A review of the zoning ordinances of several neighboring Maryland counties and found that transmission towers are generally permitted by special exception in certain residential and agricultural zones and by right in certain commercial and industrial zones.

Under the authority of the Federal Communications Act of 1934, as amended, the FCC has developed a comprehensive system to regulate radio and television transmissions and related facilities. The height, operating power and location of transmitting structures are regulated by the FCC with additional requirements of the FAA (and the County's special exception requirements). A local jurisdiction cannot ban all new communications facilities outright or impose a permanent or open-ended moratorium. The FCC has the power to issue construction permits that override such a local prohibition and a ban on towers also may violate First Amendment rights.

In a recent special exception hearing, residents unsuccessfully opposed the construction of a 200 foot tower in their neighborhood (zoned R.C.2). The tower is to be used to provide cellular phone service in Maryland. The residents felt that the tower would block views, adversely affect property values, be struck by lightning, interfere with hot air balloons and with migratory bird patterns, and that radiation from the tower would be harmful to people and animals. The petitioners for the tower have received a license from the FCC and approval by the FAA and the Public Utilities Commission. An environmentalist testified that the tower would be relatively unobstrusive and inoffensive in this wooded area and the effect on the environment and fowl would be negligible. An environmental planner discussed national and international research and American National Standards Institute (ANSI) and Environmental Protection Agency (EPA) guidelines and standards and concluded that the proposed ranges of energy would not present health hazards. Further testimony presented by a land planner/landscape architect indicated that the proposed tower would not be detrimental to the agriculture in the area. The Deputy Zoning Commissioner found that the special exception requirements had been met and granted the special exception subject to the following additional restrictions:

1. The wireless transmitting and receiving facility shall have a maximum height of 200 feet, including all antennae, and a platform no more than 4 feet wide at the top.

2. The tower and accessory building shall be enclosed within a locked, chain-link fence at least 8 feet high.

3. The tower shall be unpainted or painted gray and shall not be lighted nor have strobe lights unless specifically required by FCC or FAA rules and regulations. The color of the fence shall be black or brown.





4. At such time as the use is terminated, the tower shall be removed.

5. All plats required for permits shall be drawn by a Maryland registered professional engineer qualified in structural design. Said engineer shall supervise and certify the tower upon completion before an occupancy use permit can be issued. Every five years, a certification by a Maryland registered professional engineer shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure continues to meet all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification.

6. EPA standards and guidelines relating to radiation emissions shall be met at all times.

7. Antennae, dishes or other wireless transmitting and receiving apparatus on the tower shall be limited to those providing cellular phone service or utilized by Baltimore County.

8. The tower shall be properly grounded to minimize the possibility of fire.

9. A landscape plan, designed to minimize the visual impact of the building and lower portion of the tower, shall be submitted to and approved by the Current Planning and Development Division.

On September 4, 1984 County Council adopted Bill No. 117-84 which addresses wireless transmitting and receiving facilities located near historic districts (see Attachment #2). This Bill does not, however, apply to towers under 350 feet in height. The issue of transmission towers near historic districts is discussed in detail in the Planning Board's final report entitled Proposed Amendments to the Baltimore County Zoning Regulations Concerning Radio and Television Towers and Other Wireless Transmission or Receiving Facilities in Proximity to Historic Buildings or Lands (Legislation Project No. 84-98).

Comments/Recommendations

Radio, television and microwave communications are increasingly important for our security, recreation and economic needs. Unfortunately, the transmission towers and related facilities that are necessary components of these systems may affect safety, health and aesthetics if they are not properly situated. The communications industry is developing at a rapid pace and it is difficult to predict what the land use ramifications will be. Overly restrictive regulations may stand in the way of progress and violate federal statutes, while regulations that are too liberal may result in a proliferation of towers in Residential zones.

Banning towers from Residential zones and restricting such towers to Business and Manufacturing zones is considered inappropriate. There are roughly 7,000 acres of land zoned for business and 24,000 acres for manufacturing while the





total acreage for R.C. and D.R. zones (the only residential zones where towers are permitted) is about 251,000 and 101,000 acres respectively. Business and Manufacturing zones in the County generally fall within the urban and suburban areas. These locations may be suitable for certain types of transmitting and receiving facilities but may be inadequate for other types of wireless transmitting or receiving facilities. Many mobile communications systems (including cellular and paging systems) are oriented towards major highways (e.g., I-695, I-83 and I-95). These highways run through urban, suburban and rural areas. The amount of land zoned for business and manufacturing is small when compared to land zoned for residential use. There is no information available which would indicate how much of the land zoned for business and manufacturing would be suitable for the location of the various types of towers that may be in demand in the future. Representatives from the cellular telephone industry indicate that three or four more towers may be needed in the County to adequately serve the metropolitan area. There may also be a need to locate towers in rural areas to serve I-83 and I-95 in the northern part of the County.

One of the major arguments against towers is that towers may emit harmful radiation. Health scientists, however, have not agreed about the effects of the low levels of radiation emitted by certain types of towers. The visual impact of towers in residential areas is also a major concern. Towers are commonly held to be unattractive to the point of adversely effecting property values. Towers can be accommodated in certain residential areas with additional controls to ensure that high standards of safety are met and visual impact is lessened.

Towers under certain circumstances may not be any more compatible in Business and Manufacturing zones than in Residential zones. Many Business and Manufacturing zones are located very close to some rather densely populated residential areas. Towers may be strongly opposed in these areas also.

In general, the manner in which towers are permitted (i.e., special exception) in Residential zones is appropriate.

> The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore valid. The special exception use is a valid zoning mechanism that delegates...a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given...are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.
>
> Schultz v. Pritts, 432 A.2d 1319 (1981).

The special exception process provides a means by which a balance of concerns may be struck. When the general special exception requirements do not achieve

the desired end, additional requirements may be adopted to insure the desired result. At some point the development of new communications systems may require the use of land in Residential zones. This land may be acquired subject to local regulations which are designed to lessen the visual impact and other inconveniences that a tower might create or the land might be acquired through federal intervention. A ban on towers in Residential zones may be preempted eventually by federal statutes. Many jurisdictions in Maryland, and in many other states as well, permit towers in certain Residential zones as either a special exception or conditional use. In some cases additional requirements or criteria such as setback, landscaping and safety provisions must also be met before the special exception is granted.

It is quite understandable that most people do not want a transmission tower near their home. The setback requirements in most Residential zones would permit a tower to be located undesirably close to a dwelling. For example, in a Resource Conservation (R.C.) 5 zone a tower would be setback only 50 feet from a property line and no visual buffer is required. It is felt that a more stringent setback should be required in Residential zones in order to insure that a sufficient fall area is provided for towers and also to serve as a "worst case" safety precaution. In addition, the characteristics of a tower and its antennas effect the strength and pattern of emissions. A study of emission levels around the tower should be presented by the petitioner to the Zoning Commissioner. These emission levels should be required to meet the EPA guidelines. The point of maximum emission may not be at the base of the tower but at some point distant from the tower. (In a recent case, this point was approximately equal to seventy percent of the height of the tower.) This together with the issue of long range harm from such emissions, the lack of specific state or federally adopted standards and the significant variations of other published standards and guidelines indicates a need for a minimum setback in Residential zones. Due to the height of most towers, a requirement to completely screen a transmission tower from view would be unreasonable. The petitioner (for a tower by special exception) should, however, be required to screen the tower as much as possible from nearby dwellings. Transmission towers should be fenced in order to prevent these towers from becoming playgrounds for children.

An amendment to the Zoning Regulations to permit towers by right under specified conditions in certain Office, Business and Manufacturing zones, along with more stringent special exception requirements in Residential zones would create a situation where non-residential zones would become more attractive locations for towers. Permitting certain towers by right in non-residential zones would provide an incentive to seek sites in these zones. A petitioner could avoid the costly and time consuming special exception process by locating in a non-residential zone. Additional regulations to protect residential areas which abut such zones could also be included. Therefore, the Baltimore County Zoning Regulations, 1955, as amended, should be further amended as set forth below.

In order to minimize possible harmful effects from radiation emissions and to minimize adverse visual effects of wireless transmitting or receiving structures in certain residential zones add stricter controls to the special exception requirements as shown below.





In Subsection 502.7 ( Special exception requirements for certain wireless transmitting and receiving facilities) add Paragraphs 502.7.C and 502.7.D to read as follows:

C. Wireless transmitting or receiving structures in R.C., D.R. or R-O zones shall be subject to the following additional requirements.

1. The setback of such structure from the nearest property line shall equal or exceed three (3) times its height above grade level.

2. The structure shall be enclosed within a locked, chain-link fence, or comparable wall or structure, at least 8 feet high.

3. A landscape plan, designed to minimize the visual impact of accessory buildings and the lower portion of the structure shall be submitted to and approved by the Director of the Office of Planning and Zoning.

4. Enviromental Protection Agency standards and guidelines relating to radiation emissions shall be met at all times.

5. At such time as the use is terminated, the structure shall be removed.

6. Every five years, a certification by a Maryland registered professional engineer shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure meets all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification.

7. No white stroboscopic lights shall be permitted.

8. In order to insure against adverse effects on its surroundings, an enviromental impact statement, as defined in Section 101, shall be submitted to the Zoning Commissioner. Such enviromental impact statement shall include information on emission levels and shall evaluate the impact of the proposed structure on birds, wildlife, livestock, etc.

D. Exemptions.

1. The provisions of Subparagraphs 502.7.C.1, 2 and 3 shall not apply to roof-mounted wireless transmitting or receiving structures.





2. The provisions of Paragraph 502.7.C shall not apply to wireless transmitting or receiving structures serving gas and electric public utility communication needs except as required by the Zoning Commissioner under the authority of Subsections 502.1 and 502.2.

In order to provide a greater incentive for the location of wireless transmitting or receiving structures in certain non-residential zones, add the following amendments.

Add Section 426 immediately after Section 425 - Alcoholic Beverages License to read as follows:

Section 426 - WIRELESS TRANSMITTING OR RECEIVING STRUCTURES

426.1 Wireless transmitting or receiving structures with a maximum height of 200 feet above grade level including all antennas and platforms shall be permitted by right in O-2 (Office Park) zones, O.T. (Office and Technology) zones, and Business and Manufacturing zones subject to the following restrictions:

A. The structure shall be enclosed within a locked, chain link fence, or comparable wall or structure, at least 8 feet high unless such structure is roof-mounted.

B. The minimum setback from any boundary of a Residential or R-O zone shall be 200 feet.

C. Enviromental Protection Agency standards and guidelines relating to radiation emissions shall be met at all times.

426.2 Within O-2, O.T., Business and Manufacturing zones, accessory wireless transmitting or receiving structures shall be permitted by right; however, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure.

In Paragraph 204.3.B (certain uses permitted by special exception in O-1 zones) add the following new entry:

3. Wireless transmitting or receiving structures

In Paragraph 205.3.A (certain uses permitted by right in O-2 zones) add the following new entry:

5. Wireless transmitting or receiving structures 200 feet or less in height above grade level (see Section 426)

In Paragraph 205.3.B (certain uses permitted by special exception in O-2 zones) add the following new entry:





4. Wireless transmitting or receiving structures not permitted by Section 426

Revise Paragraph 207.3.A (certain uses permitted by right in O.T. zones) by adding the words that are underlined:

14. Wireless transmitting or receiving structures 200 feet or less in height above grade level (see Section 426)

15. Combinations of the uses listed above

Revise Paragraph 207.3.D (certain uses permitted by special exception in O.T. zones) by adding the words that are underlined:

1. Warehouses as described in A.12 of this subsection may be allowed by special exception providing the warehouse accounts for no more than 60% of the total gross floor area.

2. Wireless transmitting or receiving structures not permitted by Section 426

In Subsection 230.9 (certain uses permitted by right in B.L. zones) add alphabetically the following new entry:

Wireless transmitting or receiving structures 200 feet or less in height above grade level (see Section 426)

Revise Subsection 230.13 (certain uses permitted by special exception in B.L. zones) by adding the words that are underlined:

Wireless transmitting and or receiving structure not permitted by Section 426

Revise Subsections 233.4, 236.4, 248.4.a and 256.4 (certain uses permitted by special exception in B.M., B.R., M.L.R. and M.H. zones) by deleting the words that are lined through and adding the words that are underlined as shown below:

Wireless transmitting and or receiving structure not permitted by Section 426; ~~except as a minor accessory use or structure (which is permitted without a special exception); provided that, for the purposes of this subsection, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure.~~

In Subsection 248.3 (certain uses permitted by right in M.L.R. zones) add the words that are underlined as shown below:

248.3 - Living quarters for watchmen and caretakers and their families living on the premises and engaged in connection with any lawful use in the M.L.R. Zone;





Accessory buildings and uses in connection with living quarters (see above) and as limited by Section 400.

Hotels and motels when within an M.L.R. zone which is part of a contiguous area of 25 acres or more of industrial zoning, and provided that the combined tract areas developed for such uses do not occupy more than 25 percent of the particular contiguous area of industrial zoning in which they are located.

Wireless transmitting or receiving structures 200 feet or less in height above grade level (see Section 426)

In Paragraph 253.1.B (certain transportation, storage or quasi-public uses or utilities permitted by right in M.L. zones) add the following new entry:

19. Wireless transmitting or receiving structures 200 feet or less in height above grade level (see Section 426)

Revise Paragraph 253.2.D. (certain uses permitted by special exception in M.L. zones) by deleting the words that are lined through and adding the words that are underlined as shown below:

2. Wireless transmitting and or receiving structures not permitted by Section 426; ~~except as minor accessory uses or structures (which are permitted without a special exception); provided that, for the purposes of this paragraph, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure.~~

In Subsection 256.1 (certain uses permitted by right in M.H. zones) add alphabetically the following new entry:

Wireless transmitting or receiving structures 200 feet or less in height above grade level (see Section 426)



SUMMARY OF PROPOSED ZONING REGULATIONS FOR PRINCIPAL WIRELESS TRANSMITTING OR RECEIVING STRUCTURES

| Zone | Manner Permitted | Conditions | Sections |
|---|---|---|---|
| R.C. and D.R. | Special Exception | 3:1 setback; fenced, landscaped, EIS, no strobe lights, 5 yr. inspection; must meet emissions standards. | 502.1 and 502.7.C |
| R.A.E. | Not Permitted | -o- | -o- |
| R.O. | Special Exception | 3:1 setback, fenced, landscaped; EIS, no strobe lights, 5 yr. inspection; must meet EPA emission standards. | 502.1 and 502.7.C. |
| O-1 | Special Exception | as determined by Zoning Commissioner following hearing. | 502.1 |
| O-2, O.T., Business, M.L.R., M.L. M.H. | By Right | 200' max. height; 200' min. setback from residential and R.O. zone; fenced; must meet EPA emissions standards. | 426 |
| | Special Exception | all those not covered by above subject to conditions determined by Zoning Commissioner following hearing. | 502.1 |
| M.R. | Not Permitted | -o- | -o- |

Notes: 1) Section 502.1 refers to the general findings that must be made prior to granting a special exception.

2) All such structures over 350 feet are subject to the additional historical impact review of Section 502.7.

3) Section 502.7.C is a proposed new section.

4) Section 426 is a proposed new section.

5) Exceptions: accessory antennas including those in conjuction with licensed amateur radio operators; Section 502.7.C not applicable to communication towers accessory to Baltimore Gas and Electric operations - such as substations and gas lines.

LAW OFFICES

WHITEFORD, TAYLOR & PRESTON

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FAX: 301-832-2015

SUITE 400
888 17TH STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202-659-0606

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2090

May 16, 1990

RECEIVED
MAY 17 1990
ZONING OFFICE

The Honorable J. Robert Haines
Zoning Commissioner
Office of Planning & Zoning
111 W. Chesapeake Avenue
County Office Building, Room 113
Towson, Maryland 21204

Re: Southwestern Bell Mobile Systems, Inc.,
t/a Cellular One
Petitions for Special Exception and
Zoning Variance
Case No. 90-382-XA

Dear Mr. Haines:

This letter is to follow up on my earlier conversations with Marlene regarding potential dates for the continuation of the above case. After thoughtfully reviewing the number and nature of witnesses which I intend to present, and providing adequate time for the Protestant to present testimony, it appears clear to me that we will need a minimum of four hearing dates to complete this case. At a minimum, I will be presenting four additional witnesses. It is highly likely that I may be presenting as many as nine additional witnesses.

The June 1 date previously mentioned is satisfactory. I have a conflict on the June 14 date. Although I am available during the morning of June 18, George Gavrelis, the only witness who must attend each of the hearings in order to lay a foundation for his testimony, is unavailable between June 15 and June 24. Therefore, June 18 is not a possible date.

I am available during the following dates: June 25, 27 and 28, July 3, 5, 6, 16 through 20, 30, 31. Although I am available during these dates, I will need to confirm the availability of other witnesses, especially Mr. Gavrelis, before providing final confirmation for a date.



I appreciate your continued time and attention to this matter.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: J. Carroll Holzer, Esquire
Ms. Amy O'Rourke

MICROFILMED

LAW OFFICES

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WASHINGTON, D.C. 20006
TELEPHONE 202-835-0606

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

May 22, 1990

RECEIVED
MAY 22 1990
ZONING OFFICE

HAND DELIVERY

The Honorable J. Robert Haines
Zoning Commissioner
Office of Planning & Zoning
111 W. Chesapeake Avenue
County Office Building, Room 113
Towson, Maryland 21204

Re: Southwestern Bell Mobile Systems, Inc.,
t/a Cellular One
Petitions for Special Exception and
Zoning Variance
Case No. 90-382-XA
Hearing Dates: May 14 and May 16, 1990

Dear Mr. Haines:

Please accept this letter as my request for copies of the tape recordings of the above-referenced hearings. Through conversations with Jun, it is my understanding that the charge for this copying will be $30.00. I will pay this amount upon receipt of the tapes.

Please contact me after the tapes for these two hearing dates have been copied. I will have someone from this office pay the amounts due and pick up the tapes as soon as I receive your call.

Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Ms. Amy O'Rourke

LAW OFFICES

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TELEPHONE 202-835-0606

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

August 17, 1990

RECEIVED
AUG 20 1990
ZONING OFFICE

HAND DELIVERY

The Honorable J. Robert Haines
Zoning Commissioner
Office of Planning & Zoning
111 W. Chesapeake Avenue
County Office Building, Room 113
Towson, Maryland 21204

Re: Southwestern Bell Mobile Systems, Inc.,
t/a Cellular One
Petitions for Special Exception and
Zoning Variance
Case No. 90-382-XA
Hearing Dates: June 1, July 17 and
August 14, 1990

Dear Mr. Haines:

Please accept this letter as my request for copies of the tape recordings of the above-referenced hearings. Through conversations with Jun, it is my understanding that the charge for this copying will be $15.00 per tape. I will pay the amount due upon receipt of the tapes.

Please contact me after the tapes for these three hearing dates have been copied and inform me of the total cost. I will have someone from this office pay the amounts due and pick up the tapes as soon as I receive your call.

Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Ms. Amy O'Rourke

LAW OFFICES

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G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

November 12, 1990

RECEIVED
NOV 13 1990
ZONING OFFICE

HAND DELIVERY

The Honorable J. Robert Haines
Zoning Commissioner
Office of Planning & Zoning
111 W. Chesapeake Avenue
County Office Building, Room 109
Towson, Maryland 21204

Re: Notice of Appeal
Petitions for Special Exception and Zoning Variance
Petitioners: Joseph B. McMaster, et ux. and
Southwestern Bell Mobile Systems, Inc. t/a Cellular One
Case No. 90-382-XA

Dear Commissioner Haines:

Please note an appeal of the above-referenced case to the County Board of Appeals on behalf of the Petitioners, Joseph B. McMaster and Vivian Baker McMaster (Legal Owners) and Southwestern Bell Mobile Systems, Inc. t/a Cellular One (Lessee). Mr. and Mrs. McMaster's address is 426 Sherwood Road, Cockeysville, Maryland 21030. Cellular One's address is 7855 Walker Drive, Suite 100, Greenbelt, Maryland 20770. Enclosed is a check made payable to Baltimore County, Maryland in the amount of $300.00 as payment for the filing fee and sign costs associated with this appeal.

Should you have any questions or comments, please feel free to contact me. Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Ms. Amy O'Rourke
J. Carroll Holzer, Esquire

MICROFILMED

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TELEPHONE 202-835-0606

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

March 4, 1991

The Honorable William T. Hackett
Chairman
County Board of Appeals
of Baltimore County
County Office Building
Room 315
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Joseph B. McMaster, et ux.
Case No. 90-382-XA

Dear Mr. Chairman:

The above matter is currently assigned to be heard on Tuesday, June 25, 1991 at 10:00 a.m. Since this matter took large portions of five different days before the Zoning Commissioner, I respectfully request that the Board assign three additional full hearing dates to this case. Time is a critical element in the Petitioner's need for this site. The Petitioner strongly believes that unnecessary delays will be caused if the requisite number of hearing dates are not scheduled in advance. Upon receipt of this correspondence, please schedule three additional hearing dates for this matter as soon after June 25 as possible. Should you have any questions or comments, please feel free to contact me.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Ms. Emilienne O'Rourke
J. Carroll Holzer, Esquire
People's Counsel for Baltimore County

LAW OFFICES

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G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

August 7, 1991

J. Carroll Holzer, Esquire
305 W. Chesapeake Avenue
Suite 105
Towson, Maryland 21204

Re: Joseph B. McMaster, et ux.
Case No. 90-382-XA
Hearing Assignments

Dear Carroll:

Since I have been having some difficulty contacting you by telephone during the last several weeks, I thought it wise to correspond with you regarding the additional hearing dates required in the above-referenced matter. I appreciate your recent efforts to contact me. However, since August is quickly slipping away and Chairman Sauer specifically requested that we provide the Board with additional hearing dates, I thought further delay would be unwise.

My calendar permits me to participate in additional hearings on August 22, 23, 26, 28, 29 and 30. Please contact me so that we can communicate which dates are available on your calendar as well.

It is my understanding that the term of one of the Board members sitting in this hearing, Ms. Moreland, is to expire effective September 1. We should do everything within our power to complete the hearing during Ms. Moreland's regular term.

I look forward to your response. Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Michael B. Sauer, Esquire

91 AUG 22 PM 12:55
COUNTY BOARD OF APPEALS

Kathy -
These were hand-delivered to Mike
Please file.
Thanks,
Lesley

LAW OFFICES

WHITEFORD, TAYLOR & PRESTON

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G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

August 19, 1991

J. Carroll Holzer, Esquire
305 W. Chesapeake Avenue
Suite 105
Towson, Maryland 21204

Re: Joseph B. McMaster, et ux.
Case No. 90-382-XA
Hearing Assignments

Dear Carroll:

This letter is to confirm the results of our several telephone conversations on August 13, 1991 regarding the above case. Since Ms. Moreland's term is expiring effective August 30, we agreed to cancel the previously scheduled hearing dates of August 20 and August 21, that Chairman Sauer would select a replacement for Ms. Moreland on the panel, that we would start the hearing anew and that the Board would schedule five hearing dates at its earliest convenience. It is my understanding that the Board of Appeals will notify us of Ms. Moreland's replacement and the new hearing dates in the very near future. I will be prepared to present my opening statement and offer my first witness on the first day of the five days to be scheduled.

Should you have any questions or comments, please feel free to contact me. I am pleased that we were able to reach an agreement in this matter.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Chairman Michael B. Sauer
Ms. Emilienne O'Rourke

LAW OFFICES

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WASHINGTON, D.C. 20006
TELEPHONE 202-659-6800

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

August 19, 1991

HAND DELIVERY

Michael B. Sauer, Esquire
Chairman
Suite 802
401 Washington Avenue
Towson, MD 21204

Re: Case No. 90-382-XA
Joseph B. McMaster, et ux.

Dear Chairman Sauer:

As my letter of this same date to Mr. Holzer confirms, it is my understanding that the Board will be replacing Ms. Moreland on the panel assigned to the above-referenced case and scheduling a new hearing consisting of five hearing dates some time during November, 1991. I will be prepared to present my opening statement and offer my first witness on the first day of the five days to be rescheduled.

Please review any necessary notice and/or posting requirements which might be appropriate and contact me to confirm the Board's actions. If I can be of any assistance, please feel free to contact me. Thank you for your kind attention to this matter.

Sincerely,

G. Scott Barhight

GSB:sbt
cc: Ms. Emilienne O'Rourke
J. Carroll Holzer, Esquire

LAW OFFICES

WHITEFORD, TAYLOR & PRESTON

SUITE 1400
SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 301-347-8700

500 COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
301-832-2000
FAX: 301-832-2015

SUITE 600
888 17TH STREET, NW
WASHINGTON, D.C. 20006
TELEPHONE 202-835-0606

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

September 5, 1991

Michael B. Sauer, Esquire
Chairman
Suite 802
401 Washington Avenue
Towson, Maryland 21204

Re: Case No. 90-382-XA
Joseph B. McMaster, et ux.

Dear Chairman Sauer:

This letter is to follow up on the Notice of Assignment dated August 21, 1991 regarding the above matter. During our earlier conversations, and pursuant to an agreement with opposing counsel, it was my understanding that the Board would be scheduling five (5) hearing dates for this matter. The August 21 Notice only assigns four (4) dates.

In light of the numerous witnesses which will be called, and so as to avoid any additional delay in the completion of this case, I respectfully request that a fifth day be scheduled in November, 1991. If the additional day is necessary, and we fail to schedule the date now, the fifth day could be delayed until February or March of 1992.

Please review my request and contact me should you have any questions or concerns. Please also review any necessary notice and/or posting requirements which might be appropriate for the November hearing dates and contact me to confirm the Board's actions.

RONALD L. MAHER
J. CARROLL HOLZER
CAROLE S. DEMILIO
THOMAS J. LEE

J. HOWARD HOLZER
1907-1989

LAW OFFICES
HOLZER, MAHER, DEMILIO & LEE
305 W. CHESAPEAKE AVENUE
SUITE 103
TOWSON, MARYLAND 21204
(301) 825-6960
FAX (301) 825-6964
DIRECT DIAL:

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MARYLAND 21784
(301) 795-8556
FAX (301) 795-5535

SUITE 700
1725 DeSALES STREET, N.W.
WASHINGTON, D.C. 20036

FILE NO:

September 30, 1991
#6508

Mr. Michael Sauer
Chairman
Baltimore County
Board of Appeals
County Office Building
Towson, Maryland 21204

Dear Chairman Sauer:

Please be advised that I have just received notification from the Maryland Court of Special Appeals that Case No.: 262, September Term, 1991, Rockdale Civic and Improvement Association v. Janson Homes, Inc. is set for Wednesday, November 13, 1991 for oral argument.

That conflicts with the first day scheduled for the Board of Appeals hearing on the Sherwood Hill Tower case.

I would therefore request a postponement of the whole day for Wednesday, November 13, 1991 in that I am not sure when our case will be completed in order for me to get back from Annapolis to Towson. It would appear to be logical that the case would then start on Thursday, November 14, 1991 and we already have five (5) days scheduled.

Very truly yours,

J. Carroll Holzer

JCH:mlg

cc: G. Scott Barhite, Esquire
Dr. Cyril Byron
Mr. Jerome Goodman

91 OCT -1 AM 11:55

COUNTY BOARD OF APPEALS
RECEIVED

LAW OFFICES
WHITEFORD, TAYLOR & PRESTON

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 301-347-8700

500 COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
301-832-2000
FAX: 301-832-2015

SUITE 400
666 17TH STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202-659-6800

G. SCOTT BARHIGHT
DIRECT NUMBER
301-832-2050

October 3, 1991

Michael B. Sauer, Esquire
Chairman
Baltimore County Board of Appeals
County Office Building
111 W. Chesapeake Avenue
Towson, MD 21204

Re: Case No. 90-382-XA
Joseph B. McMaster, et ux.

Dear Chairman Sauer:

This letter is in response to Mr. Holzer's September 30 letter to you requesting a postponement of the November 13 hearing date in the above matter. Please accept this letter as the Petitioner's/Appellant's opposition to this request for postponement.

As you are well aware, this case has continued to be besieged by events which further delay the hearing of this matter. It is unfair and unreasonable to expect the Petitioners to sit idly by while the conclusion of this hearing gets pushed further and further into 1992. This case should have been able to be completed before the end of November, 1991, as was suggested by the Board when the case was rescheduled.

On behalf of my clients, I respectfully suggest that Mr. Holzer should correspond with the Maryland Court of Special Appeals and request a postponement of that oral argument. The scheduling of the McMaster case preceded the scheduling of the Rockdale v. Janson Homes case and has already been subject to considerable delay and inconvenience.

Since it is unfair, unjust and unreasonable to suggest that my client submit to further delays, I respectfully suggest that Mr. Holzer's request for postponement be denied. Justice delayed

91 OCT -7 AM 11:30

COUNTY BOARD OF APPEALS
RECEIVED

RONALD L. MAHER
J. CARROLL HOLZER
CAROLE S. DEMILIO
THOMAS J. LEE

J. HOWARD HOLZER
1907-1989

LAW OFFICES
HOLZER, MAHER, DEMILIO & LEE
305 W. CHESAPEAKE AVENUE
SUITE 103
TOWSON, MARYLAND 21204
(301) 825-6960
FAX (301) 825-6964
DIRECT DIAL:

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MARYLAND 21784
(301) 795-8556
FAX (301) 795-5535

SUITE 700
1725 DeSALES STREET, N.W.
WASHINGTON, D.C. 20036

FILE NO:

October 10, 1991
#6498

Mr. Michael Sauer
Chairman
Baltimore County
Board of Appeals
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Joseph B. McMaster, et ux.
Case No.: 90-382-XA

Dear Chairman Sauer:

I received Mr. Barhight's letter of October 3, 1991, suggesting that I contact the Maryland Court of Special Appeals to request a postponement of that oral argument. Unfortunately, in the past for other reasons, I have made efforts to request the Court of Special Appeals to reschedule oral arguments but to no avail. It is not their policy to change an oral argument once it has been scheduled.

In that the Court of Special Appeals presumably takes precedence over the Baltimore County Board of Appeals, I have no choice but to continue to request such a postponement as contained in my prior letter.

Thank you very much for your consideration.

Very truly yours,

J. Carroll Holzer

JCH:mlg

cc: Scott Barhight

91 OCT 11 PM 3:12

COUNTY BOARD OF APPEALS
RECEIVED

RONALD L. MAHER
J. CARROLL HOLZER
CAROLE S. DEMILIO

J. HOWARD HOLZER
1907-1989

LAW OFFICES
HOLZER, MAHER & DEMILIO
305 W. CHESAPEAKE AVENUE
SUITE 103
TOWSON, MARYLAND 21204
(301) 825-6960
FAX (301) 825-6964

WASHINGTON, D.C. OFFICE
SUITE 700
1725 DeSALES STREET, N.W.
WASHINGTON, D.C. 20036

September 24, 1990
#6498

RECEIVED
SEP 24 1990
ZONING OFFICE

J. Robert Haines
Zoning Commissioner for Baltimore County
County Office Building
Towson, Maryland 21204

Re: Petition for Special Exception and
Zoning Variance by Southwestern Bell
Mobile Systems, Inc.
Case No.: 90-382-XA

Dear Commissioner Haines:

Attached is a copy of a report by the county Office of Law concerning the proposed amendments to the Baltimore County Zoning Regulations as they relate to radio towers and other wireless transmission or receiving facilities dated August 28, 1985.

I trust you will find this report, which I referenced in the Protestants' Memorandum already submitted in the above case, on point and of some assistance in this matter.

Very truly yours,

J. Carroll Holzer

Enclosure

MICROFILMED

DAFT-McCUNE-WALKER, INC. Land Planning, Landscape Architecture & Environmental Design
200 East Pennsylvania Avenue Towson, Maryland 21204 301 296 3333 FAX 301 296 4705

Joe - File

RECEIVED
JUN 18 1990
ZONING OFFICE

June 15, 1990

Mr. J. Robert Haines, Zoning Commission
Baltimore County Zoning Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Caves Valley Club
Special Exception for Country Club and
Related Accessory Uses
Case No. 89-409-X

Land Planning
Environmental
Landscape Architecture
Computer Technologies
Engineering
Surveying GIS

Dear Mr. Haines:

The order in Case No. 89-409-X, issued June 6, 1989, indicated several restrictions, including a requirement for submission of a certified site plan clearly identifying all buildings with their size and area dimensions and distances from property lines.

Several plans have subsequently been submitted to your office for Special Hearings, Exceptions and Amendments to previous submissions. Detailed architectural drawings and accompanying site plans have also been submitted to the Zoning Office for building permit review.

We believe that these items satisfy the requirement specified in Case No. 89-409-X. Please notify us if you feel additional material is needed.

Sincerely,

Deanna C. Bailey
Landscape Architect

DCB/lmr

DAFT-McCUNE-WALKER, INC.
200 East Pennsylvania Avenue Towson, Maryland 21204 301 296 3333 FAX 301 296 4705

Minutes of Meeting

Land Planning
Environmental Sciences
Landscape Architecture
Computer Technologies
Engineering
Surveying GIS

Date: August 3, 1990

Re: Caves Valley Club Maintenance Center
Project No. 88015.A

Present: Bob Haines - Zoning Commissioner
Joe Merry - Assistant to the Zoning Commissioner
George Nilson - Piper and Marbury
Bruce Cadarelli - Caves Valley Golf Club
George Gavrelis - Daft-McCune-Walker

Purpose: To review changes to maintenance area plan, its effect on previously requested variances, and ways or curing any zoning problems.

Commissioner Haines is about to release his order for Case 90-362 SPHA. Believing that there is no flexibility to permit building separations less than those advertised in the public notice, he will revise it to permit Buildings A, B, C, D and E. This will be accomplished by a restriction in the order requiring all buildings to be in compliance with a more detailed, site specific plan to be developed as a result of the order. This will enable release of permits for all but Building F in accordance with the more detailed plan.

Discussion indicated that maintenance area changes in large measure were generated by wetland proximity issues raised by DEPRM. Bob Haines wants a revised comment from DEPRM acknowledging that it is acceptable with respect to building and parking arrangement and is environmentally superior to the original.

In any case, he will issue his order Tuesday, August 7 or Wednesday, August 8.

Follow-Up Actions:

1. DMW to immediately contact DEPRM and get appropriate revised comments to Haines.

2. DMW to prepare a new site specific plan for maintenance center on which to secure permits

   - label Building F as needing a revised variance which will be petitioned
   - sort out with Whiting Turner any consequential actions needed if Building Permits are already filed

3. DMW to prepare a Special Hearing Plan and Plat to amend the variances previously granted in Case 90-362

   - Description already prepared
   - Revise Sheet 3
   - Create language, coordinate with Nilson

4. George Nilson to prepare Special Hearing petition and secure signatures from legal owners.

Other Items: Commissioner Haines has received well easement revisions and the lotting plan showing details of wells and septic areas. He will incorporate into his order, suggesting that they will be granted.

Some Options:

1. Instead of proceeding with Building B and C and deferring Building F, we can proceed with Building F since A to F variance request is 20 feet.

2. Need for additional variance can be eliminated by connecting buildings with a wall within which is a gate. Need also to clarify with zoning staff their minimum requirements for the connection.

GEG/lmb

cc: Mr. Dennis Biedronski
Mr. Dan White
Mr. Edmund Haile

MICROFILMED

A Team of Land Planning Environmental & Engineering Professionals Providing Complete Site Services & Development Solutions

SHERWOOD HILL COMMUNITY ASSOCIATION
P. O. Box 1011
Cockeysville, Maryland 21030

RECEIVED
MAR 23 1990
ZONING OFFICE

March 23, 1990

HAND DELIVERED

J. Robert Haines, Zoning Commissioner of Baltimore County
111 W. Chesapeake Avenue, Room 109
Towson, Maryland 21204

Re: Petition for Special Exception and Zoning Variance
Filed by Southwester Bell Mobile Systems, Inc.
Case No.: 90-382-XA

Dear Commissioner Haines:

As President of Sherwood Hill Community Association, I am requesting a postponement of the hearing presently scheduled before you on April 3, 1990 at 9:30 a.m. The reasons for this request are as follows:

1. We became aware of the petition last week and we will need time to review the matter and to obtain an attorney to represent our interests. The required sign was not properly posted until Friday, March 16, 1990. and this has impeded notification to our members.

2. We have contacted one attorney who has indicated that he would be unable to handle this matter on our behalf on such short notice. We believe it is essential that we be afforded the opportunity to obtain counsel to assist us at the hearing.

3. We have also been in contact with the petitioner's attorney, G. Scott Barhight, who has agreed to furnish us with additional information, not on file, in support of the Petition. After our review of this information, we plan to meet with Mr. Barhight to discuss community concerns. It will not be possible to accomplish these objectives prior to the scheduled hearing.

MICROFILMED

J. Robert Haines, Zoning Commissioner of Baltimore County
March 23, 1990
Page Two

4. I have spoken with the officers of three adjoining community associations (Montvieu Community Association, Powers Avenue Community Association and Knollbrook Community Assembly) who concur with the above approach and with the requested continuance.

In view of the practical considerations involved in notifying our membership of a postponement, we would appreciate hearing from you at your earliest convenience.

Very truly yours,

Clay M. Barnes

CMB/lal

cc: The Honorable Charles A. Ruppersberger, III
G. Scott Barhight, Esquire (Hand Delivered)
Mr. David Baker, Powers Avenue Community Association
Mr. John Masser, Knollbrook Community Assembly
Mr. Steven Rosen, Montvieu Improvement Association

---

2501 Hartham Court
Timonium, MD 21093
April 3, 1990

Honorable J. Robert Haines
Baltimore County Zoning Commissioner
111 West Chesapeake Avenue
Towson, MD 21204

Re Case No. 90-382-XA

Dear Mr. Haines

Please be advised that I am a Protestant in the above entitled matter and oppose the Petition and requested Variances.

Please advise me of all hearing dates and of your Decision.

Very truly yours,

Michael P. Tanczyn

MPT/ed

RECEIVED
APR 5 1990
ZONING OFFICE

MICROFILMED

---

August 21, 1991

RECEIVED
COUNTY BOARD OF APPEALS
91 AUG 22 AM 11:20

REC
COUNTY BOAR
91 AUG 2

County Board of Appeals of Baltimore County
County Office Building, Room 315
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Sirs,

Since we, the public, are notified officially that the case number of the posted property is cycled into your calendar, may I request that we, the public, be notified of the changes, via that sign?

Thanking you, I am, an interested citizen

Sarah Adams
Sarah Adams
11424 York Road
Cockeysville, Maryland 21030

Copies: Louis J. Waidner, Phyllis Friedman, Roger B. Hayden.
Fernando T. Robert Haines "

---

September 24, 1991

County Board of Appeals of Baltimore County
Room 315 County Office Building
Towson, Maryland 21204

Re: Letter per posted dates for
McMaster Appeal -
Case No. 90-382-XA

Dear Sirs:

Thank you for the written notification -
Case No 90-382-XA - dated September 11, 1991
and U.S. Postal - Sept 13, 1991.

Sincerely,
Sarah Adams

SARAH ADAMS
11424 York Road
Cockeysville, MD. 21030

91 SEP 25 AM 9:16

---

October 1, 1991

County Board of Appeals of Baltimore County
County Office Building Room 315
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Sirs:

Thank you for notice in re. Rule 2(c) CCBA No 91-A,
"Limit 11/13/91 date case no. 90-382-XA".

Sincerely,
Sarah Adams

Sarah Adams
11424 York Road
Cockeysville, Maryland
21030

91 SEP 25 AM 9:16

---

May 16, 1990

Mr. Jun Fernando
Office of the Zoning Commissioner
111 W. Chesapeake Avenue
Towson MD 21204

Re: Case No. 90-382-XA
Petition of Southwestern Bell T/A Cellular One

Gentlemen:

Please provide the undersigned with a copy of the tape made of the hearing in the above case on May 14, 1990 and May 16, 1990.

Thank you

RECEIVED
MAY 16 1990
ZONING OFFICE

Very Truly Yours,

Clay M Barnes
Sherwood Hill Improvement Assoc.

BARNES AND RAINE, P.A.
ATTORNEYS AT LAW
405 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
(3011 321-0818

CLAY M. BARNES

RESIDENCE
628-0818

---

90-382-XA 8/14/90

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Amy O'Rourke | Cellular One 7855 Walker Dr Greenbelt MD 20768 |
| John M. Osepchuk | 2 Technology Park Dr Westford, MA 01886 |

---

July 17, 1990 — 90-382XA

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Carey Burch | 6850 Versar Center, Springfield, VA |
| George E. Gavrelis | 200 E. Penn Ave. Towson 21204 Cellular One |
| Jerry Bialecki | 7855 Walker Drive, Greenbelt MD. |

---

90-382XA

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Dennis Francis | 7855 Walker Dr Suite 410 Greenbelt MD 20768 |
| Amy O'Rourke | 7855 Walker Dr Greenbelt, MD 20768 |
| Jerry Bialecki | 7855 Walker Dr. Greenbelt, Md. 20770 |
| George E. Gavrelis | DMW 200 E Penn Ave. Towson, 21204 |

---

90-382XA

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Dennis Francis | 7855 Walker Dr Suite 410 Greenbelt MD 20768 |
| Amy O'Rourke | 7855 Walker Dr Greenbelt, MD 20770 |
| Carey Burch | 6850 Versar Center, Springfield VA |
| George E. Gavrelis | DMW 200 E Penn Ave. Towson, 21204 |
| Jerry Bialecki | 7855 Walker Dr. Greenbelt, Md. 20770 |

---

90-382-XA 5/16/90

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Amy O'Rourke | 7855 Walker Dr, Greenbelt MD 20770 |
| Dennis Francis | 7855 Walker Dr, Greenbelt MD 20770 |
| Connie Carter | 7855 Walker Dr Greenbelt, Md 20770 |
| Joan Ransone | 412 Delaware Ave 21204 |
| Nathaniel Burkett | 18930 Middletown Rd |
| Carey Burch | 6850 Versar Center, Springfield VA 22151 |
| George Gavrelis | DMW 200 E Penn Ave 21204 |

7/17/90

90-382XA

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Clay M. Barnes | 405 W. Pennsylvania Ave 21204 |
| STEVE ROSEN | 81 MONTVIEW CT Cockeysville 21030 |

90-382XA

June 1-1990

PROTESTANT(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Kay Twit | 2 Norgate Ct, Cockeysville |

5/16/90

90-382 XA

PROTESTANT(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Clay M. Barnes | Pres, Sherwood Hill Comm Assoc PO Box 1011 21030 |
| DAVID W BAKER | PRES POWERS AVE COMM. ASSOC. PO Box 333 21030 |
| STEVE ROSEN | PRES, MONTVIEW ASSOC 81 MONTVIEW CT Cockeysville 21030 |
| JENNY WISE | 427 SHERWOOD RD 21030 |
| ANTHONY J. FALCONE | 10922 Powers Ave Cockeysville 21030 |

PROTESTANT(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| Margaret D Basham | 38 Sherwood Rd . 21030 |
| Thomas S. Basham | 38 Sherwood Rd 21030 |
| Charles Gladstone | 10618 Partridge Ln 21030 |
| Walter J. Wilmer | 10618 Partridge Ln 21030 |
| Geraldine Wise | 427 Sherwood Rd 21030 |
| James H Wise | 427 Sherwood Rd 21030 |
| STEVEN ROSEN (President Montview Assoc) | 81 MONTVIEW CT 21030 |
| Clay M. Barnes, Pres. Sherwood Hill - | PO Box 1011 Cockeysville MD 21030 |
| Kay Twit V.P. Powers Ave. Assoc. | 2 Norgate Ct, Cockeysville MD 21030 |
| David W. Baker (President Powers Ave Assoc.) | 11007 GATEVIEW RD 21030 |

- 90-382XA

PROTESTANT(S) SIGN-IN SHEET

| NAME | ADDRESS |
|---|---|
| STEVEN D. ROSEN (MONTVIEW ASSOCIATION) | 81 MONTVIEW CT Cockeysville 21030 |
| Clay M. Barnes - Sherwood Hill Community Assoc. | PO Box 1011 Cockeysville MD 21030 |
| DAVID W. BAKER - POWERS AVE. COMMUNITY ASSOC. | PO Box 333 Cockeysville MD. 21030 |
| Kay Twit | 2 Norgate Ct, Cockeysville 21030 |
| ANTHONY J. FALCONE | 10922 Powers Ave, Cockeysville 21030 |
| Marsha Hewes | 10611 Topsfield Dr, Cockeysville 21030 |
| Frank Anders | 10609 TOPSFIELD DR, COCKEYSVILLE, 21030 |
| Lois C. WILMER | 10618 PARTRIDGE LN COCKEYSVILLE 21030 |
| Peg Sadler | 10616 Sherwood Ave. 21030 |
| Geraldine Wise | 427 Sherwood Rd 21030 |

Prot Ex#1

1

VOLUME III

IN RE: ZONING VARIANCE - NE CORNER SHERWOOD ROAD AND HOLLOW ROAD (426 SHERWOOD ROAD) 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT
JOSEPH B. McMASTER, et ux
Petitioners

\+ BEFORE THE
\+ BOARD OF APPEALS
\+ OF BALTIMORE COUNTY
\+ Case No: 90-382-XA

\+ + + + + + + + +

The above-entitled matter continued on for hearing on Wednesday, November 20, 1991, commencing at 9:44 a.m., at 111 West Chesapeake Avenue, Towson, Maryland 21204, before Michael B. Sauer, Chairman.

APPEARANCES:

Karl Nelson, Esquire
G. Scott Barnight, Esquire
on behalf of the Petitioners

J. Carroll Holzer, Esquire
on behalf of the Protestants

ALSO PRESENT: Judson H. Lipowitz, Board Member
Harry E. Buchheister, Board Member

Reported by: Richard D. Baker, Jr.

VOLUME III

WALLS REPORTING

BALTIMORE, MD 21202

## THE MONTVIEU IMPROVEMENT ASSOCIATION

**RESOLVED**: THAT AT THE ANNUAL MEMBERSHIP MEETING OF THE MONTVIEU IMPROVEMENT ASSOCIATION, HELD ON JULY 2, 1991 AT THE COCKEYSVILLE PUBLIC LIBRARY, IT WAS DECIDED BY THE ASSOCIATION THAT RESPONSIBILITY FOR REVIEW AND ACTION ON ALL ZONING MATTERS FOR THE PERIOD OF ONE YEAR, BE PLACED IN THE BOARD OF DIRECTORS CONSISTING OF THE FOLLOWING MEMBERS:

Steven D. Rosen, President
Charlie Latrobe, Vice President
Tom Carson, Treasurer
Niel Fick, Secretary
Directors, Members of the Board:
The Stewart Family
The Minakowski Family
The Bodie Family
The Macht Family
The Nash Family
The Weis Family
The Butler Family

AS WITNESS OUR HANDS & SEAL THIS 2ND DAY OF JULY, 1991.

ATTEST: The Montvieu Improvement Association

Nathaniel Fick
Secretary

Steven Rosen
President

Prot Ex#2

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the (Board of Directors) ~~Zoning Committee~~ of the SHERWOOD HILL IMPROVEMENT Association.

ATTEST:

Thomas S. Basham

Secretary ALEXANDER A. HASSANI

Thomas S. Basham

President THOMAS S. BASHAM

Prot Ex#3

SHERWOOD HILL IMPROVEMENT ASSOCIATION, INC.

Cellular One Tower Opposition Response

| | | |
|---|---|---|
| 10512 Abbey Road | - | Elaine Karpenko |
| 10595 Blue Bell Way | - | Donna Banning |
| 10602 Blue Bell Way | - | Jerry Francik |
| 10604 Blue Bell Way | - | Majorie Denneen |
| 10605 Blue Bell Way | - | Louis Luperini |
| 10607 Blue Bell Way | - | Charles Gladstone |
| 10608 Blue Bell Way | - | Dione Marchione |
| 10609 Blue Bell Way | - | Daniel Atkin |
| 28 Bosley Road | - | Benjamin Turnbaugh |
| 105 Bosley Road | - | Suzanne Reinke |
| 109 Bosley Road | - | Burton |
| 112 Bosley Road | - | Kerryn Brandt |
| 117 Bosley Road | - | Ray Reordon |
| Box 63 | - | Mary Scott |
| Box 63 | - | Ann T. White |
| 3 Brecon Place | - | David Spring |
| 6 Brecon Place | - | Philip Walker |
| 11 Cedar Knoll Road | - | Edward Coniff |
| 209 Dawson Drive | - | Anthony Spann |
| 210 Dawson Drive | - | William Bennett |
| 211 Dawson Drive | - | Joseph Noll |
| 212 Dawson Drive | - | Leonard Emala |
| 217 Dawson Drive | - | Louis Wilson |
| 219 Dawson Drive | - | Frank Wynn |
| 221 Dawson Drive | - | Timothy Kane |
| 224 Dawson Drive | - | James Stayer |
| 225 Dawson Drive | - | Stephen Heemann |
| 228 Dawson Drive | - | George Hummel |
| 229 Dawson Drive | - | Dean Stump |
| 230 Dawson Drive | - | Melvin Hammel |
| 231 Dawson Drive | - | H. Langrall |
| 233 Dawson Drive | - | Thomas Fahey |
| 1 Deer Pass Court | - | Charles Thompson |
| 2 Deer Pass Court | - | Charles Graham, Jr. |
| 3 Deer Pass Court | - | Alex Hassani |
| 5 Deer Pass Court | - | William Caulfield |
| 7 Deer Pass Court | - | James Henthorn |
| 9 Deer Pass Court | - | Stanley Siuta |
| 3 Glendorian Court | - | Marsha Todd |
| 6 Glendorian Court | - | Fred Knabe |
| 8 Glendorian Court | - | William Purnell |
| 9 Glendorian Court | - | George Beam, Jr. |
| 11 Glendorian Court | - | James Paraut |
| 12 Glendorian Court | - | H. Zimmerman |
| 124 Glenmoore Avenue | - | Raymond Hiser |
| 207 Glenmoore Avenue | - | Eldwood Lyan, Jr. |
| 5 Hillside Avenue | - | James Walker |
| 10509 Hoyard Avenue | - | R. Valentin |

Protestant's PETITIONERS EXHIBIT 34 90-382XA

TOWSON REPORTING COMPANY, INC. 600 Baltimore Avenue, Suite 201 Towson, Maryland 21204-4054 (301) 823-4446 Court and General Reporting

**CIRCUIT COURT FOR BALTIMORE COUNTY**

**CIVIL CATEGORY** APPEAL

92cv6036

IN THE MATTER OF THE APPLICATION OF JOSEPH B. MCMASTER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCES ON PROPERTY LOCATED ON THE NORTHEAST CORNER OF SHERWOOD AND HOLLOW ROADS (426 SHERWOOD ROAD) 8th ELECTION DISTRICT 3rd COUNCILMAN DISTRICT

CBA NO. 90-382-XA

JOSEPH B. McMASTER, VIVIAN McMASTER and SOUTHWESTERN BELL MOBILE SYSTEM, INC. t/a CELLULAR ONE
Appellees'

J. Carroll Holzer, Esq
Holzer, Maher, Demilio & Lee
305 W. Chesapeake Ave.
Ste. 105, (04) 825-6960

G. Scott Barnight
Karl J. Nelson
Whiteford, Taylor & Preston 832-2000
500 Ct Tower, 210 W Penn. Ave (4)
APPELLEES'

D/E: MAILED 1/5/93

25,1992 - Appellant's order for appeal from the Decision of the Board
s and Petition for appeal, fd.

9, 1992 - Transcript of Record, fd. (G1)

9, 1992 - Notice of Filing of Record, fd.

30, 1992 certificate of notice, fd.

SCRIPT IN BASEMENT
ATION: ~~BOX 6~~ - Sent to CBA
rd back to Goning 12-11-95

1992 - App. G. Scott Barnhight. Karl J. Nelson for Appellee Joseph
22, 1992 - App of G. Scott Barnight, Karl J. Nelson and Whiteford,
lor & Preston and Same Day Answer to Petition on Appeal fd.
15, 1992 - Appellee Southwestern Bell Mobile Systems, Inc.'s Rule B12
randum, with exhibits, fd (rec'd 9/4/92)

1992 Hon. John G. Turnbull, II. Hearing had. Case held sub-curia.
d and Order to be filed.

5, 1993 Opinion and Order of Court that the decision of the Board and the same is hereby AFFIRMED., fd. (JGT,II)

| CV GEN COSTS | 92.00 |
|---|---|
| CV CLK | 80.00 |
| B LBRY | 10.00 |
| POST | 2.00 |
| CKCHECK FL | 92.00 |
| #20913 C002 R01 T09:2 | 06/24/9 |

26 Page 147 Case 92 CV- 6036

TOWSON REPORTING COMPANY, INC. 600 Baltimore Avenue, Suite 201 Towson, Maryland 21204-4054 (301) 823-4446 Court and General Reporting

1

ORIGINAL

IN THE MATTER OF * BEFORE THE
JOSEPH B. MCMASTER, et ux. * COUNTY BOARD OF APPEALS
* OF BALTIMORE COUNTY
* Case No. 90-382-XA
* November 19, 1991
* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the County Office Building at 9 o'clock a.m., November 19, 1991.

* * * * *

Reported by:

C.E. Peatt

TOWSON REPORTING COMPANY, INC.

Cont. Exh #4F

LEGISLATION PROJECT #85-04

PROPOSED AMENDMENTS TO THE BALTIMORE COUNTY ZONING REGULATIONS
CONCERNING
RADIO AND TELEVISION TOWERS AND OTHER WIRELESS TRANSMISSION OR RECEIVING FACILITIES

A Report of the Office of Planning and Zoning
(May 1985)

Project Description

County Council Resolution No. 13-85 (see Attachment #1) requests that the Planning Board consider the appropriateness of restricting the location of new radio and television towers and other wireless transmitting or receiving structures to the commercial, industrial and business zones of the County.

Discussion

Radio and television antennas and transmission and receiving towers are currently permitted by special exception in every zone of the County except M.R., R.A.E. and O.T. zones. According to Subsection 502.1 before any special exception is granted it must appear that the use will not:

a. Be detrimental to the health, safety, or general welfare of the locality involved;

b. Tend to create congestion in roads, streets or alleys therein;

c. Create a potential hazard from fire, panic or other dangers;

d. Tend to overcrowd land and cause undue concentration of population;

e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;

f. Interfere with adequate light and air;

g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of the Zoning Regulations; nor

h. Be inconsistent with the impermeable surface and vegetative retention of the Zoning Regulations.

The design of radio and television antennas and wireless transmitting and receiving towers is dependent upon the number of stations anticipated to use the tower, the type of waves being transmitted and received, the intended operating power, the size of the service area, and the terrain of the surrounding area. The most common types of transmission are land mobile radio, A.M., F.M., television, and fixed-point microwave. Land mobile radio and common carrier systems, (i.e., cellular telephone systems) are the fastest growing segment of the communications industry.

August 28, 1985

Cont. Exh #4B

OFFICE OF LAW REPORT
PROPOSED AMENDMENTS TO THE BALTIMORE COUNTY ZONING REGULATIONS
CONCERNING
RADIO TOWERS AND TELEVISION TOWERS AND OTHER
WIRELESS TRANSMISSION OR RECEIVING FACILITIES

Cont Exh #4C

LEGISLATION PROJECT #85-04

PROPOSED AMENDMENTS TO THE BALTIMORE COUNTY ZONING REGULATIONS
CONCERNING
RADIO AND TELEVISION TOWERS AND OTHER WIRELESS TRANSMISSION OR RECEIVING FACILITIES

A Report of the Baltimore County Planning Board
(July 18, 1985)

Project Description

County Council Resolution No. 13-85 (see Attachment #1) requests that the Planning Board consider the appropriateness of restricting the location of new radio and television towers and other wireless transmitting or receiving structures to the commercial, industrial and business zones of the County.

Discussion

Radio and television antennas and transmission and receiving towers are currently permitted as a principal use by special exception in every zone of the County except M.R., R.A.E. and O.T. zones. According to Subsection 502.1 before any special exception is granted it must appear that the use will not:

a. Be detrimental to the health, safety, or general welfare of the locality involved;

b. Tend to create congestion in roads, streets or alleys therein;

c. Create a potential hazard from fire, panic or other dangers;

d. Tend to overcrowd land and cause undue concentration of population;

e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;

f. Interfere with adequate light and air;

g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor .

h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations.

The design of radio and television antennas and wireless transmitting and receiving towers is dependent upon the number of stations anticipated to use the tower, the type of waves being transmitted and received, the intended operating power, the size of the service area, and the terrain of the surrounding area. The most common types of transmission are land mobile radio, A.M., F.M., television, and fixed-point microwave. Land mobile radio and common carrier systems, (i.e., cellular telephone systems) are the fastest growing segment of the communications industry.

PROTESTANT'S EXHIBIT 4
90-382XA




PETITION FOR ZONING VARIANCE (continued)

Petitioner: Southwestern Bell Mobile Systems, Inc.
t/a Cellular One

The Petitioner hereby petitions for a variance from Sections 502.7.C.2 and 102.2 to permit a setback to the nearest property line of 10 ft. in lieu of the required 300 ft., from Sections 502.7.C.3 and 102.2 to permit a lot area of 0.13 acres in lieu of the required 5 acres, from Sections 1A03.4.B.4 and 102.2 to permit building setbacks of 12 ft., 7 ft. and 8 ft., respectively, as shown on the plat, in lieu of the required 50 ft.

SHERWOOD HILL COMMUNITY ASSOCIATION
P. O. Box 1011
Cockeysville, Maryland 21030

March 16, 1990

IMPORTANT NOTICE

Several days ago, we learned that a Petition for Zoning Variance had been filed with the Zoning Commissioner of Baltimore County by Southwestern Bell Mobile Systems, Inc., trading as Cellular One, requesting permission for authority to alter the existing zoning regulations to permit the erection of a telecommunications tower with accessory buildings to be enclosed within a chainlink fence or comparable wall or structure. The proposed location is east of Sherwood Road and south of Hollow Road. See plat on reverse. The officers of your Association have met and determined that the requested variance would not be in the best interests of our community.

Apart from the visual and esthetic implications, documents filed in support of the petition indicate that "[e]nvironmental protection agency standards and guidelines relating to radiation admissions shall be met at all times." There may be other significant implications and issues raised by the granting of the requested zoning variance, the least of which is the establishment of a negative precedent in our community. There are also important questions concerning interference with radio and television reception. The proposed tower will be nearly 15 stories high which is approximately three times as high as the AAI building located on York Road in Cockeysville!

A hearing has been scheduled by the Zoning Commissioner of Baltimore County on Tuesday, April 3, 1990 at 9:30 a.m. in Room 106 of the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204. It is essential that our community residents make a strong showing at this hearing to oppose the requested zoning variance. In addition, it appears that we may need to obtain a zoning attorney and an expert witness to represent the community interests in opposing this variance.

In the event that you are unable to personally appear at the zoning hearing, we are enclosing a postcard which you should complete and return to us immediately so that the same may be presented to the Zoning Commissioner at the hearing. In addition, we are requesting that you send us a check in the amount of $30.00 as a contribution towards anticipated legal fees and expenses.

We urge your prompt attention and we thank you for your support and cooperation.

SHERWOOD HILL COMMUNITY ASSOCIATION

PROTESTANT'S EXHIBIT 4
90-382XA

PROTESTANT'S EXHIBIT 6

AUG 13, 1990

We, the undersigned residents of Montview Association, Inc., are opposed to approval of installation of the Cellular One Tower at the McMaster-Hamden, Sherwood Road, Cockeysville.

90-382XA

| | |
|---|---|
| Jane Sirk<br>58 Montview Ct.<br>Cockeysville, Md. 21030 | Giuseppe Castellano<br>65 Montview Ct<br>Cockeysville MD 21030 |
| Skip Nowakowski<br>73 Montview Ct<br>Cockeysville, Md. 21030 | Annette C. Strauch<br>44 Montview Ct. 21030 |
| Frances M. Nowakowski<br>73 Montview Court<br>Cockeysville, Md. 21030 | Mary Ruth Chapin<br>61 Montview Ct 21030 |
| Michael Kwiatkowski<br>42 Montview Court | Ann B. Marsh<br>74 Montview Ct. 21030<br>D. Myers<br>38 Montview Ct |

PROTESTANT'S EXHIBIT 5

| | |
|---|---|
| R.B. Mangert<br>38 Montview Ct.<br>Hunt Valley, Md. 21030 | Sylvia & Andrew Harris<br>49 Montview Ct.<br>Cockeysville, Md. 21030 |
| Cathy & Mike Kiss<br>30 Montview Ct<br>Cockeysville, Md 21030 | Sandra Rosen<br>81 Montview Ct<br>Cockeysville Md 21030 |

PROTESTANT'S EXHIBIT 5
90-382XA

PROTESTANT'S EXHIBIT 6
90-382-XA
#242

Cellular One Telecommunications Tower

There is a zoning notice posted at the McMaster's driveway on Sherwood Road. Southwestern Bell is requesting a variance to the RD-4 zoning to erect a tower for cellular telephone service. A public hearing on the re-zoning will be held in room 106 of the County Office Building at 111 W. Chesapeake Avenue on the following dates:

| | |
|---|---|
| Monday, May 7 | 8:30 a.m. to 12:00 noon |
| * Monday, May 14 | 8:30 a.m. to 12:00 noon |
| * Wednesday, May 16 | 8:30 a.m. to 12:00 noon |

(*) These times and dates are reserved in case the issue cannot be resolved in the May 7th hearing.

According to the zoning office, the location for the facility is to be 1500 feet from Hollow Road and 600 feet from Sherwood Road. It will be 75 feet behind the McMaster's house. There are currently two buildings at that location. A third will be added, as well as a 150 foot tower (approximately the height of a 15 story building). The entire complex will be enclosed by an eight foot high fence or similar barrier.

The Sherwood Hill Community Association is opposing the construction of the Southwestern Bell telecommunications complex. They are contracting a zoning lawyer to present the combined communities' case at the zoning hearing. They have contacted the other associations on "the hill" and asked for support. The Montview Association has agreed to support the effort, and will accept 25% of the cost. The Knollbrook Community Association has been contacted. We do not know, at this time, of their commitment (if any). The Board of Directors of PACA has unanimously voted to support the Sherwood Hill Community Association. We will accept 25% of the cost up to a maximum of $1500.00.

Our reasoning is:

1. We oppose the zoning variance because it sets a precedent for compromising the RD-4 watershed nature of the area. Southwestern Bell must prove, at the hearing, that there is no suitable location available which is already zoned commercial. PACA is not convinced that no such location can be found.

2. It may encourage other companies to start using the Sherwood Road corridor for additional development.

3. It is aesthetically ugly! It is certainly incompatible with the nature of the existing area.

4. There may be a danger unknown to present technology.

Versar

Pet Ex #1, 2, 11
Pet Ex #17
Exhibit pg. 1, 2

ENVIRONMENTAL IMPACT ASSESSMENT
OF CELLULAR ONE'S PROPOSED
RADIO TELEPHONE STATION:
LOCH RAVEN SITE
BALTIMORE COUNTY, MARYLAND

Prepared for:

Cellular One
2855 Walker Drive
Greenbelt, Maryland 30770

Prepared by:

Versar, Inc.
Technical Services Group
6850 Versar Center
Springfield, VA 22151

Versar Job No. 6591.16.1

July 16 1990







Pet Ex #10

## The Cell Site

Once the theoretical grid point is established, Cellular One searches for a c te location. The search follows a set order of location preferences based upon a c to maximize the cell site's compatibility with surrounding land uses. These location preferences are listed below by priority.

1. Existing broadcast/communications tower structures;
2. Existing water tower/tank/standpipe;
3. Property zoned for commercial/industrial/public utility use (i.e. high rise office buildings). This category would also include the lease or purchase of bare/open land zoned accordingly;
4. Local or county government/agency service facilities such as post offices or police and fire departments with communications requirements which would permit co-location of communications equipment;
5. Property with the least residential population density and/or property that will provide natural screening to the public at large.

Each site must also be determined to be technically adequate for covering the cell, i.e. engineering elevation requirements and construction feasibility.

After the site location has been determined and approved by all concerned parties and while the final lease agreement is in preparation, surveyors, architects and engineers visit the site to collect data for the preparation of site and building plans and to perform soils tests (where applicable).

As a public service utility, time is of the essence to Cellular One in the construction and operation of new cell sites. This expansion of Cellular One coverage and capacity is directed at maintaining a high level quality and service excellence to Cellular One subscribers. Initial to the process of commissioning a cell site for service is the executed lease agreement. The signed lease must be secured prior to filing for required zoning the building permits, the acquisition of which may take up to one year in open counties of the service area. Upon receiving all necessary approvals and permits construction begins immediately. The entire construction process takes approximately two months, conditioned upon weather and availability of special materials. If not available at the leased site location, electric power and telephone lines are then brought to the site by the local utility and telephone companies via non-exclusive easements or rights of way. During the two weeks following construction, the antennas and related cooling are mounted and the radio and interconnect equipment is installed and tested. The site is then placed on the air and for approximately four weeks, technical adjustments are made by technicians twice per week.

It is Cellular One's harmonious us establish sc concern: b aesthetics, with the fol

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CELLULAR ONE
A Southwestern Bell Company

Pet Ex #2



Cellular One 150' monopole utilizing Kathrein® antennas.

22

CELLULAR ONE
A Southwestern Bell Company

# PETITIONER'S EXHIBIT 6

Pet Ex #13

REAL PROPERTY LEASE AGREEMENT

THIS LEASE, made and entered into this 23rd day of September 1989 by and between Joseph B. McMaster and Vivian Baker McMaster, herein referred to as "Landlord", and SOUTHWESTERN BELL MOBILE SYSTEMS, INC. trading as CELLULAR ONE, herein referred to as "Tenant", the parties mutually agree as follows:

1. LEASED PREMISES:

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord in consideration of the payment of rentals and performance of the covenants and agreements herein mentioned, an approximate 8.26 acre portion of that parcel of ground commonly addressed as 426 Sherwood Road, Cockeysville, Baltimore County, Maryland 21030 for the purpose of establishing a cellular telecommunications exchange location, herein referred to as Cell Site. Tenant intends to erect a 150 foot self-supporting communications monopole and to construct an accessory equipment building having approximate exterior dimensions of 14' x 40' x 10' high to house Tenant's appurtenant radio and telephone communications equipment. The location of Tenant's equipment building and monopole is further described in Exhibit A attached hereto. Collectively, the 8.26 acre portion including Tenant's monopole and equipment building shall be referred to as the Leased Premises.

2. USE OF LEASED PREMISES:

(a) Landlord leases to Tenant the Leased Premises, together with the right to use adjoining and adjacent land as is reasonably required during construction, installation, maintenance, and operation of the Cell Site, and of power lines and cables, and for construction and use of an access road and approach for ingress and egress to and from the existing service road to the Cell Site for the use and benefit of the Leased Premises, if necessary; together with the right and license to construct, erect, install, operate, relocate, and maintain aerial and underground communication cables from the Leased Premises over, across and through the adjacent property of Landlord upon and to the nearest available utility sources. The foregoing shall be accomplished without interfering with the use or development of its adjoining property by Landlord.

(b) Landlord hereby grants Tenant and the local utility and telephone companies an easement and right of way to construct, maintain, operate and repair overhead and underground communication and electric power lines and systems along, over and under the parcel and any adjacent access road, easements, or rights of way of Landlord.

(c) Landlord hereby grants Tenant a non-exclusive easement and right of way for ingress and egress over its Parcel and any existing access roads, easements, or rights of way of Landlord, to the Leased Premises and the Cell Site, for the purpose of constructing, installing, maintaining, operating and repairing the Cell Site.

90-382 XA Petitioners 13

Pet Ex #14

## AFFIDAVIT

We, the undersigned, being the owners of the property known as 426 Sherwood Road, and being the Petitioners in Case No. 90-382-XA, hereby state as follows:

1) If the above-referenced special exception and variances are granted, we agree not to permit any additional residential structures to be built within 200 feet of the base of the proposed monopole;

2) If the special exception and variances are granted, we will maintain the existing trees and shrubs along those portions of the property which are adjacent to Sherwood Road or Hollow Road;

3) If the special exception and variances are granted, and if the Zoning Commissioner's Order so requires, we will execute such deed restrictions to be recorded in the Land Records to confirm this agreement.

Witness:

Joseph B. McMaster

Vivian Baker McMaster

STATE OF MARYLAND, COUNTY of BALTIMORE, TO WIT:

I HEREBY CERTIFY that on this 10th day of August, 1990, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared Joseph B. McMaster and Vivian Baker McMaster, known to me, or satisfactorily proven, to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

AS WITNESS my hand and Notarial Seal the day and year first above written.

Darlene E Ramsey
Notary Public

My Commission Expires: 6-1-94

# PETITIONER'S EXHIBIT 20

IN RE: PETITIONS - SPECIAL EXCEPTION, SPECIAL HEARING, AND VARIANCE S/S of Greenspring Ave., 1125' SE of the c/l of Ridge Rd. 4th Election District
The Chestnut Ridge Volunteer Fire Company, Petitioner

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 97-177-XSPHA

* * * * * * * * * * *

The Petitioner herein requests a special exception to permit a wireless transmitting and receiving structure; a special hearing to determine whether or not approval should be granted to amend the special exception permitted in Case Nos. 3988 and 77-104-ASPH by reducing the area of the original special exception to 2.17 acres in lieu of the original 2.50 acres; and variances to permit a setback of 35 feet from the nearest property line in lieu of the required 300 feet and to permit a lot size of 0.229 acres in lieu of the required minimum lot size of 5 acres.

At the onset of the hearing, Counsel for the Petitioner moved to amend the instant Petition to request a variance from Section 1A04.3A of the Baltimore County Zoning Regulations (BCZR) to permit the structure to be 150' in height in lieu of the permitted 35'. That height was indicated on the plan submitted with the original petition. The motion was granted.

On behalf of the Petitioner, the surveyor submitted a modified plan, prepared by Gerhold, Cross & Etzel, revised October 27, 1986 and identified as Petitioner's Exhibit 1, and testified that the Chestnut Ridge Volunteer Fire Company owns and utilizes the front portion of 2.5 acres. The Petitioner intends to provide 10,000 sq.ft. of leased area at the rear property line and a 10-foot access easement to the Washington/Baltimore Cellular One Telephone Company. The National Guard owns and uses 8.6 acres to the north of the property; to the south there is a field and to the west there are woods and a pasture. The site also has woods along the western boundary line as well as along part of the northern property line.

# PETITIONER'S EXHIBIT 3A

90-382XA

3) In the event that the Board rules that the Petitioners have met the criteria, then the additional testimony can be taken at the convenience of the Board during the time already allocated by the Board.

4) In support of this position, the Petitioners attach the Findings of Fact and Conclusion of Law of J. Robert Haines, Zoning Commissioner of Baltimore County, dated October 12, 1990 as Exhibit 1 and Section 502.7.c.1 of the Baltimore County Zoning Regulations as Exhibit 2.

WHEREFORE, Petitioners respectfully request this Honorable Board to limit the issues to determine first, whether or not procedurally, the Petitioners have complied with the Zoning Regulations.

Respectfully Submitted,

J. Carroll Holzer
305 West Chesapeake Avenue
Suite 105
Towson, MD 21204
(301) 825-6960

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of June, 1991 a copy of this aforegoing Motion to Separate Issues was mailed, certified, return receipt requested to G. Scott Barnheight, Esq., Whiteford, Taylor and Preston, 500 Court Towers, Towson, MD 21204.

J. Carroll Holzer

LAW OFFICES
HOLZER, MAHER
& DEMILIO
305 W. CHESAPEAKE AVENUE
SUITE 105
TOWSON, MARYLAND
21204
(301) 825-6960

502.7--Wireless Transmitting and Receiving Facilities. [Bill No. 117, 1984.]

A. A special exception may not be granted for any wireless transmitting or receiving facility which is within one and one-half miles of (1) an existing district on the Baltimore County Final Historic Landmarks List, or (2) any of the following historical districts on the National Register of Historic Places, namely, Oella, My Lady's Manor, Western Run, Worthington Valley, Greenspring Valley, and Long Green Valley, if the horizontal distance from the facility to the boundary or property line of such district does not exceed ten times the height of the facility above grade, and unless the Zoning Commissioner or the Board of Appeals, upon appeal, finds that the proposed use will not be detrimental to or detract from the documented values of any such district due to the height of the proposed structure and its placement and visibility relative to such district. [Bill No. 117, 1984.]

B. Paragraph 502.7.A. does not apply to a wireless transmitting or receiving facility which is:

1. Not higher than three hundred fifty feet above grade level, or

2. Authorized by grant of special exception that is final and unappealable on the effective date of this Act. Such a facility may be fully restored in accordance with the terms of the special exception if it is destroyed or damaged to any extent, and such a facility may be enlarged, extended, or expanded notwithstanding the provisions of subsection A. above, subject to the approval of the Zoning Commissioner or Board of Appeals. [Bill No. 117, 1984.]

C. Wireless transmitting or receiving structures in R.C., D.R. or R-O zones are subject to the following additional requirements; provided that nothing herein shall be deemed to prohibit the granting, where appropriate, or variances from such requirements pursuant to Section 307 of these regulations. [Bill No. 64, 1986.]

1. Petitioner shall have the burden of establishing that it has made a diligent search for a location within a business, office or industrial zone, or for mounting on any existing structure over fifty (50) feet in height and that, due to valid considerations, including but not limited to, location, economic, elevation, engineering or technologic feasibility, no appropriate location is available. [Bill No. 64, 1986.]

REV 4/89

5-12

APPROVED JUL 0 1 1989

10-23-90

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE ZONING COMMISSIONER
PETITION FOR VARIANCE
Corner NE/S of Sherwood Rd., : OF BALTIMORE COUNTY
SE/S of Hollow Rd. (426 Sherwood Rd.) :
8th Election District :
3rd Councilmanic District :

JOSEPH B. McMASTER, et ux, : Case No. 90-382-XA
Petitioners

: : : : : : :

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman
People's Counsel for Baltimore County

Peter Max Zimmerman
Deputy People's Counsel
Room 304, County Office Building
Towson, Maryland 21204
887-2188

I HEREBY CERTIFY that on this 23rd day of March, 1990, a copy of the foregoing Entry of Appearance was mailed to G. Scott Barhight, Esquire, 500 Court Towers, 210 W. Pennsylvania Ave., Towson, MD 21204, Attorney for Petitioners; and Emilienne O'Rourke, Southwestern Bell Mobile Systems, Inc., t/a Cellular One, 7855 Walker Drive, Suite 100, Greenbelt, MD 20770, Lessee.

Peter Max Zimmerman

MICROFILMED

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE - NE/Corner Sherwood Road and Hollow Road (426 Sherwood Road) 8th Election District 3rd Councilmanic District
Joseph B. McMaster, et ux Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-382-XA

* * * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special exception for a wireless transmitting and receiving facility and a variance to permit a property line setback of 10 feet in lieu of the required 300 feet, a lot area of 0.13 acres in lieu of the required 5.0 acres, and to permit building setbacks of 12 feet, 7 feet and 8 feet in lieu of the required 50 feet for each, all as more particularly described in Petitioner's Exhibit 1.

The Petitioners, Joseph B. McMasters, Legal Owner, and Southwestern Bell Mobile Systems, Inc., T/A Cellular One, Contract Lessee, by Emilienne O'Rourke, appeared, testified, and were represented by G. Scott Barhight, Esquire. Also appearing on behalf of the Petitions were Jerry Bialecki, Director of Engineering for Cellular One, George Gavrelis, Land Planner, Dennis Francis, Professional Engineer, Carey Burch, Environmentalist, John M. Osepchuk, Consulting Scientist, David Ransone, Professional Property Line Surveyor, a Mr. Lipman, Real Estate Appraiser, Conny Carter, and Nathaniel Burkert. Appearing as Protestants in the matter were Thomas S. and Margaret D. Basham, Walter J. and Elva C. Wilmer, James H. and Gerardino Wise, Steven Rosen, President, Montview Association, Clay M. Barnes, President, Sherwood Hill Association, Kay Twit, Vice President, and David W. Baker, President, Powers Avenue Community Association. The Protestants were represented by J. Carroll Holzer, Esquire.

ORDER RECEIVED FOR FILING
Date 10/12/90
By BJS

As the hearing in this matter extended over a four day period, only portions of the testimony and evidence presented therein will be highlighted in this opinion.

Testimony indicated that the subject property, known as 426 Sherwood Road, consists of 104.7 acres of farmland more or less split zoned R.C. 4 and D.R. 2, and is improved with a single family dwelling, barn and other accessory structures. Petitioners have entered into a lease agreement with Cellular One who is desirous of erecting a 100-foot tall wireless transmitting and receiving tower on 0.13 acres of the subject property as depicted on Petitioner's Exhibit 4.

Emilienne O'Rourke testified that current customer demand requires the addition of the proposed tower to improve transmission and reception along the I-83 corridor. She indicated that there is currently poor reception in this area and that other existing towers must pick up calls from this area as "overflow." Ms. O'Rourke testified that Cellular One is also desirous of constructing an equipment building, 14' x 30' wide x 10' high. She testified that an 8' high chain link security fence would be erected around the tower and equipment building and that appropriate landscaping would be provided. Ms. O'Rourke testified that Cellular One is also requesting permission to use a temporary antenna and equipment building while the permanent facility is being constructed.

Dennis Francis testified regarding the technical aspects of the Cellular One system and the need for the proposed tower. Mr. Francis certified specifically regarding the search area and the specific sites considered and discounted for the subject tower. Mr. Francis concluded his testimony by indicating that in his opinion, the proposed site is the most appropriate location for the subject tower.

ORDER RECEIVED FOR FILING
Date 10/12/90
By BJS

MICROFILMED



Carey Burch, who was hired by Petitioners to conduct an environmental impact study of the subject site, concluded, based upon the findings of his study, that the subject tower would have no detrimental impact on the surrounding environment.

George Gavrelis testified on behalf of the Petitions and indicated that in his opinion, the relief requested is consistent with the requirements set forth in Sections 502.1, 502.7 and 307.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) and that the proposed location provides a better buffer from the surrounding residential community. Mr. Gavrelis further stated that in his opinion the subject request is generally consistent with the B.C.Z.R.

A contention raised by the Protestants, which is of particular concern, is whether Petitioners have met the preconditions concerning the search area, imposed specifically under Section 502.7.C.1 of the B.C.Z.R. Section 502.7.C.1 reads as follows:

> "Petitioner shall have the burden of establishing that it has made a diligent search for a location within a business, office or industrial zone, or for mounting on any existing structure over fifty (50) feet in height and that, due to valid considerations, including but not limited to, location, economic, elevation, engineering or technologic feasibility, no appropriate location is available."

Section 502.7.C.1 clearly places the burden on the Petitioners to establish that they have made a "diligent search" for a location within a business, office or industrial zone. Ms. O'Rourke testified that Cellular One hired Frederick Kruhm, a real estate consultant, to locate a site within the search area that would be appropriate for the proposed tower. Mr. Kruhm never testified in this matter and there was no evidence submitted indicating Petitioners' diligent search prior to the selection of the McMasters' property. In fact, testimony clearly indicated that the search

ORDER RECEIVED FOR FILING
Date 10/12/90
By BJS

MICROFILMED



for alternate sites occurred after the selection and contractual commitment between Cellular One and the McMasters. There was no testimony or evidence indicating that any commercial- or industrial-zoned property was examined within the search area prior to the signing of a contract between the McMasters and Cellular One on September 22, 1989.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Sections 502.1 and 502.7 of the B.C.Z.R. Based upon the testimony and evidence presented, the Petitioner has not met this burden. It was abundantly clear from the testimony that Petitioners made no diligent or reasonable search for a location within the business, office or industrial zones until after the execution of a lease between the McMasters and Cellular One on September 22, 1989. Petitioners testimony and the evidence presented did not provide "valid considerations" for not selecting a site in the commercial zone. In fact, Petitioners presented no testimony which would indicate that they seriously considered any other location other than the McMasters' property.

In the opinion of the Zoning Commissioner, the Petitioners have not complied with the requirements of Section 502.7.C.1 of the B.C.Z.R. Said regulation requires Petitioners to establish that they have made a diligent search within a business, office or industrial zone. A diligent search requires more than the exploration of one, two or three alternate sites.

After due consideration of the testimony and evidence presented, it is the opinion of the Zoning Commissioner that the Petition for Special Exception should be denied.

ORDER RECEIVED FOR FILING
Date 10/12/90
By BJS

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Petitioners have also requested the granting of certain variances which were contingent upon the relief sought in the special exception request being granted. In view of the fact that the Petition for Special Exception has been denied, the relief requested in the Petition for Zoning Variance is rendered moot, and as such, should be dismissed.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the relief requested in the special exception should be denied and the variances dismissed as moot.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 12th day of October, 1990 that the Petition for Special Exception for a wireless transmitting and receiving facility on the subject property, in accordance with Petitioner's Exhibit 4, be and is hereby DENIED; and.

IT IS FURTHER ORDERED that the Petition for Zoning Variance to permit to permit a property line setback of 10 feet in lieu of the required 300 feet, a lot area of 0.13 acres in lieu of the required 5.0 acres, and to permit building setbacks of 12 feet, 7 feet and 8 feet in lieu of the required 50 feet for each, be and is hereby DISMISSED as moot.

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH:bjs

ORDER RECEIVED FOR FILING
Date 10/12/90
By BJS

MICROFILMED

IN THE MATTER OF THE APPLICATION OF JOSEPH B. McMASTER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCES ON PROPERTY LOCATED ON THE NORTHEAST CORNER OF SHERWOOD AND HOLLOW ROADS (426 SHERWOOD ROAD) 8TH ELECTION DISTRICT 3RD COUNCILMAN DISTRICT

CBA No.: 90-382-XA

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No.:

* * * * * * * * * * * * * *

**PETITION ON APPEAL**

1. That the Board of Appeals had no legally sufficient evidence upon which to base its conclusion and therefore their Order passed is illegal, arbitrary and capricious.

2. That the Board of Appeals erred in misapplying the standards of Baltimore County Zoning Regulations Section 502.7, particularly 502.7C.

3. That there is no evidence in the record to support the Board of Appeals findings and Order pursuant to Section 502.7C and Section 502.1.

4. That the record in the instant case is devoid of any facts to support the granting of the variance by the Board of Appeals.

5. The Board of Appeals erred as a matter of law in granting the variance in that there is no proper finding of unreasonable hardship and practical difficulty required under Section 307.1 of Baltimore County Zoning Regulations.

6. And for such other reasons as may be raised upon a review of the transcript.

**WHEREFORE**, Appellants pray that this Honorable Court issue an Order reversing the Baltimore County Board of Appeals.

J. Carroll Holzer

**J. CARROLL HOLZER, Esquire**
Holzer, Maher, Demilio & Lee
305 West Chesapeake Avenue
Suite 105
Towson, Maryland 21204
410-825-6960
Attorney for Appellants

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 25th day of June, 1992, a copy of the foregoing Petition on Appeal was mailed, first-class, postage pre-paid to: G. Scott Barhight, Esquire, Whiteford, Taylor & Preston, 500 Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland 21204.

J. Carroll Holzer

**J. CARROLL HOLZER, Esquire**

c:\wp\pet\mcmaster.pet



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TOWSON, MARYLAND
21204
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IN THE MATTER OF THE APPLICATION OF JOSEPH B. McMASTER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCES ON PROPERTY LOCATED ON THE NORTHEAST CORNER OF SHERWOOD AND HOLLOW ROADS (426 SHERWOOD ROAD) 8TH ELECTION DISTRICT 3RD COUNCILMAN DISTRICT

CBA No.: 90-382-XA

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No.: 92CV6036
* 26/147

* * * * * * * * * * * * * *

**NOTICE OF APPEAL**

**J. Carroll Holzer**, on behalf of his clients, Sherwood Hill Improvement Association, Montvieu Improvement Association, Clay M. Barnes, David Baker, Thomas S. Basham and Steven L. Rosen, appeal to the Circuit Court for Baltimore County the decision of the Board of Appeals in the above captioned matter decided on May 28, 1992.

RECEIVED AND FILED
92 JUN 25 PM 1:10
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY, MARYLAND

J. Carroll Holzer

**J. CARROLL HOLZER, Esquire**
Holzer, Maher, Demilio & Lee
305 West Chesapeake Avenue
Suite 105
Towson, Maryland 21204
410-825-6960
Attorney for Appellants

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 25th day of June, 1992, a copy of the aforegoing Notice of Appeal was mailed, first-class, postage pre-paid to: G. Scott Barhight, Whiteford, Taylor and Preston, 500 Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland 21204.

J. Carroll Holzer

**J. CARROLL HOLZER, Esquire**

notice-1\mcmaster.not

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IN THE MATTER OF THE APPLICATION OF JOSEPH B. McMASTER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCES ON PROPERTY LOCATED ON THE NORTHEAST CORNER OF SHERWOOD AND HOLLOW ROADS (426 SHERWOOD ROAD) 8TH ELECTION DISTRICT 3RD COUNCILMAN DISTRICT

Case No.: 90-382-XA

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No.: 90-382-XA

* * * * * * * * * * * * * *

**O P I N I O N**

This case comes before this Board on an appeal from a decision of the Zoning Commissioner dated October 12, 1990, denying the Petition for Special Exception for a wireless cellular telephone transmitting and receiving facility and dismissing certain zoning variance requests as moot.

The Petitioners in this case, which was heard de novo, were Joseph B. and Vivian B. McMaster, Property Owners, and Southwestern Bell Mobile Systems, Inc., t/a Cellular One, Contract Lessee.

The Protestants were Sherwood Hill Improvement Association, Inc., Powers Avenue Community Association and Montview Improvement Association along with Clay M. Barnes, David Baker, Thomas S. Basham and Steven L. Rosen, individually.

Mr. David Ransome, a registered professional land surveyor, testified for the Petitioners as an expert witness in the field of land surveying. Mr. Ransome testified that he prepared the Plat to accompany the Petitions for Special Exception and Zoning Variance in this case. Mr. Ransome explained the three zoning variance requests in detail.

Mr. Jerry Bialecki, Cellular One's chief design engineer, testified as an expert in cellular radio telephone technology. Mr. Bialecki primarily testified about three maps which he prepared depicting areas which would meet Cellular One's technological needs



for a cell site in the Loch Raven area.

Ms. Amy O'Rourke, Cellular One's director of real estate, testified that she was responsible for locating the cell site for the Loch Raven facility. Ms. O'Rourke testified that she searched for a cell site based on the information given to her by Mr. Bialecki regarding engineering and technologic feasibility and Cellular One's policies concerning the location of cell sites.

Mr. Ronald Lipman testified for the Petitioners as an expert in the field of real estate appraising. Mr. Lipman testified that he had conducted studies concerning the effect of various transmitting structures upon property values and concluded that such structures had no significant negative impact upon property values.

Mr. Joseph Joyce, Cellular One's construction manager, testified about the various costs associated with lattice-type towers and monopoles and concluded that lattice-type towers were more expensive to construct than monopoles.

Mr. George E. Gavrelis testified for the Petitioners as an expert witness in the field of planning and zoning. Mr. Gavrelis testified that the proposed use of the cell site would comply with all of the special exception and variance requirements contained in the Baltimore County Zoning Regulations (hereinafter "BCZR").

Mr. Carey W. Burch testified for the Petitioners as an expert in the field of environmental matters and the preparation of environmental impact statements. Mr. Burch testified that he prepared an environmental impact statement for the subject property.

Dr. John Osepchuk, an expert in the field of radio



transmissions and radiation, testified for the Petitioners about Environmental Protection Agency standards and guidelines relating to radiation emissions.

Mr. Steven L. Rosen, one of the Protestants, testified as an individual and on behalf of Montview Improvement Association. Mr. Thomas S. Basham, another Protestant, testified as an individual and on behalf of Sherwood Hill Improvement Association, Inc. Messrs. Rosen and Basham testified, among other things, that they believed this location was picked by Cellular One for height consideration only; that it is a commercial fixture which should not be located in a residential area; and that Cellular One failed to develop a suitable search area. In addition, they expressed concern for the property value of the surrounding homes as well as the aesthetics of having a structure of this nature located in their neighborhood.

**FINDINGS OF FACT**

From the testimony and evidence received, the Board finds the following facts:

The Petitioners plan to construct a wireless cellular telephone transmitting and receiving facility on the farm of Joseph and Vivian McMaster located at 426 Sherwood Road, Cockeysville, Maryland. The farm has a total acreage of 104.7 acres and the relevant portion of the property is zoned R.C. 4. Currently, the property is a working farm consisting of cropland, pastureland, pig farming facilities and some cattle grazing areas. Approximately fifty percent (50%) of the farm is wooded and the majority of the Sherwood Road frontage is tree lined. The relevant area of the farm has a ground elevation of approximately 590 feet above mean



sea level.

The proposed site for the wireless cellular telephone transmitting and receiving facility, known as the "cell site," consists of .13 acres and is located between existing farm buildings on the northeast portion of the farm. The proposed transmitting and receiving facility consists of a 100-foot tall, freestanding monopole tower with attached antennae and an unmanned 14'x30'x10' equipment building with an adjacent single vehicle parking space. The proposed cell site is to be enclosed by an 8-foot high chain link fence topped with barbed wire and the proposed monopole is to have no lights or beacons. The proposed cell site as currently configured is approximately 600 feet from the nearest non-farm property line and approximately 700 feet from the nearest non-farm residential structure. Further, the proposed cell site is more than 200 feet from any residential structure on the McMaster farm.

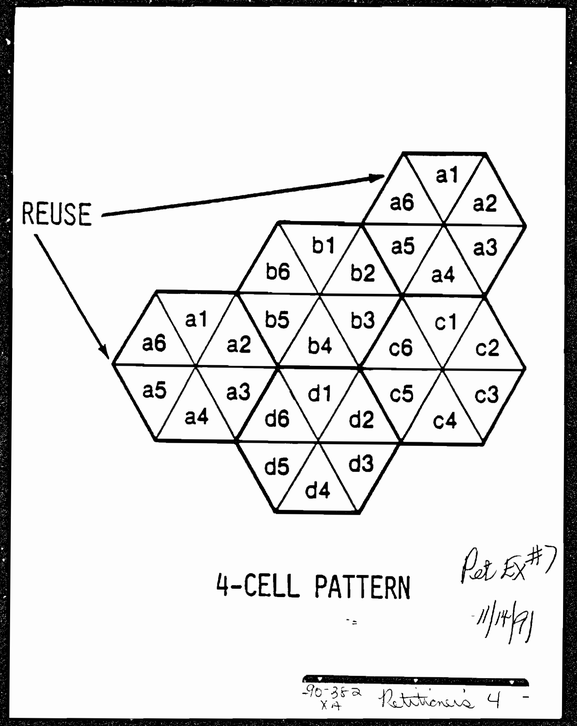
Pursuant to a document entitled Real Property Lease Agreement, dated September 22, 1989, Cellular One is currently leasing 8.26 acres of the property from the McMasters.

Mr. Bialecki prepared a map, dated September 10, 1987, which initially depicted the cell site areas necessary to meet Cellular One's technological parameters. In March of 1989, Mr. Bialecki produced a search area map which depicted Cellular One's geographical needs for a cell site in the Loch Raven area. In the summer of 1990, Mr. Bialecki generated another search map based on Cellular One's technical needs. From a coverage standpoint, Cellular One requires a cell site in the Loch Raven area. From a technological standpoint, Cellular One requires a 650 to 700 foot



minimum above ground antenna elevation in the Loch Raven area. Based on a propagation model prepared by Mr. Bialecki, it was determined that certain potential cell sites did not work because they had low elevations and/or lacked coverage in one direction or the other. From a technological standpoint, a wireless cellular telephone transmitting and receiving facility with an above-ground antenna elevation of 650 to 700 feet could be erected within the commercially zoned valley west of York Road.

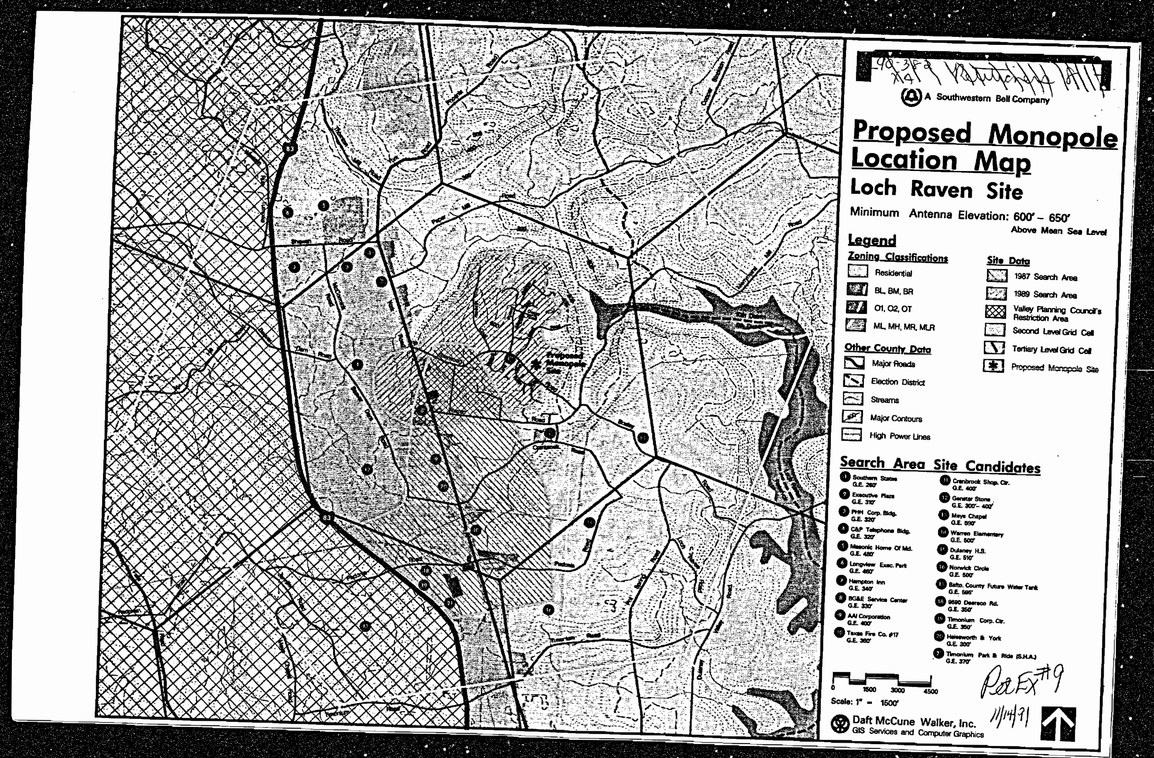
Ms. O'Rourke began to search for potential cell sites in the Loch Raven area in April of 1989. Ms. O'Rourke based her search on Cellular One's geographic, engineering, technologic and elevation requirements and was guided by Cellular One's policies when she conducted her search for the Loch Raven cell site. Ms. O'Rourke examined the overall topography of the search area defined by Mr. Bialecki and concluded that the commercially zoned area lying west of York Road was mostly in a valley with above-ground elevations ranging from 200 to 400 feet. The low elevations of the commercially zoned areas would have created the need for a 300 to 400 foot tower. For the proposed 100-foot application, Cellular One utilizes a single, self-supporting monopole which resembles a tall telephone pole. For a 300 or more foot tower, Cellular One utilizes a three-sided lattice-type tower that has steel cross-members which are woven through three legs for structural purposes. Lattice-type towers create a much greater visual impact than monopoles do. The FAA requires that all structures in excess of 200 feet in height be lighted with red lights and such structures must be painted red and white. The cost of constructing a lattice-type tower is significantly greater than the cost of constructing




4-CELL PATTERN

Pet Ex #7
11/14/91

90-382A
XA Petitioner's 4




Pet Ex #9
11/14/91

PETITIONER(S) EXHIBIT ( 7 )

12:53
4/19/90

A
Joe Patbert
GenStar
Re Tower on Texas Quarry in Cockeysville
527-4165
He doesn't know if he can accumulate us, but he's interested in talking

12:59
3/7

A
Jerry Tolbert
Gen Star
527-4165

BALTIMORE GAS AND ELECTRIC

Wendell Colson
Supervisor for
R.E. & Envtl. Mgmt.

RICHARD R. REICHELT
LAND MANAGEMENT REPRESENTATIVE
FACILITIES MANAGEMENT DEPARTMENT

BALTIMORE GAS AND ELECTRIC COMPANY
Windsor Office Building
P.O. Box 1475, Baltimore, MD 21203 (301) 281-3105

1053

R. L. Benhaven, Broker

1. GENERAL SITE INFORMATION

Bus Frac N. Krupa 421 9510

REMARKS

PETITIONER'S EXHIBIT 9

90-382XA

SEARCH AREA SITE CANDIDATES DATA SHEET

SEARCH AREA: Cockeysville "Loch Raven" Site G.E. REQUIRED: 360'± ANTENNA HT. AGL: 120'

| SITE NAME ADDRESS | ZONING | TYPE STRUCTURE | G.E. | AGL | EQUIP SPACE | INSIDE SEARCH AREA? | IF NOT, DISTANCE/DIRECTION | TWR/POLE REQ'D? | YES | NO | SITE ACCEPTANCE REPORT WHY NOT |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Southern States 10825 Beaver Dam Rd | ML-IM | ss Tower | 260' | 200' | NO | NO | 2000' Due West | Replace Tower | | X | No equip space and 400'± tower req'd |
| Executive Plaza 11350 McCormick Rd | ML-IM | Ofc Bldg | 310' | 140' | YES | NO | 1 mile WNW | N/A | | X | Site too low won't clear ridge |
| FMH Corp. Bldg. 11333 McCormick Rd | ML-IM | Ofc Bldg | 320' | 87' | YES | NO | 1 mile WNW | N/A | | X | Same as above |
| C&P Telephone Bldg Shawan & York Roads | BL | Ofc Bldg | 320' | 50' | NO | NO | 1 mile Northwest | N/A | | X | No equip space and Site much too low |
| Masonic Home of MD 300 International Cr | RC 4 DR 1&2 | Retirement Home | 480' | 60' | YES | NO | 1.5 miles NW | YES-200' | | X | Masons Declined Too visible on Hill |
| Longview Exec Park 303 International Dr | MLR | Ofc Bldg | 460' | 70' | YES | NO | 1.5 miles NW | N/A | | X | Site too low |
| Hampton Inn York & Paper Mill | BR-CHS | Hotel | 340' | 80' | NO | NO | 1000' Northwest | N/A | | X | No space Site too low |
| BG&E Service Center 10500 block York Rd | ML-IM | Ofc Bldg | 330' | 20' | NO | YES | | YES-350' | | X | No space for tower or equipment |
| AAI Corporation Industry Ln & York | ML-CS2 | Ofc Bldg | 400' | 40' | NO | NO | 2500' South | YES-200' | | X | No space for tower or equipment |
| Texas Fire Co.#17 Galloway Ave & York | DR-16 | Station House | 360' | 20' | NO | NO | 4200' South | YES-300'± | | X | Same as above |
| Crenbrook Shop. Ctr Crenbrook & Ridgland | BL | Strip Stores | 400' | 24' | NO | NO | 900' South | YES-200' | | X | Same |
| Genstar Stone Beaver Dam & Church | MH-IM | Quarry Bare Land | 300'– 400' | N/A | YES | NO | 3000' South | YES 300'–400' | | X | Same |

PETITIONER'S EXHIBIT 11

90-382XA

Scotch™
VIDEOCASSETTE
LOCH RAVEN
POLE "TEST"
Petitioner's #16
EVERYDAY USE
for general purpose recording
VHS
Made in USA

PETITIONER(S) EXHIBIT ( )

90-382XA

PETITIONER'S EXHIBIT 18

Seven small overlays
1. Loch Raven Genstar
2. Loch Raven South
3. Loch Raven Inver. Water Tank
4. Loch Raven Rossly Water Tank
5. Loch Raven Golf Water Tank
6. Loch Raven Norwick Water Tank
7. Loch Raven Office Building

90-382-XA

[redacted]

PETITIONER'S EXHIBIT 19 A

90-382XA

Versar INC. ENVIRONMENTAL RISK MANAGEMENT

Versar, Inc.

P.E. A

ENVIRONMENTAL IMPACT ASSESSMENT
OF CELLULAR ONE'S PROPOSED
RADIO TELEPHONE STATION:
LOCH RAVEN SITE
BALTIMORE COUNTY, MARYLAND

Prepared for:

Cellular One
2855 Walker Drive
Greenbelt, Maryland 30770

Prepared by:

Versar, Inc.
Technical Services Group
6850 Versar Center
Springfield, VA 22151

Versar Job No. 6591.16.1

May 4, 1990

90-382XA

PETITIONER'S EXHIBIT 19 B

Versar, Inc.

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PETITIONER'S EXHIBIT 19 C

90-382XA



Versar, Inc.

## 2.0 PROPOSED ACTION

### 2.1 Project Background

The history of cellular radio began in 1968 when the Federal Communications Commission (FCC) instituted an inquiry into methods to alleviate mobile communications congestion. The FCC requested comments on a proposal to eliminate UHF television channels 70 through 83 in 1970. (The elimination of these channels was proposed in order to expand the mobile communications network.) In 1977, the FCC granted two experimental licenses authorizing the construction of developmental cellular systems to demonstrate cellular's feasibility. One license was awarded to Illinois Bell Telephone in the Chicago, Illinois area and the second was awarded to American TeleService (now Cellular One) for the Washington/Baltimore region. It was American TeleService system that laid the foundation for the Cellular One network. The experimental system was a joint venture between American TeleService and Motorola. American TeleService began its experimental system in December 1981 when the first market trial customers began using and paying for the service.

In September 1983, the five original applicants in the Washington/Baltimore market signed a complete market settlement. Each applicant agreed to consolidate their interests behind the Cellular One application. The commercial license to operate the Washington/Baltimore system was awarded to Cellular One on December 16, 1983. Since then, Cellular One has been upgrading and expanding the original market trial system to handle the demands for cellular telephone service in the Washington/ Baltimore area. Today, the system provides coverage to the full 5,186 square mile market area.

Cellular radio telephone service is officially called "Domestic Public Cellular Radio Telecommunications" (DPCRTS) by the FCC, but is universally referred to as "cellular". Cellular represents the combination of a large portion of the radio spectrum with sophisticated switching technology and is capable of providing mobile or portable

[D95ea]

90-382XA



PETITIONER'S EXHIBIT 19 D

(hand-held) telephone service to virtually any number of subscribers in a given area. The transmission quality is indistinguishable from that provided by conventional fixed (wire line) telephone and the same dialing capabilities and features are available. Cellular allows a person to make telephone calls to any telephone in the nation or to over 100 foreign nations. To understand cellular, it is useful to look at conventional mobile telephone service. Conventional mobile telephone systems use one high-powered transmitter to cover an area with a 20 to 30 mile radius (see Figure 2-1). Such systems have no more than 12 radio channels available to them; however the typical number is three. When all three channels are in use, all other subscribers within the 30-mile radius must wait until the channel clears to make a telephone call. Subscription is limited to approximately 200 mobile units (in a population of more than 2 million) and even with this limitation on the number of users, the waiting time for a free channel is 15 minutes on an average. The waiting time may exceed 30 minutes during peak rush hour.

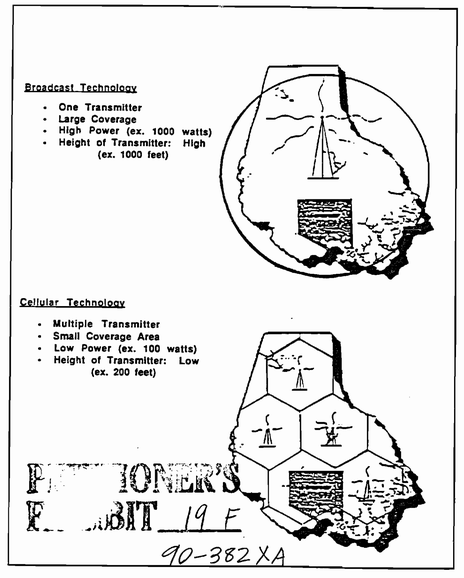
Cellular replaces the single, high-powered transmitter with several smaller low-powered transmitters throughout the same area as shown in Figure 2-1. With a nominal service radius of 8 to 10 miles, these subdivisions, or cells (hence, cellular) enable a user in one area to talk on the same frequency as a user in another area with no interference. As the user travels, the switching equipment which controls the cells monitors the relative signal strength and switches control of the call from one cell to another. This process, called "hand-off", makes for a very complex and expensive switching network, but provides the users with a continuous coverage over as large of an area as the cellular system operator chooses to cover.

PETITIONER'S EXHIBIT 19 E

90-382XA



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PETITIONER'S EXHIBIT 19 F

90-382XA

Figure 2-1. Comparison of Conventional Broadcast Technology and Cellular Technology.



Versar, Inc.

### 2.2 Purpose of the Proposed Action

The primary purpose of constructing a new 100 feet monopole on the McMaster's property and constructing a 14 feet by 30 feet by 10 feet unmanned equipment building on the property is to provide increased signal strength and availability of service in the Cockeysville, Baltimore County, Maryland area. The proposed station will enable Cellular One to maintain their existing level of service in the general area by:

(1) Maintaining the signal strength,

(2) Maintaining the geographical area of good reception, and

(3) Maintaining the number of frequencies that are simultaneously available in separate, nonadjacent cells. (Within a cellular system, nonadjacent cells may simultaneously use the same frequencies without interference.)

Failure to operate a station within this cell would result in a loss of signal strength and reception, thus disrupting communications and creating a dead zone where the Cellular One system would be inoperative.

### 2.3 Project Description

#### 2.3.1 Monopole and Equipment Building

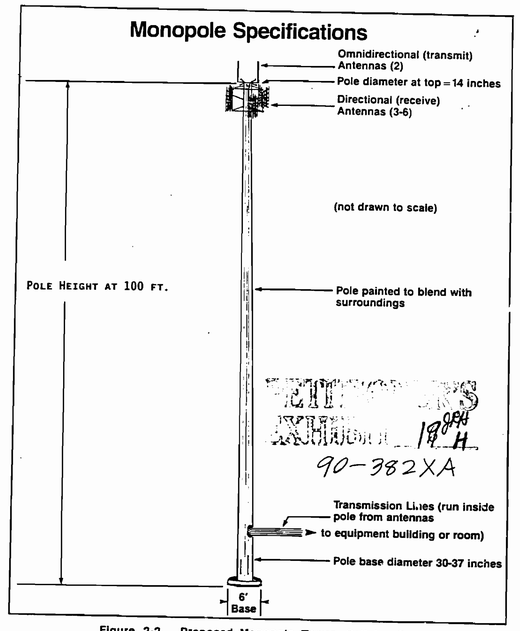
The proposed station will be constructed on land currently owned by Joseph B. and Virginia McMaster. The site is located at 426 Sherwood Road in Cockeysville, Maryland. The station will be owned and operated by Cellular One and will be located approximately 200 feet north of the McMaster's residential dwelling and 600 feet north of Sherwood Road. The station antenna will be mounted on a self-supporting monopole structure, with a concrete foundation (see Figure 2-2). The structural design of the monopole is in accordance with the following standards:

(1) ANSI/EIA-22-D-1988 at 80 miles per hour + 1/2-inch ice Structural Standards for Steel Antenna Towers and Steel Antenna Supporting Structures (Electronic Industries Association).

PETITIONER'S EXHIBIT 19 G

90-382XA

[D95ea]




PETITIONER'S EXHIBIT 19 H

90-382XA

Figure 2-2. Proposed Monopole Tower, Cellular One, Cockeysville, Maryland.

(2) AISC Steel Construction Specification for the Design, Fabrication, and Erection of Structural Steel for Buildings, Eighth Edition (American Institute of Steel Construction).

(3) ACI Standard 301 and Standard 614, Specifications for Reinforced Concrete (American Construction Institute).

The equipment building will be a single story brick veneer structure. The building will be the standard Cellular One equipment building (which is 14 feet wide, 30 feet long, and 10 feet in height). There will be no plumbing utility lines required for the building. The structure will have its own HVAC (heating, ventilation, and air conditioning) system. Electrical power and telephone will be supplied by a local utility company and will be mounted to the structure from the nearest utility pole. A single car parking space will also be constructed adjacent to the equipment building.

Once the station is completed and tested, it will operate unmanned. It will be visited by a licensed radio technician on a regular basis (approximately once every two weeks) for routine maintenance. Should emergency maintenance require, the station may be visited at any time.

2.3.2 Radio Frequency Transmissions

The station will transmit and receive electromagnetic energy in the form of radio frequency (RF) transmissions. These RF transmissions are defined by frequency and power density. The electromagnetic spectrum is divided into frequencies for each type of use, including AM, FM, two-way radio, television, and microwave transmissions. Frequency is measured by the number of times the wave-like RF transmission cycles from positive to negative charge per second, called hertz (Hz). The hertz scale is logarithmic, with values typically expressed in kilohertz (KHz; thousands of hertz), megahertz (MHz; millions of hertz), and gigahertz (GHz; billions of hertz). Table 2-1 illustrates typical uses of different frequencies and Figure 2-3 displays the frequencies of the electromagnetic spectrum.

90-382XA PETITIONER'S EXHIBIT 19 I



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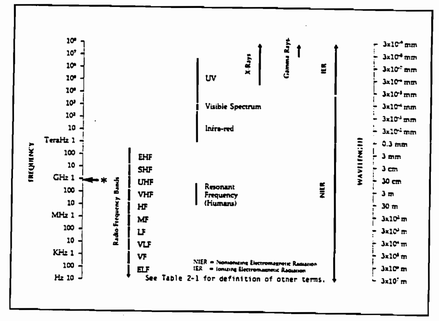
**Table 2-1. Typical Uses by Frequency Ranges**

| Frequency | Wavelength | Band Designations | Typical Uses | Wave Type |
|---|---|---|---|---|
| 300 GHz | 10 mm | EHF—Extremely high frequency | Satellite communications; Radar; Microwave relay; Radionavigation. amateur. | Millimeter waves |
| 30 GHz | 1 cm | SHF—Super high frequency | Satellite communications; Radar; Amateur; Microwave relay; Airborne weather radar. | Microwaves |
| 3 GHz | 10 cm | UHF—Ultrahigh frequency | Short-range communications; Amateur; Taxi; Police; Fire; Radar; Citizens band; Radionavigation; UHF TV; Microwave ovens. | Microwaves |
| 300 MHz | 1 m | VHF—Very high frequency | Police; Fire; Amateur; VHF TV; FM. | Radar |
| 30 MHz | 10 m | HF—High frequency | Citizens band; Amateur; Voice of America broadcast; International communications; Medical diathermy. | |
| 3 MHz | 100 m | MF—Medium frequency | Communications; Radionavigation; Marine Radiophone; Amateur; AM. | Ultrasonics |
| 300 kHz | 1 km | LF—Low frequency | Radionavigation; Marine communications; Long-range communications. | |
| 30 kHz | 10 km | VLF—Very low frequency | Very long-range communications. | |
| 3 kHz | 100 km | VF—Voice frequency | Voice, audio. | |
| 300 Hz | 1,000 km | ELF—Extremely low frequency | Seafarer; Power lines; Audio. | |
| 30 Hz | | | | |

*Cellular One operating frequency = 870-880 MHz

Source: Adopted from Bookin and Epstein (1

90-382XA PETITIONER'S EXHIBIT 19 J




*Cellular One operating frequency = 870-880 MHz

**Figure 2-3. Electromagnetic Spectrum**
Source: Adopted from Bookin and Epstein (1984).

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Power density is the number of watts of power falling on the given area and represents the strength of the transmission. Power density is typically expressed in terms of milliwatts (thousandths of a watt) or microwatts (millionths of a watt ) per square centimeter. (As a reference, a flashlight bulb requires one watt of power and a microwave oven generates approximately 500 watts of power within the oven.)

The proposed station will transmit RF at approximately 870 to 880 MHz and receive transmissions at 825 to 835 MHz. The transmissions will typically be at a power level of 40 to 45 watts and maximum transmissions from the station will be 100 watts.

2.4 Site Description

The proposed site for the Cellular One station will be constructed on land currently owned by Joseph B. and Virginia McMaster. The total parcel of land owned by the McMasters is approximately 104.7 acres, of which approximately 0.13-acre will be leased to Cellular One. The station will be located approximately 600 feet north of Sherwood Road. The proposed site plan is shown in Figure 2-4.

2.5 Land Use

Land use in the area surrounding the proposed site is mixed farmland and residential. Land use adjacent to the site is as follows:

- North: The site is bounded by farmland, beyond which are residential homes. The western arm of the Lock Raven Reservoir is located approximately 1/2-mile northeast of the proposed site.
- South: The McMaster property is bounded by Sherwood Road to the south. There are single-family residential homes on the opposite side of Sherwood Road.
- East: The McMaster property is bounded by farmland, woods, and single-family homes to the east, beyond which are residential developments.
- West: The McMaster property is bounded by single-family residential homes and farmland to the west and York Road (Route 45) is approximately 1 mile to the west.

90-382XA PETITIONER'S EXHIBIT 19 L



[0958x]

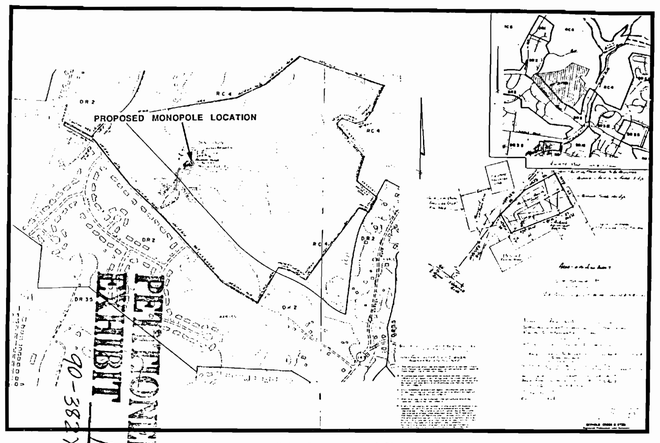



**Figure 2-4. Cellular One Proposed Site Plan for Cockeysville, Maryland.**

90-382XA PETITIONER'S EXHIBIT 19 H





2.6 Topography

The topography of the site and surrounding area is characterized by gently rolling land. The United States Geological Survey Survey (USGS) map of the Cockeysville and Towson, Maryland, Quadrangle show that the average elevation of the site is approximately 590 feet above mean sea level (msl). There is no surface water on the property. The closet surface water is Lock Raven Reservoir, which is approximately 1/2-mile east and north of the McMaster property. See Figure 2-5 for topography and location of property and surrounding area.

PETITIONER'S EXHIBIT 19 N
90-382XA



[0958x]

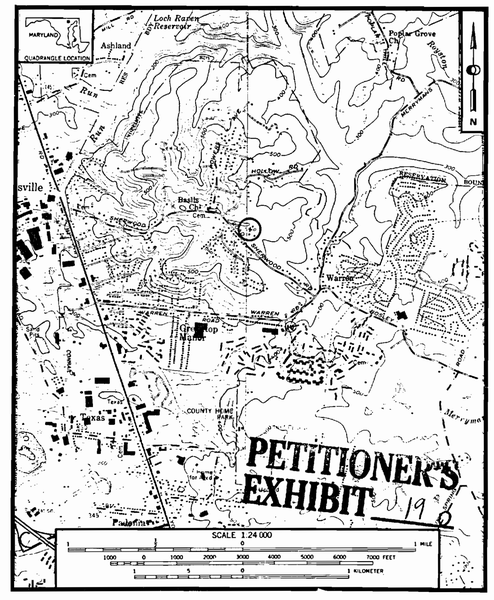



**Figure 2-5. Proposed Tower Location and Topography of the Project Area in Cockeysville, Maryland.**

Source: USGS Topography Maps of Cockeysville and Towson, Maryland Quandrangles.

90-382XA PETITIONER'S EXHIBIT 19 O



3.0 ENVIRONMENTAL IMPACTS OF THE PROPOSED ACTION

3.1 Wildlife

The site is located in a mixed residential/agricultural area in close proximity to Loch Raven Reservoir. The monopole will be sited in a pasture adjacent to livestock paddocks and various out-buildings. This site does not constitute a significant wildlife habitat, although it may be occasionally visited by various small mammals (e.g., squirrels, rabbits, raccoons, etc.) and birds. Impact upon wildlife associated with the construction of the proposed monopole and the construction of an equipment building will be negligible. The proposed monopole will be 100 feet in height and therefore, poses minimal threat to migrating or local birds. Based on existing studies, structures less than 200 feet tall do not constitute a threat to birds.

3.2 Vegetation

The immediate area surrounding the proposed site is mixed farmland and residential. The site will be constructed in a pasture. The proposed construction will not have any adverse effects on area vegetation (e.g., woodlands and grass areas). After construction of the tower and support building, the remaining land around the tower will not be disturbed. A dirt access road already exists on the property, thus further reducing any impact on local vegetation.

3.3 Water Resources

The only potential for short-term impacts upon the area's water resources is during the construction of the tower and its associated support building. Erosion of disturbed soil is the primary potential mechanism of impact. Some grading and filling activities will be necessary during construction. Best management practices for erosion control will be used during construction to assure that no sediment-laden runoff leaves the site. Grass seed will be planted on all disturbed soils as soon as possible to minimize erosion.

90-382XA PETITIONER'S EXHIBIT 19 P



[0958x]




Figure 3-1. Locations of Potential Impacts Within One Mile Radius of the Proposed Site.

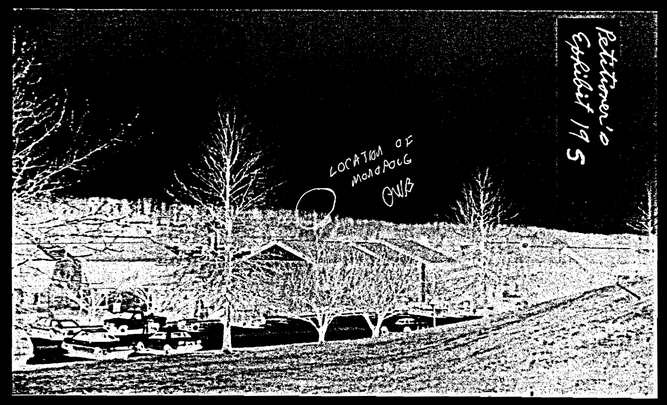
Source: USGS Topography Maps of Cockeysville and Towson, Maryland Quandrangles.

PHOTOGRAPH 1. PROPOSED CELLULAR ONE MONOPOLE AS VIEWED FROM BOSLEY ROAD ADJACENT TO THE SPRINGHILL CLUB.



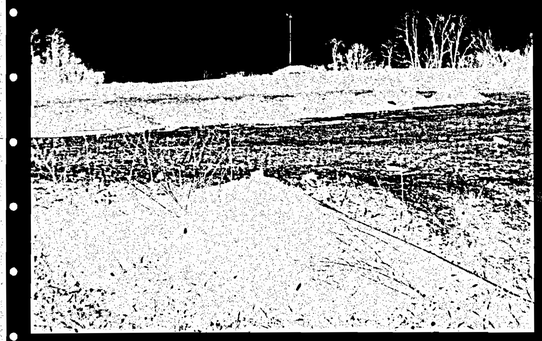

VISIBLE HEIGHT: 100 FT DISTANCE TO TOWER: 4400 FT

PHOTOGRAPH 2. PROPOSED CELLULAR ONE MONOPOLE AS VIEWED FROM CRANBROOK ROAD.




VISIBLE HEIGHT: 90 FT DISTANCE TO TOWER: 4000 FT

PHOTOGRAPH 3. PROPOSED CELLULAR ONE MONOPOLE AS VIEWED FROM HOLLOW ROAD.



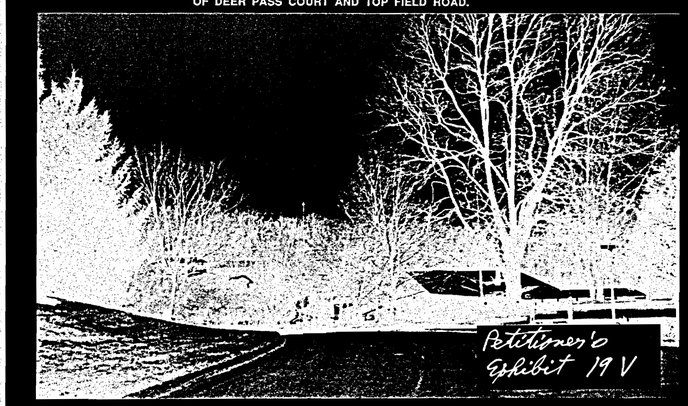

VISIBLE HEIGHT: 79 FT DISTANCE TO TOWER: 900 FT

PHOTOGRAPH 4. PROPOSED CELLULAR ONE MONOPOLE AS VIEWED FROM EAST SIDE OF BLUE BELL WAY.



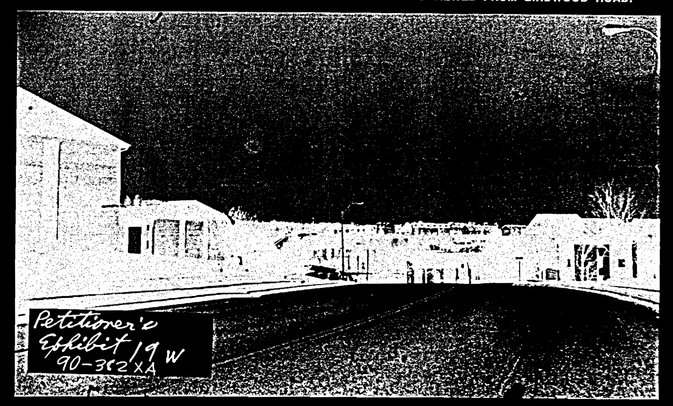

VISIBLE HEIGHT: 80 FT DISTANCE TO TOWER: 1500 FT

PHOTOGRAPH 5. PROPOSED CELLULAR ONE MONOPOLE AS VIEWED FROM INTERSECTION OF DEER PASS COURT AND TOP FIELD ROAD.



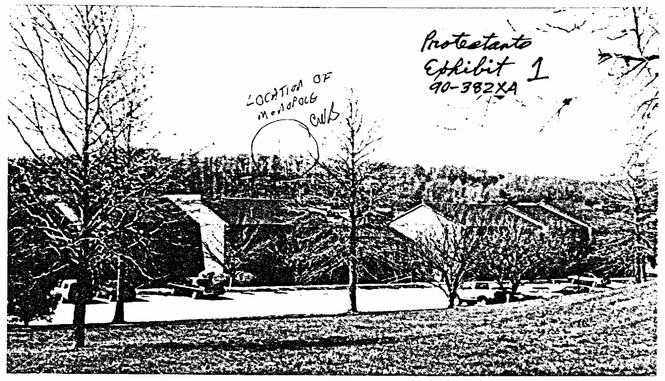

VISIBLE HEIGHT: 80 FT DISTANCE TO TOWER: 1500 FT

PHOTOGRAPH 6. PROPOSED CELLULAR ONE MONOPOLE AS VIEWED FROM GIRDWOOD ROAD.

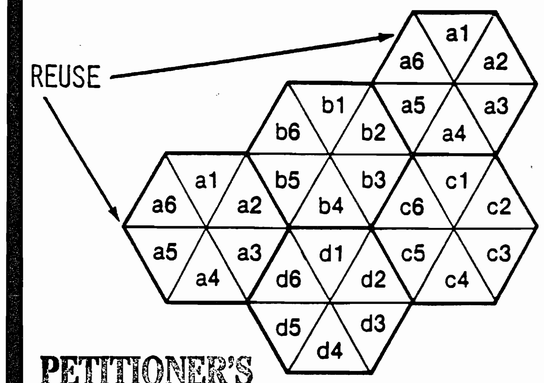



VISIBLE HEIGHT: 70 FT DISTANCE TO TOWER: 10,000 FT

PHOTOGRAPH 2. PROPOSED CELLULAR ONE MONOPOLE AS VIEWED FROM CRANBROOK ROAD.




VISIBLE MONOPOLE HEIGHT: 90 FT DISTANCE TO MONOPOLE: 4000 FT




PETITIONER'S EXHIBIT 12

90-382XA 4-CELL PATTERN

JOHN M. OSEPCHUK
Consulting Scientist

Dr. Osepchuk received his A.B., magna cum laude, and his M.A. in engineering science and applied physics from Harvard University in 1949 and 1950. He received his Ph.D. from Harvard in applied physics in 1957.

Upon joining Raytheon in 1950, Dr. Osepchuk conducted research on ridge-waveguide, magnetrons, and helped develop the first high-power backward-wave oscillator in the United States. During 1956 and 1957, he was technical liaison for Raytheon at the microwave tube research laboratories of Compagnie Generale de Telegraphie san Fils at Paris, France. From 1957 to 1962, Dr. Osepchuk was head of several research projects on crossed-field devices.

From 1962 to 1964, Dr. Osepchuk was chief microwave engineer for Sage Laboratories in Natick, Massachusetts.

In 1964, Dr. Osepchuk rejoined the Raytheon Research Division in Waltham, Massachusetts. He has directed various projects in the field of microwaves (tubes, ferrites, plasmas), image tubes, and physical electronics. In recent years, he has consulted for Amana and other Raytheon Divisions on radiation hazards, and investigated various aspects of Radarange technology, especially those involving leakage and safety. He was appointed Consulting Scientist in December 1974.

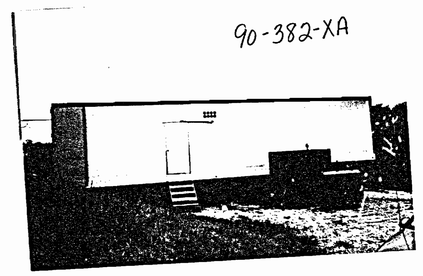
Dr. Osepchuk has published and presented many papers in the fields of microwaves and radiation hazards and holds over ten patents. He was guest editor for the special issue (February 1971) on Biological Effects of Microwaves of the IEEE Transactions on Microwave Theory and Techniques. He was editor of the Journal of Microwave Power (1970-1971) and is the editor of the recent IEEE Press volume of reprints; Biological Effects of Electromagnetic Radiation.

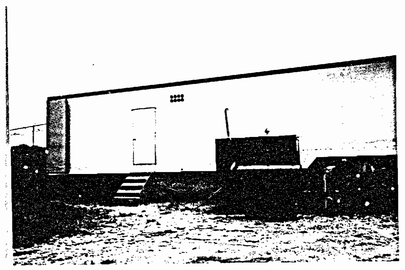
Dr. Osepchuk was National Lecturer (for 1977-1978) of the MTT Society (IEEE) on "Microwave Radiation Hazards in Perspective". In addition, he was General Chairman of the 1978 Symposium on Electromagnetic Fields in Biological Systems which was co-sponsored by IEEE MTT-S and IMPI. He was on the Program Committee and a Session Chairman for a Symposium on "Health

PETITIONER'S EXHIBIT 21 A 90-382XA

PETITIONER(S) EXHIBIT (5)

90-382-XA

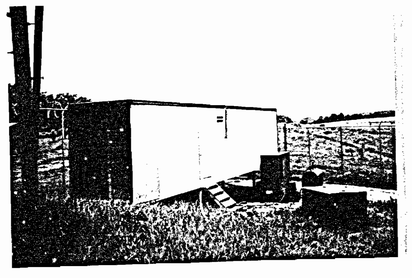




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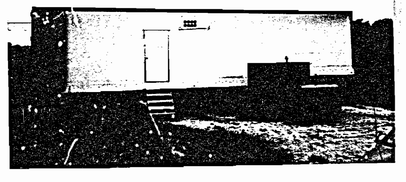
90-382-XA

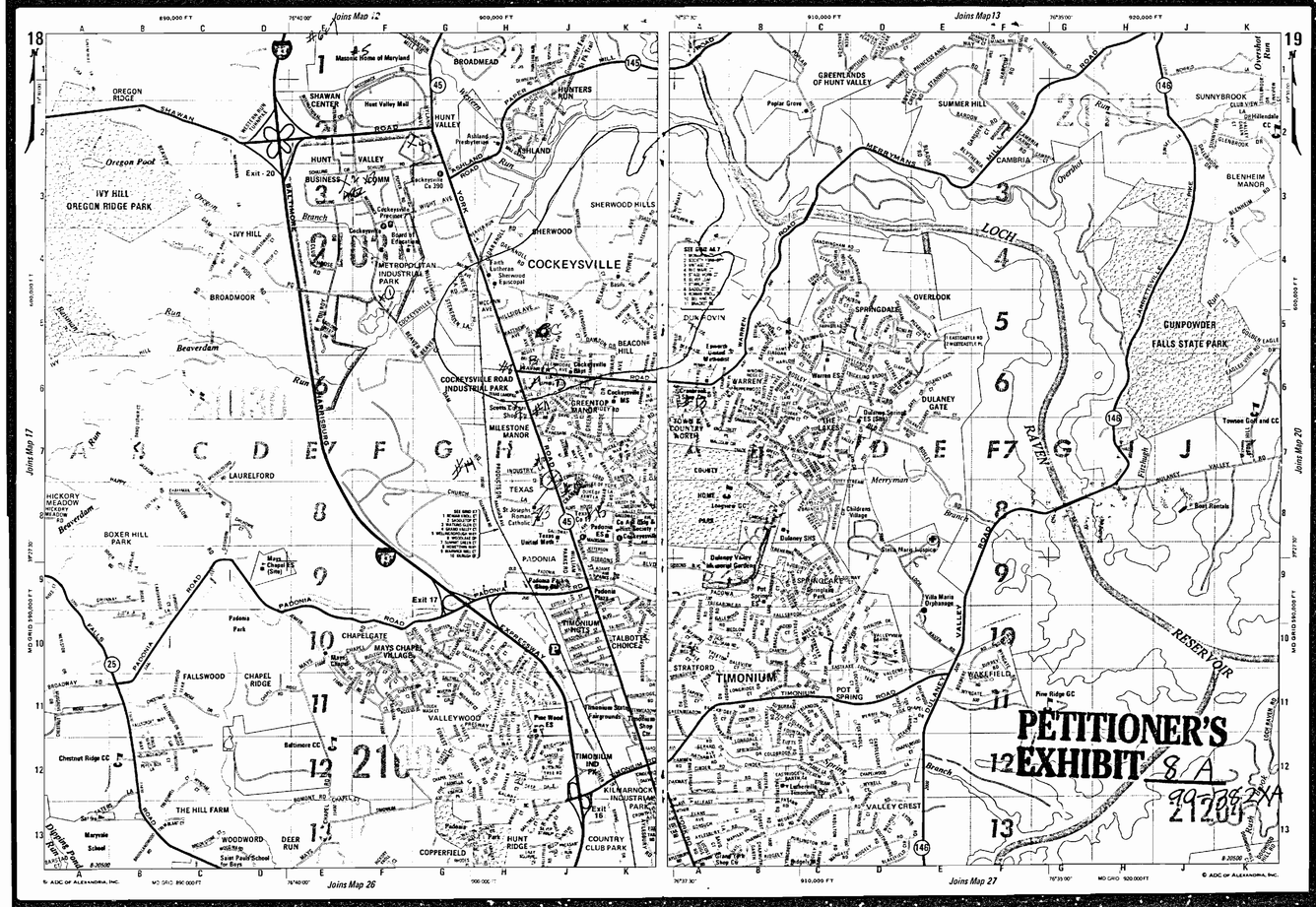




PETITIONER(S) EXHIBIT (5)

90-382-XA






PETITIONER'S EXHIBIT 8 A 90-382-XA

| SITE NAME / ADDRESS | ZONING | TYPE STRUCTURE | GRID LOCATION | AGL | BUILT SPACE? | INSIDE SEARCH RING? | IF NO, DIST/DIR | TWR/HOUSE ROOF | TWR AGL | SITE ACCEPTED / REJ |
|---|---|---|---|---|---|---|---|---|---|---|
| 1 2nd | | | | 200' | NO | NO | 2000' WSW | N/A | | NO EQUIV SPACE |
| 2 301 785-2270 | 55 TWR | | | 140' | ? | NO | 1 mi WNW | | | |
| 3 3rd | 111 BASE OPN | | | 85-90' | ? | | | | | |
| 4 | | | | | | | | | | |

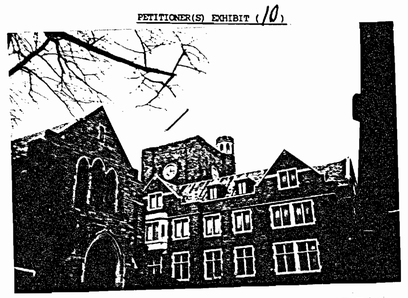
Jim Pembroke - DIST. MGR.
(301) 785-2270
10825 Beaver Dam Rd.

A - Warren dodge
B - High on corner Hunt Valley Rec Ctr
C - York Ave - all single fam homes. 100 yrs old.
D - 1AC VACANT LOT
E - 111 Warren Rd
F - Hunt Meadows - Townhouses. Scodale Rd + Warren Rd Opposite DEF - Single family all steps from back side to Warren Rd
G - Hunt View Development Warren Manor Ct 74 acres. (high on hill) 100 (new) residences (single family dwellings)

from Partridge + 4 trees down on Wake Robin you can't see prop(pos)

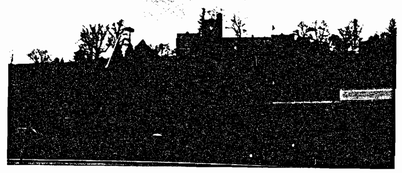
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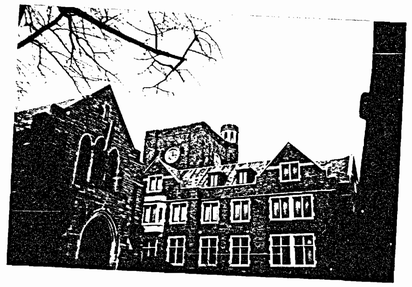
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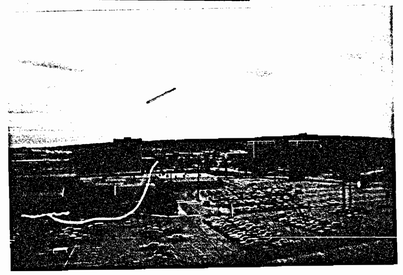


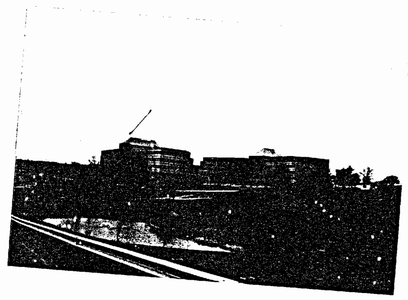
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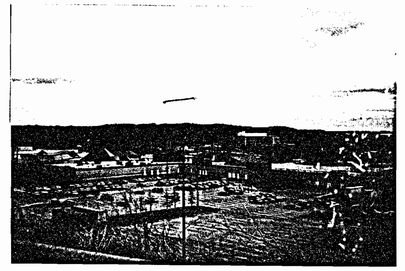


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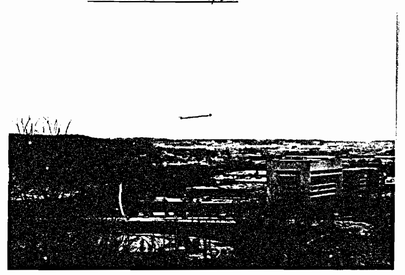


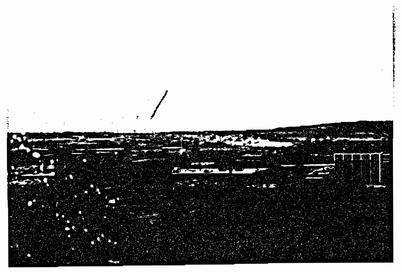
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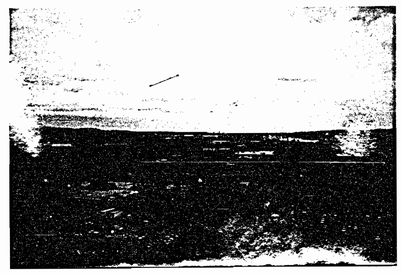


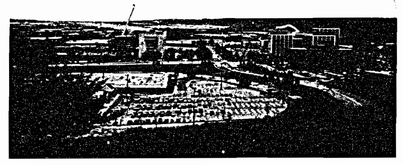
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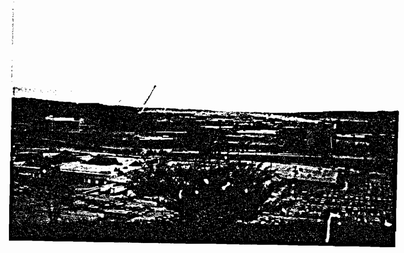
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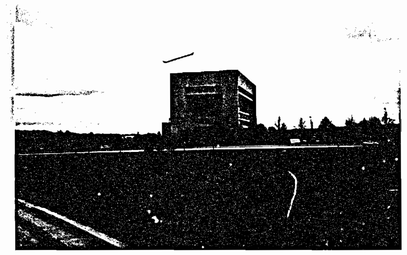


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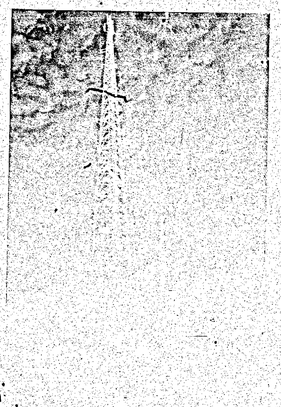
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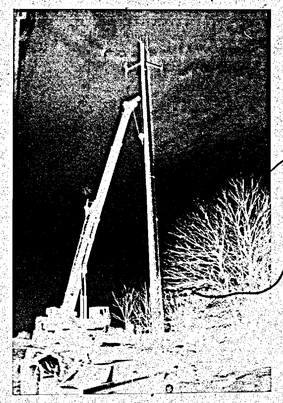


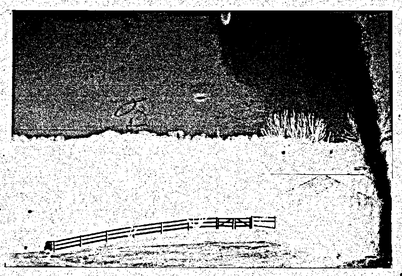
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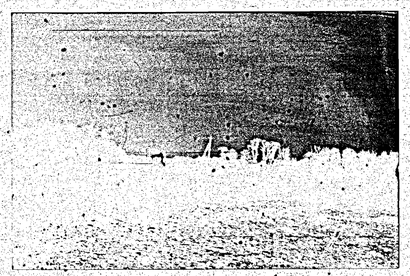


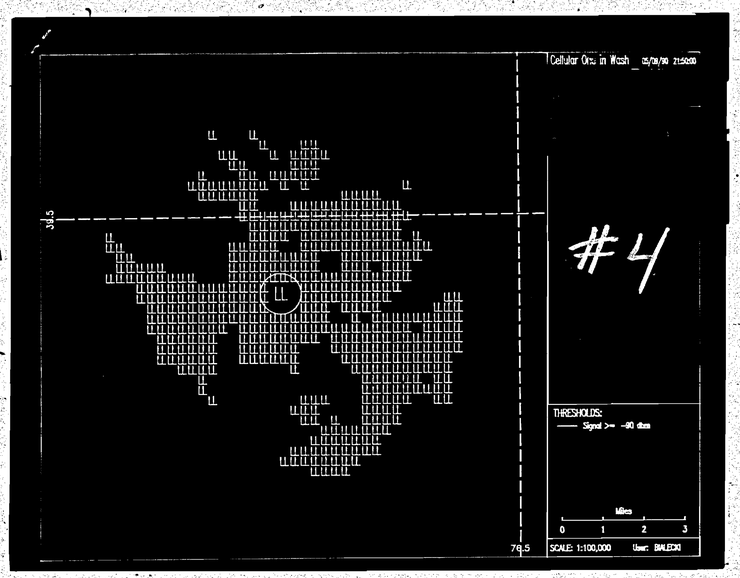


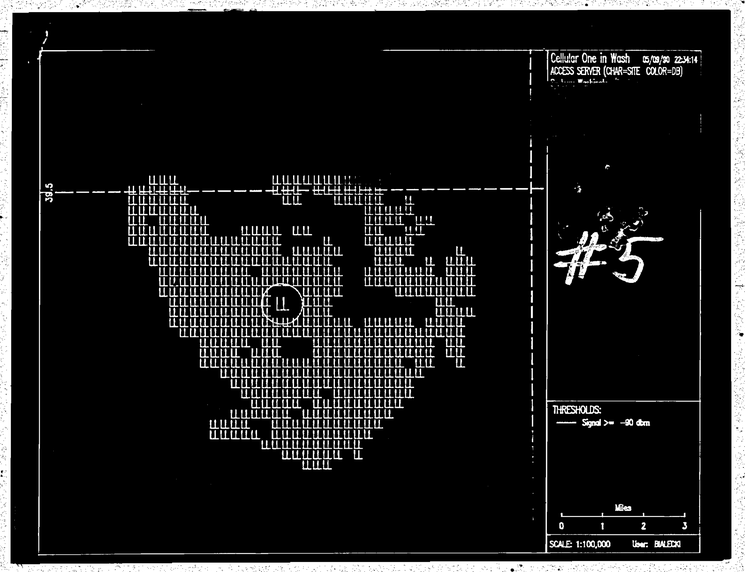


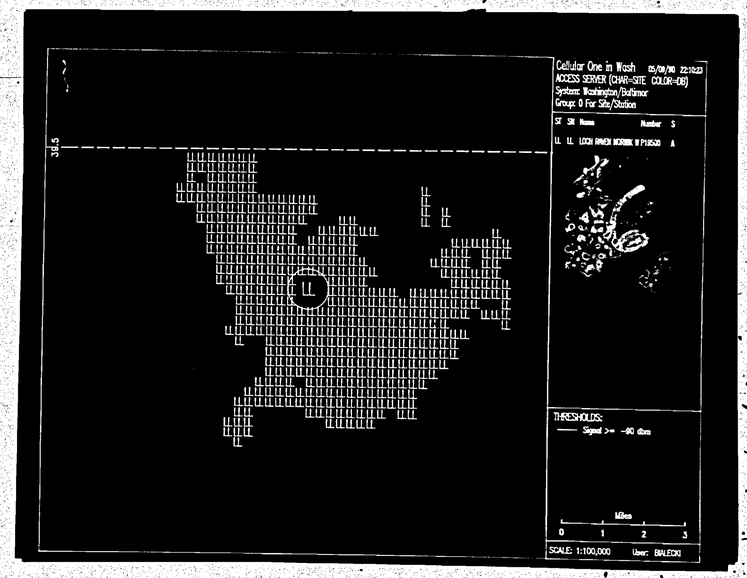


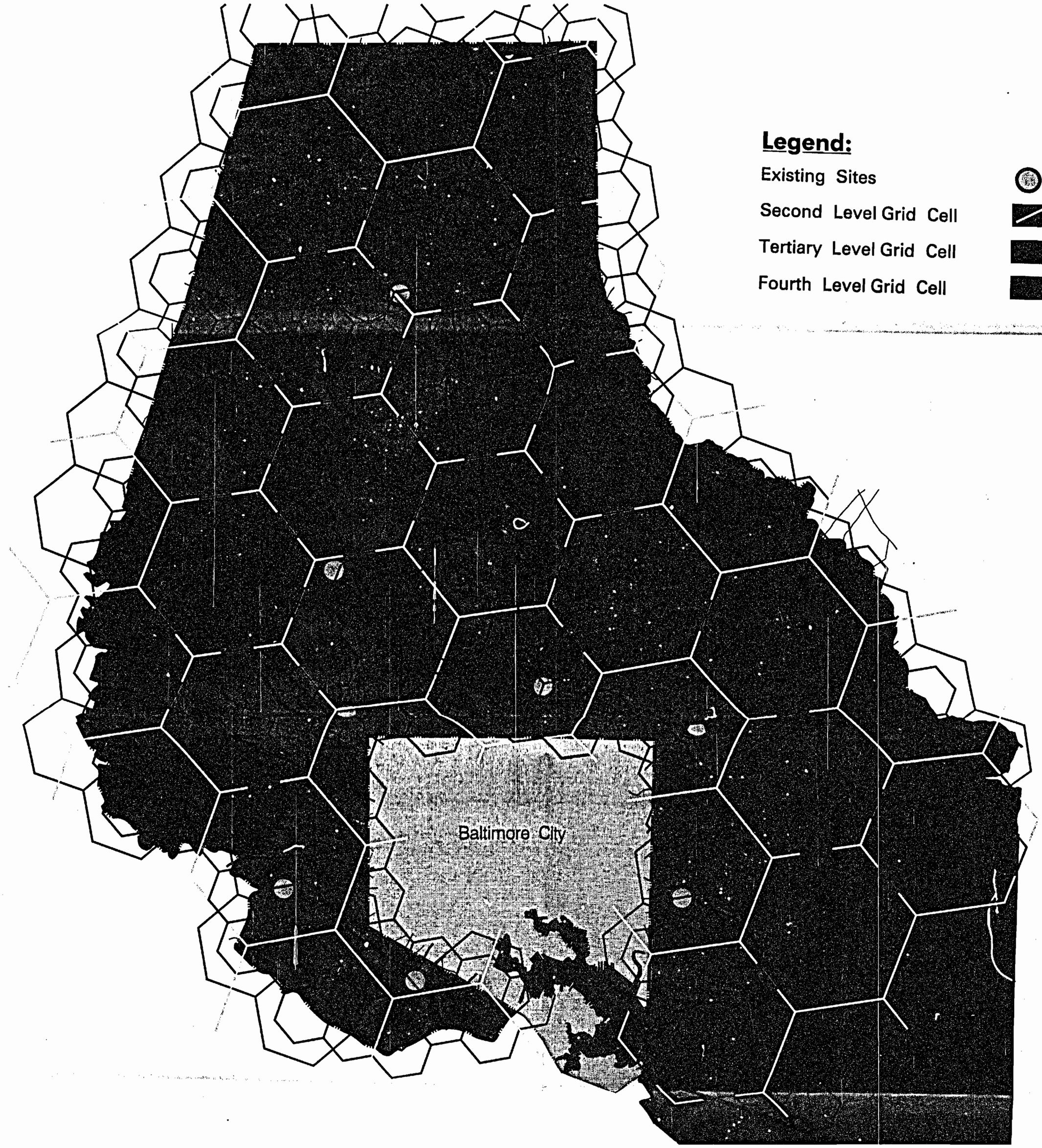









**Legend:**

Existing Sites

Second Level Grid Cell

Tertiary Level Grid Cell

Fourth Level Grid Cell

# Service Area Map

## Baltimore County, Maryland

Pet Ex #8
11/14/91

June 1991

Prepared by:

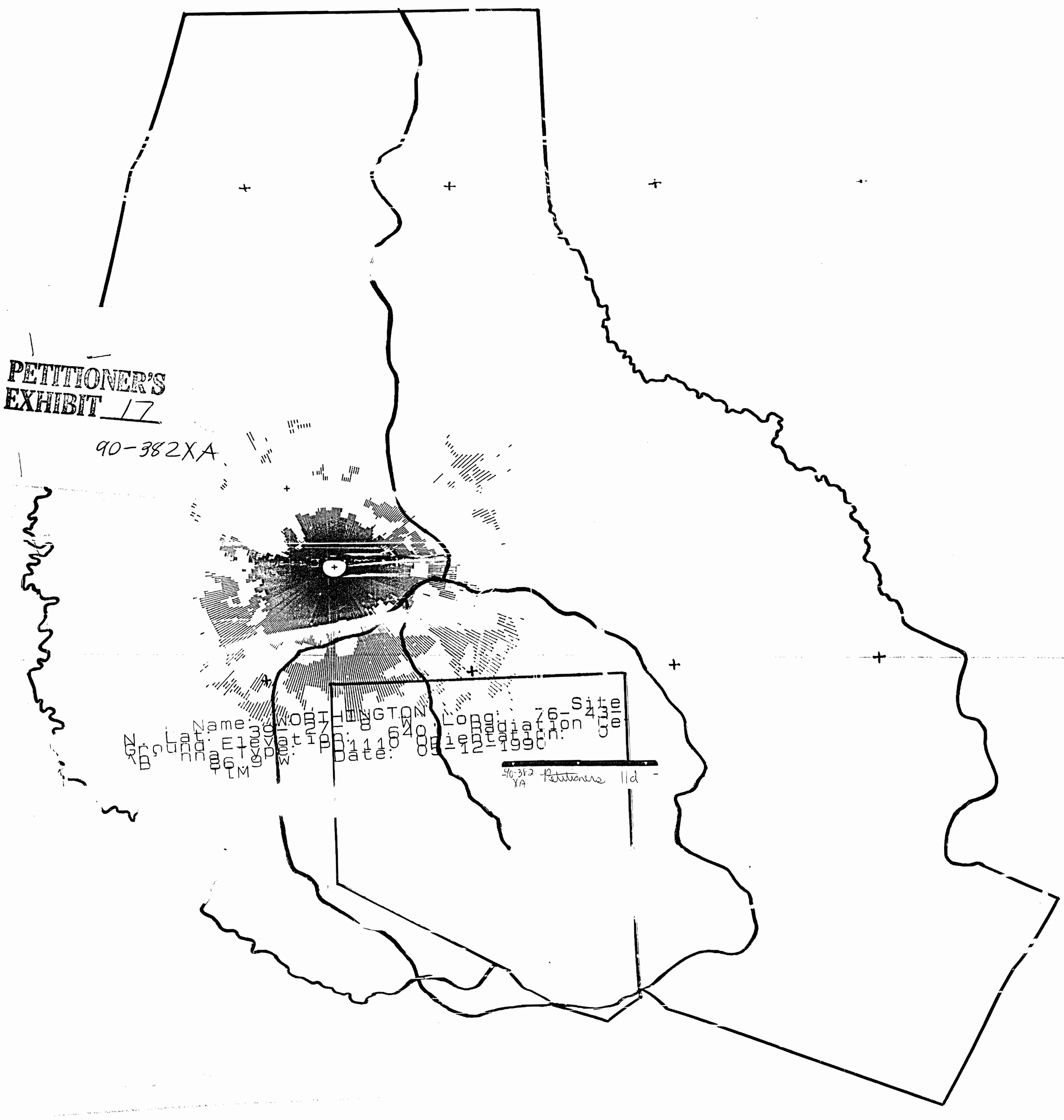
**Daft · McCune · Walker, Inc.**
200 East Pennsylvania Avenue
Towson, Maryland 21204 (301)296–3333

Land Planning · Landscape Architecture · Engineering
Applied Environmental & Computer Sciences

Scale: 1" = 2 miles

0 2 4 6

90-382 XA Petitioners 7




PETITIONER'S EXHIBIT 17

90-382XA

PETITIONER'S EXHIBIT 13

90-382 XA Petitioners 11a

RE: Petition for Special Exception and Zoning Variance * BEFORE THE

Corner NE/S SHERWOOD ROAD, SE/S of HOLLOW ROAD (426 SHERWOOD ROAD), 8th Election District, * ZONING COMMISSIONER

* OF

* BALTIMORE COUNTY

Southwestern Bell Mobile Systems, Inc., t/a Cellular One Petitioners * Case No.: 90-382-XA

* * * * * * * * * * * * *

PROTESTANTS MEMORANDUM

Sherwood Hill Improvement Association, Inc., Powers Avenue Community Association and Montview Improvement Association, Clay M. Barnes, David Baker and Steve Rosen, individuals, Protestants, by J. Carroll Holzer, their attorney, hereby submit this Memorandum in lieu of final argument before the Zoning Commissioner of Baltimore County.

STATEMENT OF CASE

The Petitioner, Southwestern Bell, trading as Cellular One (hereinafter "Bell") has filed a Petition for Special Exception and Variance before the Zoning Commission of Baltimore County to permit the operation of a cellular radio telephone transceiver station on property owned by Joseph B. and Virginia McMasters at 426 Sherwood Road in Cockeysville, Maryland. The variance requests approval for the site to occupy an area of approximately .13 acres. A 100 foot monopole type antenna, mounting structure, a brick veneer building

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14x30x10 feet and a single car parking space will be constructed on the site. The facility will be enclosed by a eight foot high chain link fence topped with barbed wire and the site will remain unmanned except for a visit once every two weeks for routine maintenance. According to the Petitioners, the monopole will have no lights or other beacons.

The Protestants herein, consist of Sherwood Hill Improvement Association, Inc., Powers Avenue Community Association and Montview Improvement Association along with Clay M. Barnes, David Baker and Steve Rosen, individually, residents of the affected communities.

The Petition for Variance requests variances from Sections 502.7.C2 and 102.2 of the Baltimore County Zoning Regulations, as well as from Section 502.7.C3 and 102.2 and from Sections 1A03.4.B.4 and 102.2. The Special Exception is requested pursuant to Section 502 which requires the zoning commissioner to review and apply the criteria set forth in Section 502.1 as well as the additional criteria of Section 502.7 created by Baltimore County Council Bill No. 64-86, permitting wireless transmitting and receiving facilities under certain circumstances.

Protestants submit that the extended testimony presented by Bell in this case, which lasted for all or portions of at least four days, should be examined in the light of whether the preconditions concerning the search area, imposed specially under Section 502.7. C.1 of the Baltimore County Zoning

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Regulations, for wireless transmitting and receiving facilities have been met. Only after a determination by the Zoning Commissioner that those preconditions set forth in that section of the Regulations have been complied with, should the criteria set forth under Section 502.1 be examined. It is also submitted by Protestants that the requirement under Section 307.1 of the Baltimore County Zoning Regulations, relating to the granting of a variance only where the strict compliance of the regulations would result in "practical difficulty or unreasonable hardship", and should be examined and rejected under the facts as presented in this case.

It is submitted that the following examination of the facts presented before the Commissioner, as they relate to both of these important criteria, will result in the conclusion that Bell has not met its burden of establishing that it conducted a dilligent search for an appropriate site under the requirements of Section 502.7, as it relates to the special exception and the hardship as required pursuant to Section 307.1.

It is important to remember that Section 502.7.C.1 requires the following:

> "Petitioner shall have the burden of establishing that it has made a diligent search for a location within a business, office or industrial zone, or for mounting on an existing structure over fifty feet in height and that, due to valid considerations, including but not limited to

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> location, economic, elevation, engineering or technological feasibility, no appropriate location is available."

The key to the issue of whether or not there was a good faith effort to conduct a "diligent search for a location" is two-fold: first, whether the search area to be examined is a legitimate one appropriately defined, upon a reasonable basis, or conversely, whether it is arbitrarily defined, without cause, or with an improper motive of procuring a desired result. The second issue is whether there was a good faith effort to conduct a diligent search for a potential site location within that area. Within the context them of Section 502.7.C.i., one should examine the testimony of the various witnesses presented by Bell.

STATEMENT OF FACTS

A. Petitioner's Case

Bell first called Ms. Amy O'Rourke, a representative of Bell's Real Estate Department, to testify as to her efforts on behalf of Bell to explore the Cockeysville area for a location for the proposed tower.

It is clear that Amy O'Rourke did not in anyway prepare or define the search area map marked as Petitioner's Exhibit Number 1 and that it was developed by others at Bell - and in particular, by a Mr. Dennis Francis. It also is clear from Ms. O'Rourke's testimony that she obtained the search area map and



provided it to Frederick Kruhm, a consultant occasionally hired by Bell, to conduct a search for an appropriate site within the area of Exhibit Number I. Mr. Kruhm never testified, nor is there any evidence before the Zoning Commissioner as to the nature of his search, if any, beyond the limited search area boundary as prescribed to him by Ms. O'Rourke. Ms. O'Rourke testified that long after Mr. Kruhm submitted his recommendation for the McMaster's property, she drove around the rest of the search area and took photos and names and location of property sites for purposes of this hearing. The purpose of Ms. O'Rourke's "search" was to justify Bell's position that the McMaster property was the only possible location for the tower. There was no testimony that any commercial or industrially zoned property was examined within the search area by anyone prior to the signing of a contract with McMasters by Bell on September 22, 1989. Ms. O'Rourke further testified that Kruhm normally provides alternative sites in the search area; however, in this case she admitted he provided only the McMaster site. Ms. O'Rourke testified that Bell limited its search, even originally, to the east side of Interstate 83, based upon a decision of the Zoning Commissioner in the Chestnut Ridge Fire Company Case, (Petitioner's Exhibit 3) as well as upon a Restrictive Covenant Agreement executed with the Valley's Planning Council.

During the cross-examination of Ms. O'Rourke, Petitioner's Exhibit Number 6, the Real Property Lease Agreement was



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discovered and introduced into evidence. It basically establishes a number of significant points: first, it was executed on September 22, 1989, well before the examination of any alternative site locations either contained within the described search area on Petitioner's Exhibit 1, or alternatives even outside of the search area as presented by Bell to bolster this aspect of their case. It is clear that this document establishes that no reasonable or diligent search for a location within a business, office or industrial zone was made by Bell prior to their execution of the lease with McMasters on September 22, 1989.

Secondly, it indicates that an 8.26 acre portion of the McMasters property was the subject of the lease, which would allow the utilization of the entire portion for the purposes of Bell. Paragraph three of the lease allows the McMasters to utilize the balance of these premises for "agricultural development, or any other use that is permitted by the County (including residential development)". Obviously the lease establishes, as does the testimony of Ms. O'Rourke, that McMasters simply wanted the tower to be located on the site at a location where it would be a minimal disadvantage to him personally and where he could gain economic advantage from developing the remainder of the farm. No thought was given to the set backs and requirements of Bill 64-86, providing for the safety of the public. Protestants submit that these objectives are not sufficient to constitute "practical difficulty or



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unreasonable hardship" to support a granting of the variance request.

Ms. O'Rourke further testified that it is the request of Bell that they be allowed to put up a portable cellular site which would consist of a portable one hundred foot tower, as well as a trailer, parked on the approximate location of the parking available to the permanent site. It is the stated intention of Bell to put up the portable tower if the Zoning Commissioner grants the zoning, without waiting and to utilize this tower and the facility during any appeal period. On cross examination of Ms. O'Rourke, it became clear, and later upon a review of the taped proceedings before the Zoning Commissioner it was confirmed, that Ms. O'Rourke, on behalf of Bell, simply found the McMaster's site to be the highest elevation within this arbitrarily defined search area and that she chose it for the location for the tower. She then conducted a search of other locations within and outside of the search area as an after thought, primarily to support the Bell position at the hearing for Special Exception. The following quotes from her taped testimony support this conclusion:

1) "I am the director of real estate for Southwest Bell, my responsibility is to secure locations within the entire service area"...

2) "I obtained the Chestnut Ridge Volunteer Fire Company site so I am familiar with the county law and I have testified



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at the hearing for the special exception for the Chestnut Ridge Fire Company Site"...

3) "I limited my search area to east of Interstate 83 due to the restrictive covenant agreement signed with Valley's Planning Counsel"...

4) "(O'Rourke) acknowledged the precedent in Baltimore County for giving approval to tower locations on County property, but did not check any county locations in the Cockeysville area prior to signing a contract with McMasters"...

5) "(O'Rourke) did not conduct any search in the Cockeysville area to determine whether any county locations were available"...

6) "(O'Rourke) acknowledged that Frederick Kruhm in his report to her of June 8, 1989 provided no other site candidates within the search area other then the McMasters property"...

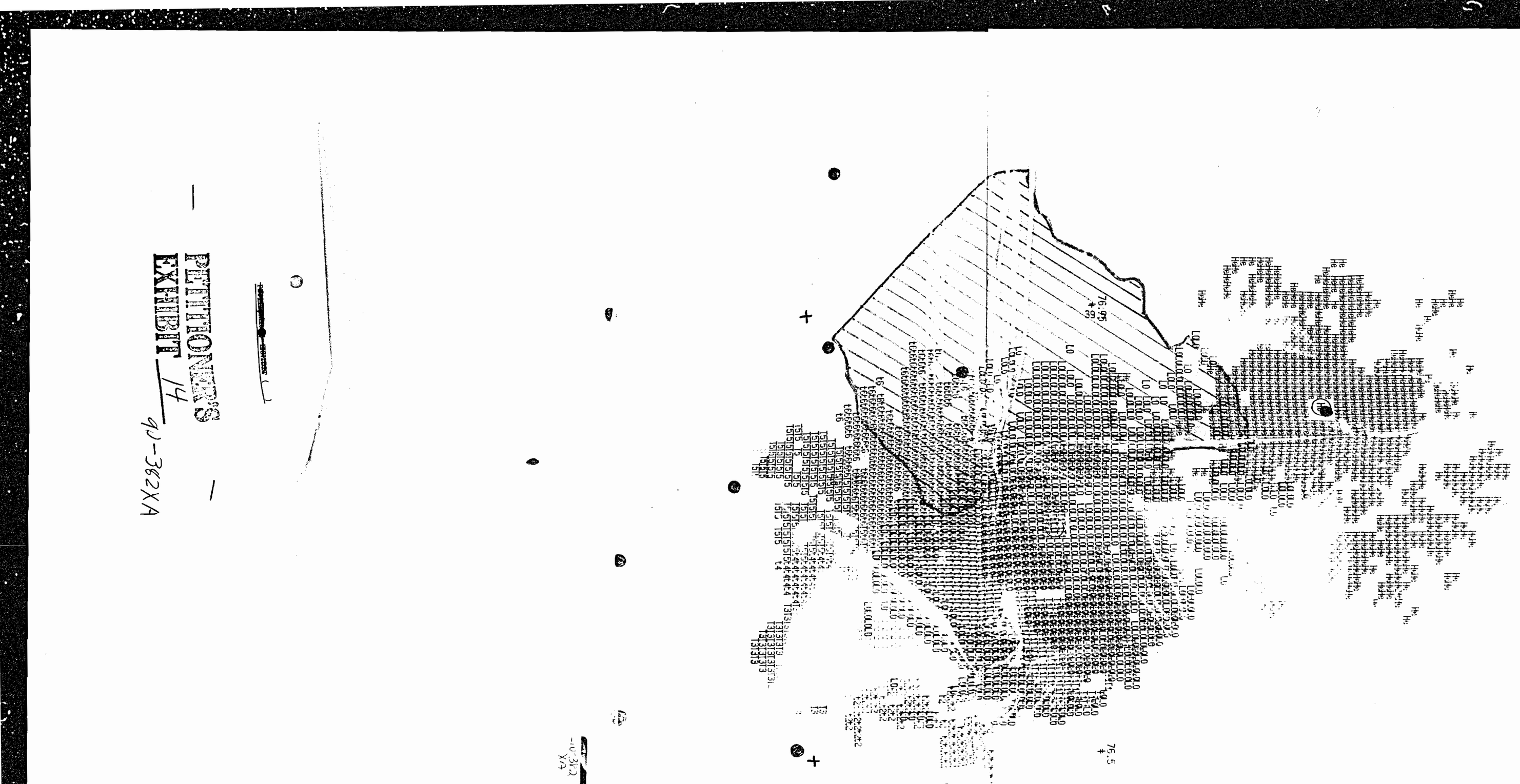
7) "Kruhm mentioned other sites located outside of the search area such as Baltimore Gas & Electric and Southern States and requested whether or not she (O'Rourke) wanted him to pursue those other sites and she indicated him not to proceed that she would handle it"...

8) "(O'Rourke) acknowledged that she followed up on the alternative sites in March 1990, only after the issue was raised by the Protestants, and well after the September 1989 lease was signed between Bell and McMasters"...

9) "(O'Rourke) acknowledged that there was "No



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PETITIONER'S
EXHIBIT 14
90-382XA
PETITIONER'S
EXHIBIT 15
90-382XA
PETITIONER(S) EXHIBIT ( )
PETITIONER'S
EXHIBIT 16
90-382XA

a monopole structure.

L A W

The Special Exception is requested pursuant to Section 502 of BCZR. The Board is required to review and apply the criteria set forth in Section 502.1 of the BCZR as well as the additional criteria of Section 502.7 created by Baltimore County Council Bill No. 64-86, permitting wireless transmitting and receiving facilities in the D.R., R.C. and R-O zones. The additional criteria of Section 502.7C are as follows:

1) petitioner shall have the burden of establishing that it has made a diligent search for a location within a business, office or industrial zone, or for mounting on any existing structure over fifty (50) feet in height and that, due to valid considerations, including but not limited to, location, economic, elevation, engineering or technologic feasibility, no appropriate location is available;

2) the setback of such structure from the nearest property line shall equal or exceed two (2) times its height above grade level;

3) the structure shall be located on a lot of at least five (5) acres;

4) the structure shall be enclosed within a locked, chain-link fence, or comparable wall or structure, at least 8 feet high;

5) a landscape plan, designed to minimize the visual impact of accessory buildings and the lower portion of the structure shall be submitted and approved by the Director of the Office of Planning and Zoning;

6) Environmental Protection Agency standards and guidelines relating to radiation emissions shall be met at all times;

7) when the use is terminated, the structure shall be removed;

8) every five years, or sooner in the event of substantial damage, a certification by a professional engineer registered in Maryland . . . shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure meets all safety requirements. Any upgrading or maintenance required to comply with any



changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification;

9) no white stroboscopic lights are permitted;

10) in order to insure adverse effects on its surroundings, an environmental impact statement, as defined in section 101, shall be submitted to the Zoning Commissioner or, in the event of an appeal, to the County Board of Appeals of Baltimore County. Such environmental impact statements shall include information on emission levels and shall evaluate the impact of the proposed structure on the ecosystem; and based on such environmental impact statement and other evidence produced at the hearing, it must appear that the proposed structure will not have a substantial adverse impact on the environment; and

11) the Zoning Commissioner or, in the event of an appeal, the County Board of Appeals of Baltimore County shall determine that there will not be a substantial adverse impact on surrounding property values, park lands or open space.

Section 102.2 of the BCZR requires that the special exception area be considered a separate "lot" for variance purposes.

Three variances are requested pursuant to Section 102.1 of the BCZR. The first variance requested concerns Section 1A03.4.B.4, which provides that any principal structure constructed in an R.C.4 zone must be at least 50 feet from any lot line other than a street line. The second variance requested concerns Section 502.7.C.2, which provides that the setback of any radio transmitting or receiving structure from the nearest property line "shall equal or exceed two (2) times its height above grade level." The third variance requested concerns Section 502.7.C.3, which requires that a radio transmitting or receiving facility "shall be located on a lot of at least five (5) acres."

Section 307.1 of the BCZR gives the Board power to grant variances from height and area restrictions only in cases where special circumstances or conditions exist that are peculiar to the



land or structure which is the subject of the variance request. Such variances may be granted when strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. Further, the proposed variance must be in strict harmony with the spirit and intent of the height and area regulations and must not pose any injury to public health, safety, and general welfare.

CONCLUSIONS OF LAW

Based on the Board's Findings of Fact and the applicable law, the Board concludes that both Sections 502.1 and 502.7 have been complied with. With respect to Section 502.7.C.1 of the BCZR, the Board concludes that a diligent search for a location within a business, office, or industrial zone was made and that, due to valid considerations, including, but not limited to, location, economic, elevation, engineering or technological feasibility, no such location was appropriate or available.

Cellular One's search for an appropriate cell site validly considered the location of the cell site based on technological feasibility. After defining the Loch Raven search area, Cellular One validly considered the elevations of the land within the Loch Raven search area. The ground level elevation of the proposed cell site is substantially higher than the ground level elevations of the land within the commercially zoned valley west of York Road. Cellular One also validly considered the difference in the cost between constructing a 300 to 400 foot lattice-type tower in the low-lying commercially zoned area west of York Road and a 100-foot monopole structure on the high lands of the proposed cell site. The Board concludes that the different technological factors,



elevations and costs are all valid considerations under Section 502.7.C.1 and that the timing of Cellular One's search for a cell site within the Loch Raven area has no bearing on such considerations.

The Board concludes that a 300 to 400 foot steel lattice-type tower, red and white, with flashing red beacons would be far more obtrusive and less aesthetically pleasing than a 100-foot steel gray monopole with no lights. The Board further concludes that the very nature of the farm and the existing trees will insulate the monopole from adjoining residential properties and that the cell site's relationship with adjoining properties is within the spirit and intent of the applicable regulations.

The Board also concludes that the proposed use will not be detrimental to the health, safety or general welfare of the locality, nor tend to create congestion, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the BCZR.

The Board has given due consideration to the above facts and concludes that the requested variances should be granted.

Further, the Board has considered the above facts with regard to Section 307.1 of the BCZR concerning the Board's authority to grant the requested variances. It is clear from the facts and evidence that special circumstances or conditions do in fact exist with regard to this particular piece of land which is the subject of the variance requests.

Therefore, after reviewing all the testimony, evidence and arguments, the Board is of the opinion that the granting of the variances would do substantial justice to the applicant and that



the spirit of the ordinance will be observed and public safety and welfare will be secured. The Board therefore finds that the requested variances should be granted and will so order.

O R D E R

IT IS THEREFORE this 28th day of May, 1992 by the County Board of Appeals of Baltimore County ORDERED that the Petition for Special Exception be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2) Prior to the issuance of any permits, Petitioners shall obtain CRG approval and/or a waiver.

3) The structure shall be enclosed within a locked, chain-link fence, or comparable wall or structure, at least 8 feet high.

4) A landscape plan, designed to minimize the visual impact of accessory buildings and the lower portion of the structure shall be submitted to and approved by the Director of the Office of Planning.

5) Environmental Protection Agency standards and guidelines reluting to radiation emissions shall be met at all times.

6) when the use is terminated, the structure shall be removed.

7) Every five years, or sooner in the event of substantial damage, a certification by a Maryland registered professional engineer shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure met all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification.

8) No white stroboscopic lights are permitted.



9) Prior to the issuance of any permits, Petitioners shall submit evidence of approval by all applicable Federal and State regulatory agencies and provide an affidavit that all required approvals have been given.

10) Prior to the issuance of any permits, Petitioner shall provide a 1988, 1"=200' scale zoning map, which has been sealed by a civil engineer or land surveyor, with the use area plotted accurately and legibly thereon for inclusion in the case file.

11) When applying for any permits, the site plan and landscaping filed must reference this case and set forth and address the restrictions of this Order.

IT IS FURTHER ORDERED that the Petition for Variance to permit a property line setback of 10 feet in lieu of the required 200 feet be and is hereby GRANTED; and

FURTHER ORDERED that the Petition for Variance to permit a lot area of 0.13 acre in lieu of the required 5.0 acres be and is hereby GRANTED; and

FURTHER ORDERED that the Petition for Variance to permit building setbacks of 12 feet, 7 feet and 8 feet in lieu of the required 50 feet be and is hereby GRANTED.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Michael B. Gauer, Acting Chairman

Judson H. Lipowitz

Harry E. Buchheister, Jr.

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

May 28, 1992

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: Case No. 90-382-XA
Joseph B. McMaster, et ux

Dear Mr. Barhight:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Sincerely,

Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Mr. Joseph B. McMaster
J. Carroll Holzer, Esquire
Emilienne O'Rourke
Ms. Sarah Adams
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of
Zoning Administration

Printed on Recycled Paper

IN THE MATTER OF
JOSEPH B. MCMASTER, et ux.

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF BALTIMORE COUNTY
* Case No. 90-382-XA

* * * * * * * * * * *

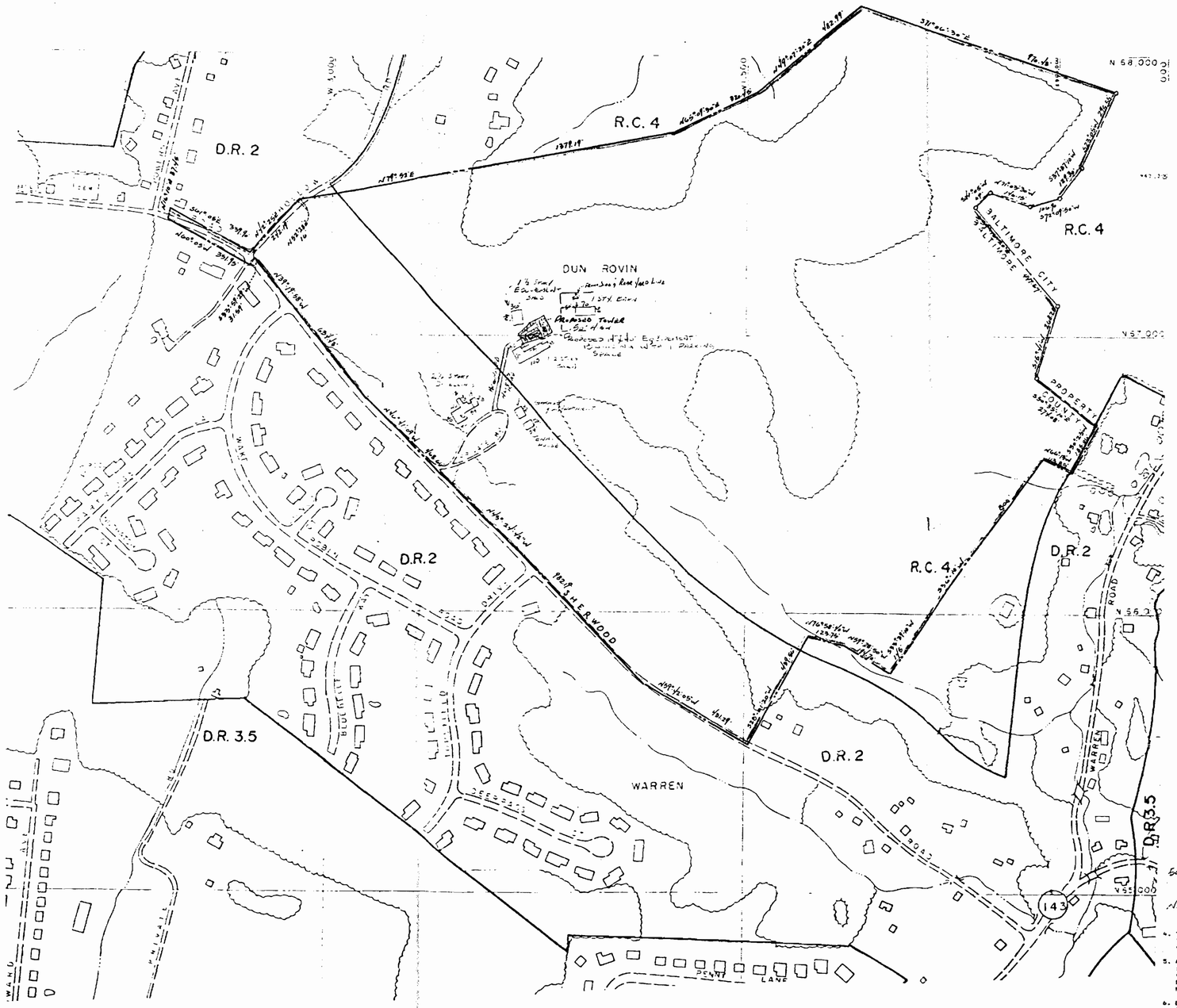
MEMORANDUM IN SUPPORT OF APPELLANTS' PETITIONS FOR SPECIAL EXCEPTION AND VARIANCES

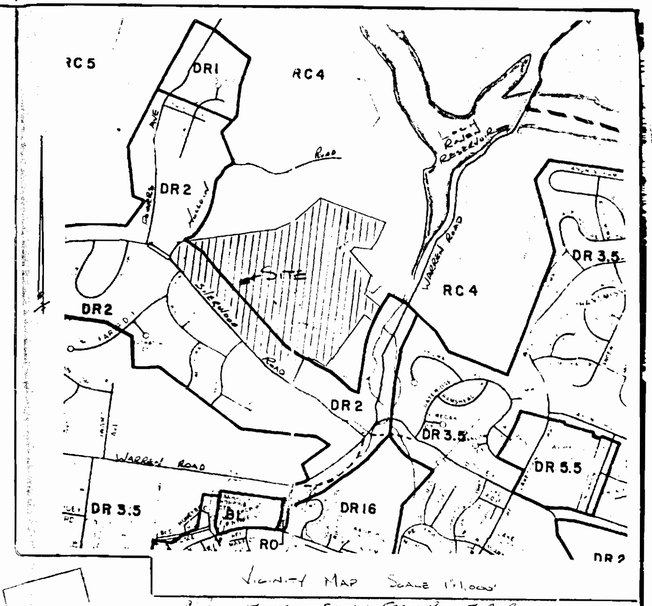
Joseph B. McMaster, et ux., and Southwestern Bell Mobile Systems, Inc., t/a Cellular One, by their attorneys, G. Scott Barhight, Karl J. Nelson, and Whiteford, Taylor & Preston, submit this Memorandum in Support of their Petitions for Special Exception and Variances, and in support thereof state as follows:

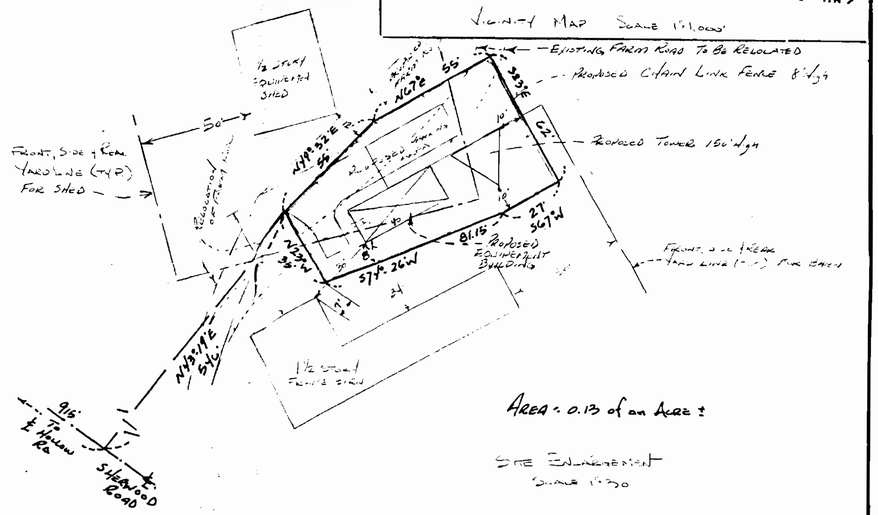
I. INTRODUCTION

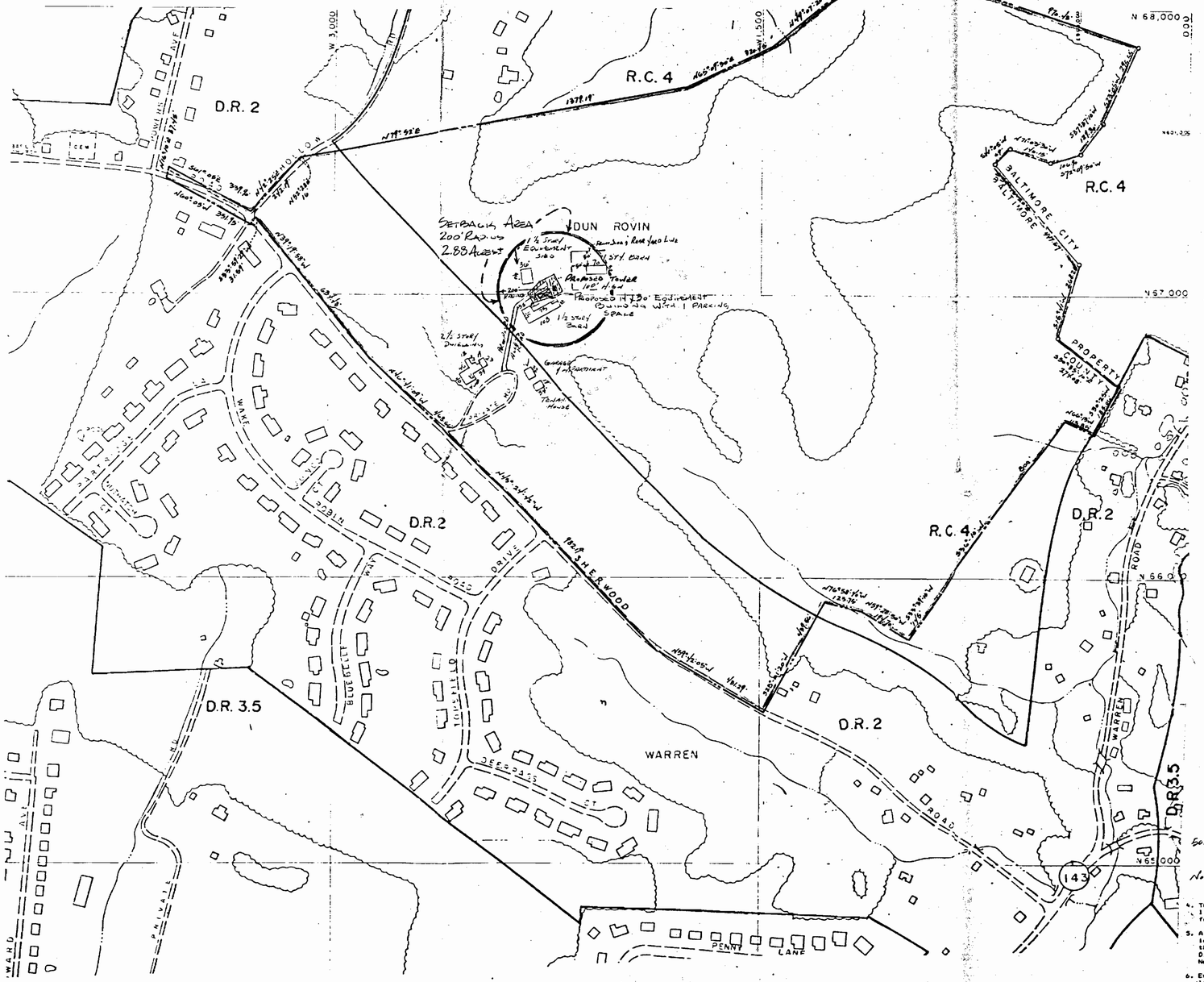
This case involves the efforts of Appellants Joseph B. McMaster, et ux. and Cellular One to place a wireless cellular telephone transmitting and receiving facility on Mr. McMaster's farm in the Cockeysville area of Baltimore County. The actual site in question, known as a "cell site", will consist of a one hundred (100) foot monopole tower with attached antennae, as well as a small accessory outbuilding. As is fully explained below, this cell site will form an integral part of Cellular One's cellular telephone network in Baltimore County.

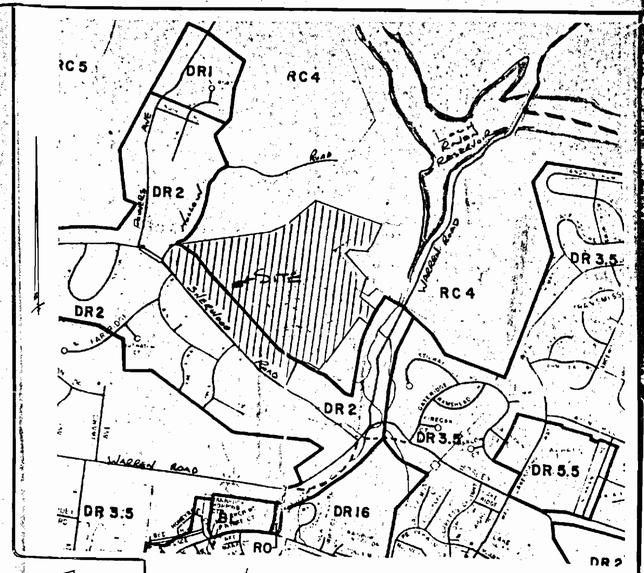
In order to place this cell site on the McMaster farm. Cellular One must obtain a special exception and three variances. Radio transmitting and receiving facilities are allowed in R.C. zones by special exception. See B.C.Z.R. section 1A03.3.B.14. The variances requested concern setback and minimum lot size



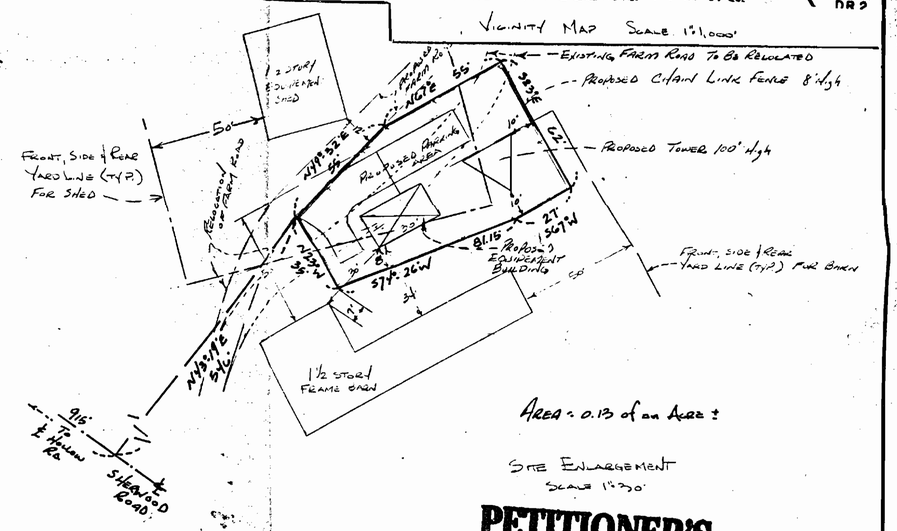





EXISTING FARM ROAD TO BE RELOCATED
PROPOSED CHAIN LINK FENCE 8'H/GA
PROPOSED TOWER 150'H/GA
PROPOSED EQUIPMENT BUILDING
FRONT, SIDE & REAR YARD LINE (TYP) FOR SHED
FRONT, SIDE & REAR YARD LINE (TYP) FOR SHED
1½ STORY EQUIPMENT SHED
1½ STORY EQUIPMENT SHED
EXISTING TREES
EXISTING TREES
SHERWOOD ROAD
N67°E
N67°W
N23°53'E
S23°53'W
S67°E
S67°W
N23°53'E
S23°53'W
81.15'
50'
55'
55'
55'
55'
55'
55'
24'
24'
10'
10'
10




VICINITY MAP SCALE 1"=1,000'




AREA = 0.13 of an Acre ±

SITE ENLARGEMENT
SCALE 1"=30'

# PETITIONER'S EXHIBIT 4

'90-382XA

PLAT TO ACCOMPANY PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCES FOR A COMMUNICATION TOWER

LOCATED IN

8TH ELECTION DISTRICT - BALTIMORE COUNTY, MD.
3RD COUNCILMANIC DISTRICT

OWNER: JOSEPH D. McMANUS JR. DEED REF: G.L.B. No. 2076/513
426 SHERWOOD ROAD
CLARKSVILLE, MD.

PETITIONER: SOUTHERN PACIFIC MOBILE SYSTEMS INC.
T/A CELLULAR ONE, 7855 WALKER DRIVE, GREENBELT MD, 20770

GROSS AREA WHOLE TRACT : 104.7 AC.±
AREA FOR SPECIAL EXCEPTION : 0.13 AC.±
EXISTING ZONING: RC4 & DR2

TOWER: 100' MONOPOLE
BUILDING: 14'x30' (max. 15' H/G4)

ADD SALEABLE AREA OF 2.88 AC. 3-05-90
REVISE BUILDING SIZE 3-27-90
REVISIONS 1-17-90
ADD NOTE 1-10-90
REVISED 1-08-90
11-14-89

SCALE 1"=200'

GERHOLD, CROSS & ETZEL
Registered Professional Land Surveyors
412 Delaware Avenue
TOWSON, MARYLAND 21204

NOTE: PLAT COMPILED

502.7.A. DOES NOT APPLY BECAUSE TOWER IS LESS THAN 350' high

NOTES FROM SECTION 502.7.C. BCZR INCORPORATED WITH THIS PLAN

4. The structure shall be enclosed within a locked, chain-link fence, or comparable wall or structure, at least 8 feet high. [Bill No. 64, 1986.]

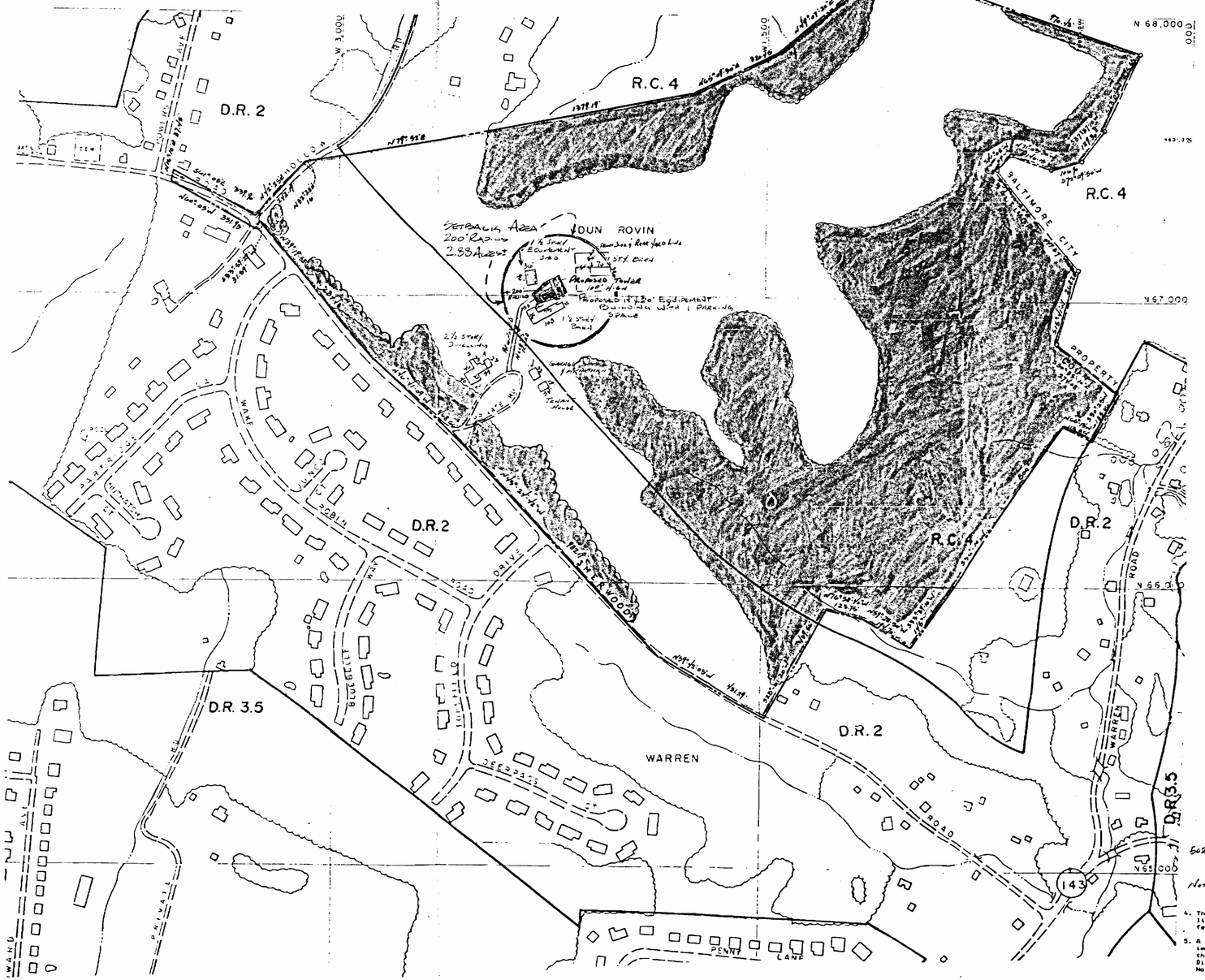
5. A landscape plan, designed to minimize the visual impact of accessory buildings and the lower portion of the structure shall be submitted to and approved by the Director of the Office of Planning and Zoning. [Bill No. 64, 1986.]

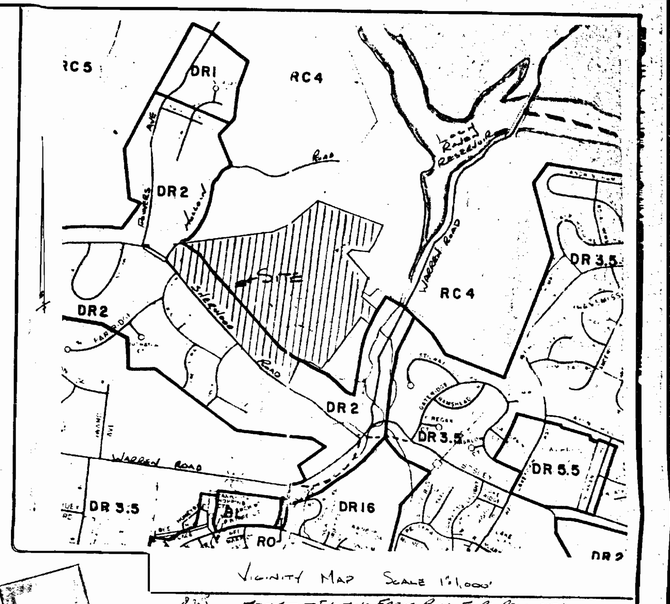
6. Environmental protection agency standards and guidelines relating to radiation emissions shall be met at all times. [Bill No. 64, 1986.]

7. When the use is terminated, the structure shall be removed. [Bill No. 64, 1986.]

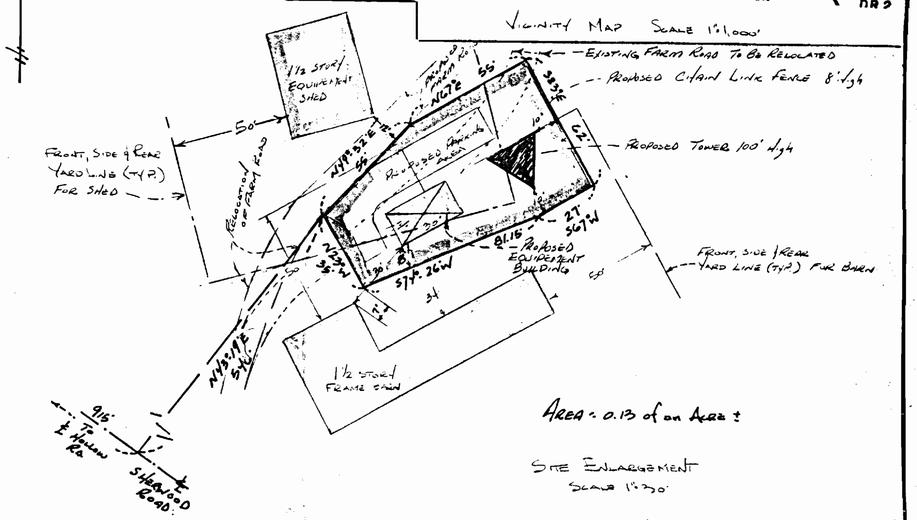
8. Every five years, or sooner in the event of substantial damage, a certification by a professional engineer registered in Maryland a certification by a Maryland registered professional engineer shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure meets all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification. [Bill No. 64, 1986.]

9. No white stroboscopic lights are permitted. [Bill No. 64, 1986.]




VICINITY MAP SCALE 1"=1000'




AREA = 0.13 of an ACRE ±

SITE ENLARGEMENT
SCALE 1"=30'

502.7.A. DOES NOT APPLY BECAUSE TOWER IS LESS THAN 350' HIGH

NOTES FROM SECTION 502.7.C, BCZR INCORPORATED WITH THIS PLAN

4. The structure shall be enclosed within a locked, chain-link fence, or comparable wall or structure, at least 8 feet high. [Bill No. 64, 1986.]
5. A landscape plan, designed to minimize the visual impact of accessory buildings and the lower portion of the structure shall be submitted to and approved by the Director of the Office of Planning and Zoning. [Bill No. 64, 1986.]
6. Environmental protection agency standards and guidelines relating to radiation emissions shall be met at all times. [Bill No. 64, 1986.]
7. When the use is terminated, the structure shall be removed. [Bill No. 64, 1986.]
8. Every five years, or sooner in the event of substantial damage, a certification by a professional engineer registered in Maryland a certification by a Maryland registered professional engineer shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure meets all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification. [Bill No. 64, 1986.]
9. No white stroboscopic lights are permitted. [Bill No. 64, 1986.]

PLAT TO ACCOMPANY PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCES FOR A COMMUNICATION TOWER

LOCATED IN

8TH ELECTION DISTRICT - BALTIMORE COUNTY, MD.
3RD COUNCILMANIC DISTRICT

OWNER: JOSEPH J. McMASTER IV, ESQ. DEED REF: G.L.B. No. 2047/643
426 SHERWOOD ROAD
CLARKSVILLE, MD.

PETITIONER: SOUTHWEST REGIONAL SYSTEMS INC.
T/A CELLULAR ONE, 7855 WALKER DRIVE, GREENBELT MD. 20770

GROSS AREA WHOLE TRACT : 104.7 AC. ±
AREA FOR SPECIAL EXCEPTION = 0.13 AC. ±
EXISTING ZONING: RC4 & DR2

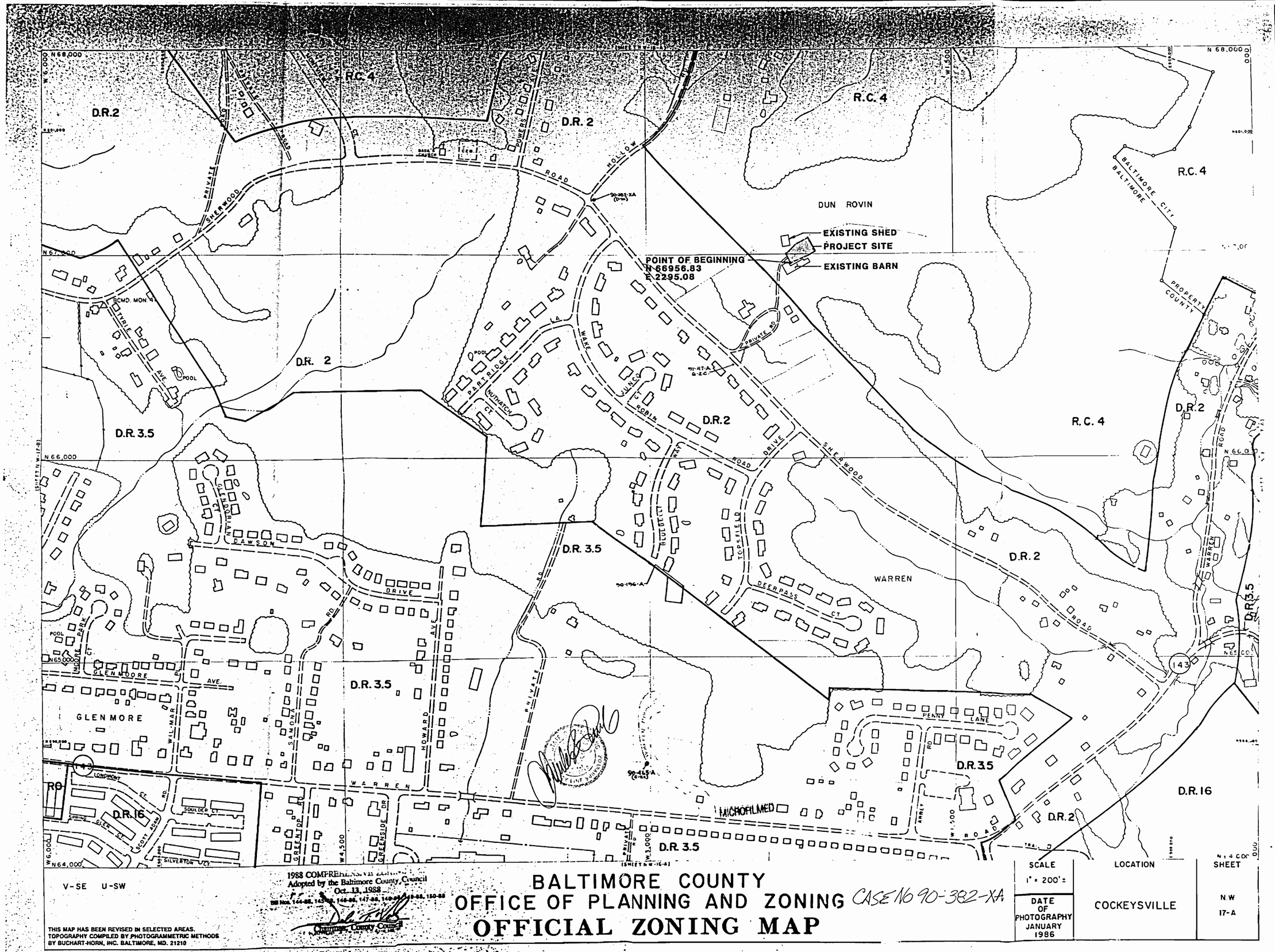
TOWER: 100' MONOPOLE
BUILDING: 14'-4"x30' (MAX. 15' H'GT.)

ADD SPECIAL AREA OF 2.88 AC. 8-03-90
REVISE BUILDING SIZE 3-27-90
REVISIONS 1-17-90
ADD ANTENNA 1-10-90
REVISED 1-08-90
11-14-89

SCALE 1"=200'

GERHOLD, CROSS & ETZEL
Registered Professional Land Surveyors
412 Delaware Avenue
TOWSON, MARYLAND 21204

Pet Ex #1
11/14/91
NOTE: NOT COMPOSED




V-SE U-SW

1988 COMPREHENSIVE ZONING
Adopted by the Baltimore County Council
Oct. 13, 1988
Bill Nos. 144-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88

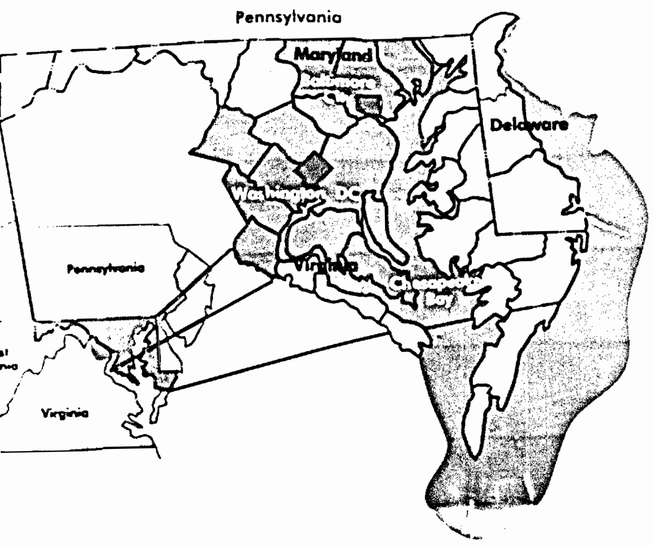
Chairman, County Council

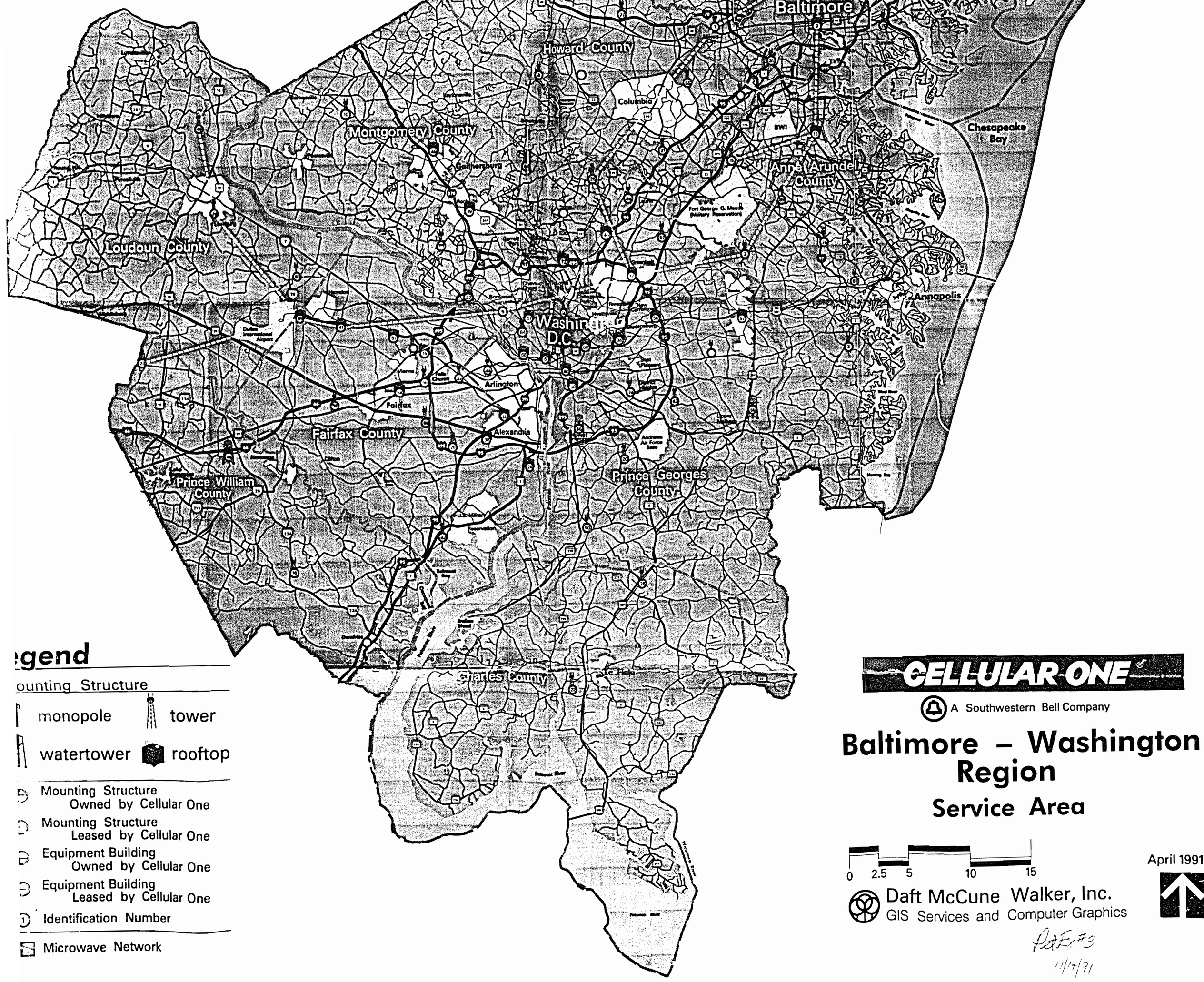
THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

# BALTIMORE COUNTY
# OFFICE OF PLANNING AND ZONING
# OFFICIAL ZONING MAP

CASE NO 90-382-XA

| SCALE | LOCATION | SHEET |
|---|---|---|
| 1" = 200'± | COCKEYSVILLE | N.W 17-A |
| DATE OF PHOTOGRAPHY JANUARY 1986 | | |




## Legend

Mounting Structure

- monopole
- tower
- watertower
- rooftop

- Mounting Structure Owned by Cellular One
- Mounting Structure Leased by Cellular One
- Equipment Building Owned by Cellular One
- Equipment Building Leased by Cellular One
- Identification Number
- Microwave Network

CELLULAR ONE®

A Southwestern Bell Company

# Baltimore – Washington Region

## Service Area

0 2.5 5 10 15

April 1991

Daft McCune Walker, Inc.
GIS Services and Computer Graphics

PSC Ex #3
11/7/91

requirements. Cellular One and Mr. McMaster (hereinafter collectively referred to as "Cellular One" or "Appellants") have applied for the requisite special exception and variances. Appellees in this matter have opposed Cellular One's petitions. After months of negotiation, the matter was heard by the Zoning Commissioner, J. Robert Haines. The Zoning Commissioner denied Cellular One's special exception petition, thereby rendering the proposed variances moot.

Cellular One has brought this timely appeal before the Board of Appeals. A hearing has been conducted before the Board. This hearing lasted for four days and involved numerous witnesses and exhibits. Pursuant to section 501.6 of the Baltimore County Zoning Regulations, this appeal has been heard de novo. Thus, the Zoning Commissioner's findings are not before this Board for consideration. At the conclusion of the hearing, the Board requested that counsel prepare memoranda explaining their relative cases. The following is an explanation of the legal standards applicable to this case, and the factual evidence addressing those standards. Upon reviewing this information, it is patent that Cellular One has met its burden of proof as to both the special exception and the variances. There being no legal justification for impeding Cellular One's petitions, these petitions must be granted.

The following legal discussion is organized as follows. First, brief descriptions of the site and Cellular One's need for such a site are set forth. Next, the legal and factual issues



concerning the proposed special exception are explained. In response to the Board's request, the so-called "diligent search" requirement is addressed in detail. Finally, the legal and factual issues relating to the proposed variances are examined. A copy of the hearing transcript is attached for the Board's review.

**II. THE SITE**

Cellular One has proposed to erect its cell site on the farm of Joseph and Vivian McMaster. This farm is located at 426 Sherwood Road, Cockeysville, Maryland. See the Hearing Transcript, Volume I, at 38, hereinafter cited as "T1-__". The farm has a total acreage of 104.7 acres. (T1-38). The relevant portion of the property rests within an R.C.4 zone. (T1-39).

Currently, the property is a working farm. Thus, it consists of cropland, pastureland, pig farming facilities and some cattle grazing areas. (T1-39). Approximately fifty (50) per cent of the farm is wooded. (T1-39). The majority of the Sherwood Road frontage is tree-lined, thereby naturally camouflaging the proposed cell site.

The proposed special exception site is located on the northeast portion of the farm. (T1-39). This site occupies .13 acres. (T1-45). In the general area of the special exception site are two one and one-half story barns and a one story barn. (T1-40). These farm buildings also serve to obstruct the view of the base of the monopole and the equipment building.



Cellular One plans to locate two structures on the proposed site. The first is a one hundred (100) foot tall, freestanding monopole tower. (T1-43). From the base of this monopole to the nearest property line is approximately six hundred (600) feet. (T1-46). From the base of the monopole to the nearest off-site dwelling is approximately seven hundred (700) feet. (T1-46). In addition to this monopole, Cellular One plans to erect an unmanned equipment building with dimensions of fourteen feet by thirty feet. (T1-43). The farm has a ground elevation of approximately six hundred (600) feet above mean sea level. (T1-22).

Cellular One is currently leasing the special exception area of the McMaster property. (T2-27). This lease agreement was executed on September 22, 1989. (T2-27).

**III. THE CURRENT PROBLEM**

As explained above, Cellular One provides a mobile telecommunications service. It operates under an FCC license which requires it to provide this service to its subscribers. (T1-75). The primary thrust of this service is to provide a system for automobile-based telephones. Cellular One operates its network throughout a 5,000 square mile region consisting of the Baltimore/Washington metropolitan area. (T1-77). The network contains three hotspots: downtown Baltimore, downtown Washington, and greater Towson. On any given day, any of these three areas may be the most heavily-used part of the network. (T1-83).



The "car phone" system is quite simple. Each car phone is capable of both receiving and sending transmissions. These transmissions are sent from the car phone unit itself to antennae which are mounted at cell sites. The antennae, placed at high elevation, then relay the communication throughout the system. As a Cellular One customer travels throughout the Baltimore/Washington area, his signal is "handed off" from cell site to successive cell site. Since each cell site has a limited range, or "coverage", the concept of "hand off" allows the customer to experience an uninterrupted call.

It is easy to envision the cell sites as a network of overlapping umbrellas, which together provide a large area of overall coverage. The diameter of each umbrella would be the "coverage" of each cell site. Of course, an area may lack sufficient coverage if there are not enough "umbrellas". When a driver enters a "hole" in coverage between cell sites, he may experience a deterioration in the quality of his signal. (T1-80-81). This problem may be sufficiently severe to terminate the signal entirely. (T1-81).

Despite the importance of the Towson service area, Cellular One is experiencing coverage problems in that area. Currently, there is insufficient coverage in the area north of Towson and south of Hereford. (T1-82-83). This area is heavily-travelled by commuters who place a substantial demand upon Cellular One's network. Thus, the important areas of Towson proper,



Lutherville, Timonium, Cockeysville, the Loch Raven Reservoir area, and parts of the Parkton/Sparks area are without sufficient coverage. (T1-83).

In addition to coverage problems, the Towson area also suffers from a lack of "capacity". (T1-91-92). Capacity is the measure of how many calls a cell site can handle at any given time. (T1-81). Each call is carried on one "channel". (T1-82). The FCC limits the number of channels per cell site to 395. (T1-82). Thus, each cell site can handle only 395 calls at a given time. (T1-82). Since the Towson area vies with Baltimore and Washington for overall traffic supremacy, the capacity needs of the Towson area are great.

Thus, the Towson/I-83 corridor area provides two separate but related problems concerning coverage and capacity. Cellular One has designed a tripartite solution to these problems. This solution was explained at the hearing by Jerry Bialecki, Cellular One's chief design engineer (T1-70 et seq.). Mr. Bialecki indicated that Cellular One's dilemma will be best resolved by the placement of three cell sites in the northern Baltimore County area. These sites would be located in Cockeysville (toward the Loch Raven Reservoir), Mays Chapel and Ruxton. (T1-91). Each of these three sites will solve one part of the current problem. Since the capacity and coverage problems are so extensive, none of these sites will be acceptable individually to



create sufficient coverage and capacity. (T1-91-93). Thus, the proposed "Loch Raven" site is an integral part of the solution to Cellular One's Towson-area problems.

**IV. THE SPECIAL EXCEPTION**

As explained above, Cellular One seeks to place a wireless transmitting and receiving facility on the McMaster farm. The Baltimore County Zoning Regulations allow "[w]ireless transmitting and receiving structures" to be placed in R.C.4 zones by special exception. See B.C.Z.R. section 1A03.3.B.14.

In order to qualify for a special exception, an applicant must demonstrate the proposed use will not:

1) be detrimental to the health, safety, or general welfare of the locality involved;

2) tend to create congestion in roads, streets or alleys therein;

3) create a potential hazard from fire, panic or other dangers;

4) tend to overcrowd land and cause undue concentration of population;

5) interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;

6) interfere with adequate light and air;

7) be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor

8) be inconsistent with impermeable surface and vegetative provisions of these Zoning Regulations.



See B.C.Z.R. section 502.1.a-h.

In addition to these general provisions, there is a specific section addressing the additional special exception requirements placed upon wireless transmitting and receiving facilities in the D.R., R.C. and R-O zones. This section provides that the following additional requirements apply:

1) petitioner shall have the burden of establishing that it has made a diligent search for a location within a business, office or industrial zone, or for mounting on any existing structure over fifty (50) feet in height and that, due to valid considerations, including but not limited to, location, economic, elevation, engineering or technologic feasibility, no appropriate location is available;

2) the setback of such structure from the nearest property line shall equal or exceed two (2) times its height above grade level;

3) the structure shall be located on a lot of at least five (5) acres;

4) the structure shall be enclosed within a locked, chain-link fence, or comparable wall or structure, at least 8-feet high;

5) a landscape plan, designed to minimize the visual impact of accessory buildings and the lower portion of the structure shall be submitted and approved by the Director of the Office of Planning and Zoning;

6) Environmental Protection Agency standards and guidelines relating to radiation emissions shall be met at all times;

7) when the use is terminated, the structure shall be removed;

8) every five years, or sooner in the event of substantial damage, a certification by a professional engineer registered in Maryland...shall be filed with the Department of Permits and Licenses indicating that the aforementioned structure meets all safety requirements. Any upgrading or maintenance required to comply with any changes in the safety requirements, or to maintain the safety thereof, shall be performed prior to the filing of such certification;



9) no white stroboscopic lights are permitted;

10) in order to insure against adverse effects on its surroundings, an environmental impact statement, as defined in section 101, shall be submitted to the Zoning Commissioner or, in the event of an appeal, to the County Board of Appeals of Baltimore County. Such environmental impact statements shall include information on emission levels and shall evaluate the impact of the proposed structure on the ecosystem; and based on such environmental impact statement and other evidence produced at the hearing, it must appear that the proposed structure will not have a substantial adverse impact on the environment; and

11) the Zoning Commissioner or, in the event of an appeal,the County Board of Appeals of Baltimore County shall determine that there will not be a substantial adverse impact on surrounding property values, park lands or open space.

See B.C.Z.R. section 502.7.C.1-11.

While these numerous requirements may appear at first blush to be overwhelming, it is fair to say that they largely address two separate concerns: health issues and public safety issues. Perhaps straddling this dichotomy is the "diligent search" requirement of section 502.7.C.1, which will be addressed separately.

**V. THE LAW APPLICABLE TO SPECIAL EXCEPTIONS**

When considering these various requirements, the purpose of the special exception scheme must be borne in mind. By definition, a special exception use is somehow different from uses permitted as a matter of right. As the Court of Appeals has indicated, however, special exceptions are not freak aberrations to the overall zoning scheme, but rather legislatively-encouraged user. See Schultz v. Pritts, 291 Md. 1, 20-22 (1981). Thus, the legislature has already weighed the advantages and disadvantages

associated with allowing a particular use in a particular zone. Id. at 21. Since the legislature has already weighed these factors, a special exception application may be denied only when there exist "facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects beyond those inherently associated with such a special exception use irrespective of its location within the zone." Id. at 23. (emphasis added).

The rationale underlying Schultz is clear. Simply put, by allowing for a particular use pursuant to a special exception, the legislature has already weighed the advantages and disadvantages associated with placing a certain use in a given zone. Upon considering these factors, the County Council has determined that a special exception use should be allowed, subject to certain restraints. Thus, to avoid acting as a superlegislature, the Board should determine only whether the particular proposed use has drawbacks beyond those inherently associated with such uses.

**A. DILIGENT SEARCH**

**1. Statutory Requisites Concerning Diligent Search**

As explained above, there are certain additional conditions which apply to special exceptions for wireless transmitting and receiving facilities which are located within residential zones. Most notable among these is the so-called "diligent search" requirement. As the Board has expressed particular interest in



this requirement, it will be addressed in detail. The language of the diligent search requirement is straightforward, and provides in pertinent part;

> [p]etitioner shall have the burden of establishing that it has made a diligent search for a location within a business, office or industrial zone, or for mounting on any existing structure over fifty (50) feet in height and that, due to valid considerations, including but not limited to, location, economic, elevation, engineering or technologic feasibility, no appropriate location is available.

B.C.Z.R. section 502.7.C.1.

Clearly, this section does not limit the location of cell sites to business, office or industrial zones. Rather, it merely requires an applicant to place a cell site in a commercial zone unless there are "valid considerations" for not doing so. The section mentions that some valid considerations include "location, economic, elevation, engineering or technologic feasibility". Thus, a petitioner need only prove that such valid considerations render the commercially-zoned properties in the area inappropriate.

Cellular One has met its burden of showing such valid considerations. Specifically, Cellular One has shown that all of the considerations enumerated in section 502.7.C.1 require that the proposed cell site be placed outside of the relevant commercially-zoned areas.

When reviewing this case, the Board must keep the language of section 502.7.C.1 in mind. The statute does not require a petitioner to find the single best location for its proposed use.



Rather, the statute merely requires that a petitioner must investigate the feasibility of locating its cell site within a commercial zone or atop an existing structure. If no such site is feasible, the petitioner may locate its site in an R.C., D.R. or R-O zone.

**2. What Is A Diligent Search**

Section 502.7.C.1 requires a petitioner to make a "diligent search" for viable tower locations in a business, office, or industrial zone or upon an existing structure over fifty feet in height. The section does not define the term "diligent search". Counsel for Cellular One have been unable to locate any judicial interpretation of this term in any relevant context. Thus, the Board may interpret this term from a blank slate.

It is expected that Protestants will offer a narrow interpretation of diligent search. Presumably, they will argue that any "search" conducted by Cellular One ended on the day that Cellular One signed its lease with Joseph McMaster. This analysis, while simple to apply, fails to accomplish the underlying purposes of section 502.7.C.1. The County Council did not create time parameters for the diligent search requirement. The purpose of section 502.7.C.1 is not to establish mechanistic procedures for diligent search, but rather to ensure that a petitioner has not overlooked viable sites which are either pre-existent or outside of residential zoning.



Cellular One asserts that the underlying purposes of section 502.7.C.1 are best served by applying the statute as it is written. Thus, the issue before this Board is whether Cellular One has located and given sufficient consideration to sites outside of the residential area or atop existing structures. This search obligation is ongoing. It does not end at some preconceived point in time. Cellular One has treated the diligent search requirement as ongoing. Although Cellular One located the McMaster site in May of 1989, it has continued to examine and test alternative sites. Cellular One did not rest after it executed the McMaster lease.

Protestant's position fails to appreciate the continuing nature of the diligent search requirement. In essence, Protestants take the formalistic position that Cellular One should be punished because it was fortunate enough to locate a viable site early in the game. This position might possess some merit but for the fact that Cellular One continued to examine and evaluate other sites long after the McMaster lease was signed. Do Protestants suggest that Cellular One should be chastised because it took steps to secure a highly desirable site? Do Protestants suggest that the outcome of this case would be different if Cellular One had followed exactly the same course, but waited six months or a year to sign the McMaster lease? Surely, the diligent search requirement cannot hinge upon such formality.



Protestants cling to this formality, however, since there can be little doubt that Cellular One's search, when viewed as a whole, was "diligent". As is explained below, Cellular One has given ample consideration to commercially zoned areas as well as existing structures. After balancing all of the valid considerations enumerated in section 502.7.C.1, Cellular One has determined that neither the commercial areas nor the existing structures are viable alternatives. Thus, section 502.7.C.1 allows Cellular One to construct its cell site in an R.C. zone.

**3. Technical Limitations On The Location Of The Loch Raven Site**

Mr. Bialecki first determined that a Loch Raven-area site was necessary in September of 1987. (T1-93). Using various tools and methods of calculation, Mr. Bialecki determined where in the Loch Raven area the cell site would need to be placed in order to be successful. On September 10, 1987, Mr. Bialecki depicted this area on a map. (T1-94). Thus, this map outlined the area necessary to meet Cellular One's technological parameters. The map is currently before the Board as Petitioner's Exhibit 5.

The map was to provide a "search area" to guide Cellular One's real estate department in the location of a cell site. (T1-95). Although this first search area map was created in 1987, no actual search was conducted at that time.

In March of 1989, Mr. Bialecki produced a second search area map for the Loch Raven site. This second map was generated by using more advanced computer technology. The 1989 search map is



before the Board as Petitioner's Exhibit 6. The 1989 map provided a more accurate picture of the necessary geographical location of a Loch Raven cell site.

In a continuing effort to refine the site location process, Mr. Bialecki generated a third search area map in the summer of 1990. (T1-99). This 1990 search map was based upon a new tool for calculating the location of cell sites: an integrated grid system. (T1-99 et seq.). Without belaboring the technical issues, suffice it to say that Mr. Bialecki developed a pattern of locating cell sites in interlocking hexagonal grids. This grid system allowed for better planning of site location by ensuring that all potential sites would function efficiently within the overall system. (T1-198). Such greater efficiency will ultimately result in the need for fewer overall sites. Mr. Bialecki first developed the grid system for the Washington area, and then extended the grid outward in all directions. (T1-100). In order for a site to be acceptable, that site would have to be located within a particular grid. Thus, the grid nearest to the Loch Raven area became the search area in the summer of 1990. The proposed site is within this grid. (T1-107). See the search map which displays the grid pattern for the Loch Raven area which is before the Board as Petitioner's Exhibit 9.

The grid system has become the chief planning tool for Cellular One's overall network. It is so important as a planning tool that Cellular One will no longer build sites which do not comport with the grid system. (T1-200 et seq.). This commitment



is so strong that Cellular One has actually terminated two sites which did not satisfy the grid system requirements. (T1-201). Thus, the grid system sufficiently revolutionized the site selection process that Cellular One would not have pursued the McMaster site if it had failed to satisfy the grid requirements. (T1-200, 201).

It is clear, therefore, that Cellular One has continued to perfect the Loch Raven search area. Although the search area has undergone three incarnations, the McMaster farm has remained a viable site. It should be noted, however, that Mr. Bialecki merely provided the technological parameters for the search. He did not actually select the site in question. That task fell to Cellular One's director of real estate, Amy O'Rourke.

**4. The Site Selection Process**

As Cellular One's director of real estate, Amy O'Rourke is charged with the task of locating particular sites for cellular facilities. (T2-7). When searching for a Loch Raven site, Ms. O'Rourke received guidance from several areas. First, Ms. O'Rourke had to stay within the boundaries of the various search area maps provided by Jerry Bialecki. (T2-11). The first map utilized by Ms. O'Rourke was the 1989 map which listed Cellular One's total elevation requirement as approximately 700 feet. (T2-14).

In addition to these technological limitations, Ms. O'Rourke was bound by Cellular One's policy concerning the location of cell sites. This policy consists of a prioritization of



potential cell site locations. Cellular One considers sites in the following order: 1) existing broadcast/communications structures; 2) existing water towers or standpipes; 3) property zoned for commercial, industrial or public utility use; 4) local or county government facilities such as police and fire stations; and 5) property with the least residential density and/or property that will provide natural screening to the public at large. (T2-8).

Ms. O'Rourke began to consider potential sites in April of 1989. (T2-13). The launching point for her actions was the 1989 search map produced by Jerry Bialecki. Ms. O'Rourke initiated her search by examining the overall topography of the search area. Given Cellular One's policy of locating sites within commercial zones, Ms. O'Rourke naturally looked to that part of the search area lying west of York Road. Most of this area is commercially-zoned. Unfortunately, this commercially-zoned land site is in a valley with above-ground elevations ranging from 200 to 400 feet. (T1-122 and T2-14). Since Cellular One requires a total above-ground elevation of approximately 700 feet, low ground elevations require tall structures. In this case, the low elevations of the commercially-zoned areas would have created the need for a 300-400 foot tower. (T2-15).

The differences between a 300-400 foot tower and a 100 foot tower such as that proposed for the McMaster farm are staggering. First, the very shape of the structures is different. For a 100 foot application, Cellular One utilizes a "monopole". (T2-25).

A monopole is a single, self-supporting pole which resembles a tall telephone pole. A tower of 300 feet or more requires significantly greater structural integrity. Thus, rather than erecting a monopole, Cellular One must erect a three-sided lattice-type tower. (T2-15). Lattice-type towers have steel cross-members which are woven through their three legs for structural purposes. (T2-16).

Obviously, a lattice-type tower creates a much greater visual impact than a monopole. The visual impact of a lattice-type tower extends beyond its mere enormity. The FAA requires that all structures in excess of 200 feet in height be lighted with red lights. (T2-17). Additionally, such structures must be painted red and white to further draw attention to themselves. (T2-16).

Given their greatly increased size and stature, lattice-type towers are vastly more expensive than monopoles. A vivid illustration of this cost factor was provided to the Board by Joseph Joyce, who is Cellular One's construction manager. (T2-103). As construction manager, Mr. Joyce is intimately familiar with the costs associated with building towers. (T2-104). Mr. Joyce testified that Cellular One is currently erecting a 300 foot lattice-type tower in Dumfries, Virginia. (T2-104). The total cost of erecting this tower, not including any real estate considerations, will be approximately $159,000.00. (T2-105). Cellular One is also constructing a 350 foot lattice-type tower



in Tapahanac, Virginia. The total cost of this tower, not including any real estate considerations will be approximately $180,000.00. (T2-107).

Mr. Joyce was able to contrast these lattice-tower costs with the costs associated with a 100 foot monopole, such as that proposed for the McMaster farm. Cellular One has already purchased steel for the Loch Raven site at a cost of $20,000.00. (T2-107). By comparing the Loch Raven site to a recently completed 90 foot monopole in Chevy Chase, Mr. Joyce was able to extrapolate the remaining costs of the Loch Raven site to be approximately $20,000.00. Hence, the total estimated cost of the Loch Raven site will be approximately $40,000.00.

The implications of this cost comparison are immense. If Cellular One erects a tower in the commercially-zoned valley west of York Road, that tower must be 300-400 feet tall. The cost of a 300 foot tower will be approximately $159,000.00, thus exceeding the approximate cost of the McMaster monopole ($40,000.00) by $119,000.00. A 350 foot tower, costing approximately $180,000.00, will eclipse the cost of the McMaster monopole by $140,000.00. Although no cost estimates were available for a 400 foot tower, it can only be assumed that such a tower would be even more expensive than a 350 foot tower.

In addition to examining the feasibility of the commercially-zoned areas, Cellular One considered the appropriateness of locating a cell site on an existing tower or other structure. To this end, Cellular One has located all of



the existing towers, tall buildings and government facilities within the area. Most of these sites have been tested using computer models for technological feasibility. Some were not tested due to their proximity to tested sites or obviously insufficient elevation. The tested sites include: the Warren Elementary School water tower; the Dulaney Valley water tower; the Norwich Circle water tower; the Mays Chapel water tower; a building at Halesworth and York Roads; the McCormick Building; the Genstar Quarry; and the existing tower on the Southern States property. Largely due to elevation problems, none of these existing structures within the search area is technologically feasible. (T1-111).

Certainly, Cellular One would utilize an existing tower if possible. Such a use would be consistent with Cellular One's corporate policy, which requires the company to consider existing structures before considering virgin sites. Additionally, the utilization of an existing structure would allow Cellular One to avoid the restrictions of 502.7.C.1. Finally, by utilizing an existing structure, Cellular One could have avoided a long and costly dispute with two powerful community associations.

Despite the many advantages associated with selecting an existing site, Cellular One did not do so. There can be only one explanation for this decision--that the pre-existing structures simply would not do the job. There is no other plausible explanation for Cellular One's decision not to take this easier and less costly path.



In addition to analyzing maps and topographical data, Ms. O'Rourke hired Fred Kruhm, a local real estate consultant, to conduct a field search. Mr. Kruhm was given a copy of the 1989 search area map, and also provided with Cellular One's elevation requirements. (T2-24). Mr. Kruhm was further made aware of Cellular One's corporate policy that commercial/industrial sites be given first priority. (T2-45). Armed with this information, Mr. Kruhm began to physically examine the area. In May of 1989, Mr. Kruhm contacted Ms. O'Rourke with two potential sites. (T2-25). The first site was the McMaster farm. The second site, although not within the then-prescribed search area, was nevertheless tested and found to be technically deficient.

After the McMaster site was located, it was tested by Mr. Bialecki. His conclusion was that the McMaster site would meet Cellular One's needs in the area quite well. (T1-90, 110). Further, given the property's high above-ground elevation of 590 feet, the site would require only a 100 foot monopole tower. Of course, this site was re-evaluated after the grid system was developed in 1990. Since the site did comport with the requirements of the grid system, it remained a viable site candidate. (T1-107-109).

Thus, the ongoing search of the Loch Raven area provided Cellular One with three distinct options. First, Cellular One could erect a 300-400 foot lattice-type tower in the



commercially-zoned valley west of York Road. This option would be at least 300% more expensive than placing a 100 foot monopole on the McMaster property.

The second option would be to utilize an existing tower or other tall structure. This option would have numerous economic and logistical advantages. Despite these advantages, the existing sites are technologically deficient.

The final option was to look toward the surrounding residential areas. Located within the search area, but within an R.C. zone, was the McMaster farm. The farm consisted of 104.7 acres and was heavily wooded. Further, the farm's high elevation necessitated only a 100 foot monopole. Finally, the site met Cellular One's technological needs.

Faced with these three options, Cellular One made the only rational choice--the McMaster farm. This decision was based solely upon the "valid considerations" of "location, economic, elevation, engineering or technologic feasibility". B.C.Z.R. section 502.7.C.1. The instant case provides a clearcut example of how section 502.7.C.1 was intended to work. It is patent from the statutory language that the County Council sought to avoid the placement of towers in residential areas when there exist viable locations for those towers in commercial zones. If, however, the aforementioned "valid considerations" render the commercially-zoned areas untenable, a tower may be placed in an R.C., D.R. or R.O. zone.



Clearly, Cellular One has "searched" the Loch Raven area. This search has continued for several years. It has taken many forms, including topographical analysis, site testing and in-field observation. The simple conclusion of this search is that factors of "location, economic, elevation, engineering [and] technologic feasibility" render the neighboring commercial zones and existing structures in excess of fifty feet untenable. Thus, Cellular One may locate its cell site within an R.C. zone.

**B. THE REMAINING SPECIAL EXCEPTION REQUIREMENTS**

The diligent search requirement of section 502.7.C.1 is but one of many requirements associated with a special exception. These additional requirements are set forth earlier in this Memorandum, and will not be recounted here. The Board has expressed its opinion that the diligent search requirement will be the true battleground for this special exception. Thus, the remaining special exception requirements will be dealt with in summary fashion.

**1. The Special Exception Requirements Of B.C.Z.R. Section 1A03.3.B.14**

In order to expeditiously cover the various requirements contained in section 1A03.3.B.14, the individual requirements will be addressed in question and answer form as follows:

1. Will the proposed use be detrimental to the health, safety, or general welfare of the locality involved?



George Gavrelis testified that the cell site will not create any detrimental affect on the general health, safety, or welfare of the locality. (T2-142). This was particularly true in light of the large nature of the McMaster property. (T2-142).

2. Will the proposed use tend to create congestion in roads, streets, or alleys?

Mr. Gavrelis testified that the site will not create any such congestion since it will be unoccupied and will be visited only twice a month for routine maintenance. (T2-138).

3. Will the proposed use create a potential hazard from fire, panic or other dangers?

Mr. Gavrelis testified that the proposed site will create no such hazards since it will be in compliance with all applicable codes. (T2-138-139).

4. Will the proposed use tend to overcrowd land and cause undue concentration of population?

Mr. Gavrelis testified that, since the site will be visited only twice monthly, it will create no such overcrowding or undue concentration. (T2-139).

5. Will the proposed use interfere with adequate provisions for schools, parks, water, sewerage, transportation, or other public requirements, conveniences or improvements?

Mr. Gavrelis testified that the proposed special exception "will in effect have no impact on the requirements of the county or other public infrastructure". (T2-139). Rather, the proposed cell site will provide a public convenience. (T2-140).



6. Will the proposed site interfere with adequate light and air?

Mr. Gavrelis testified that light and air will not be affected in the instant case as "[t]he monopole will cause a very negligible shadow and on no adjoining property". (T2-140).

7. Will the proposed special exception be inconsistent with the purposes of the property's zoning classification or in any other way inconsistent with the spirit and intent of the zoning regulations?

Mr. Gavrelis testified that no such inconsistency will resolve from the placement of this cell site. (T2-140 et seq.). Mr. Gavrelis noted that the proposed cell site will not be detrimental to the surrounding watershed or to the resources of the public water supply. (T2-140). Further, he noted that radio receiving and transmitting facilities are specifically enumerated special exception uses. (T2-140-141).

8. Will the proposed use be inconsistent with impermeable surface and vegetative provisions of the zoning regulations?

Mr. Gavrelis testified that impermeable surface and vegetative provisions will be virtually unaffected by this site. Given the extremely small area of space taken up by the monopole and the accessory building, there will be little, if any, measurable affect upon impermeable surface or vegetative conditions. (T2-141-142).

examination of alternatives sites between the time Kruhm's report was received and the signing of the lease with McMasters in September 1989"...

10) "(O'Rourke) acknowledged that Kruhm normally would provide more then one (1) site candidate but did not do so in this instance"...

David Ransom-surveyor, was called next by Bell. The Petitioners called Ransom to testify with regard to the variances, the nature of the variances and the proposed reasons why they were needed. Ransom testified that the tower and facility could be moved to the West into the flat area, northeast into another suitable area, southeast of the present site and that the primary purpose for its location was to accommodate Mr. McMasters and his desire to continue farming at the present location and to minimize the effect of the tower on his future ability to use his property.

Bell then called Mr. Frances, as vice-president of network operations of Bell, who testified as to the nature of how the search area was created. It is interesting to note that the search area was created by Bell, with all its stated criteria to serve only Bell's purposes such as; a) Bell's goals to serve the area, b) terrain and elevation, c) tower height, d) consider the use pattern and transmit power, e) coverage of critical areas, f) system integration. He testified that Bell's criteria never included the Baltimore



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County Zoning Regulation requirements in developing the search area.

Mr. Frances further acknowledged that the Valley's Planning Council Agreement, as well as the Zoning Commissioner's decision in the Chestnut Ridge Fire Company case, served to preclude areas west of Interstate 83 from consideration in regard to a location of this tower. He further acknowledged that there were a number of locations along the ridge sites west of Interstate 83, that could have served the goals of the Southwest Bell system.

He presented an analysis of a number of charts entitled Petitioner's Exhibit 13 with base overlay and small charts attached thereto to explore alternative sites such as Genstar quarry, Southern States, Mays Chapel water tank, Warren Elementary School, Dulaney High School Water tank, etc. The thrust of the testimony however, in regard to all of these overlays was that they were conducted and created after the selection of the McMasters property in September 22, 1989. These were done to establish in hindsight that these sites were not appropriate. This analysis, done after the fact, was not in good faith and may not be used as a "boot strap" argument to allow Bell to meet its heavy burden under Section 502.7.C.1.

He also acknowledged that the Cellular One brochure utilized by Bell in their public relations campaign acknowledges the preference by the company of breaking cell sites to include smaller areas to achieve the same objective.



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It is clear from the entirety of his testimony, that Bell could readily achieve all of the goals that it desires simply by establishing a number of smaller cell sites and towers in areas presently zoned commercial, business office or industrial, rather than by selecting a location in a purely residential area, notwithstanding the fact that the cost might be a factor in such a determination. Again, from the testimony of Frances, it is clear that no consideration of the public factors, nor compliance with the Zoning Regulations, played a part in Bell's analyses of the site location. The only concern was in satisfying their own economic and profit objectives.

It is also significant that upon cross examination by the Zoning Commissioner, Mr. Frances acknowledged that at the current time, this system is operational and that it is just the desire to improve this system that results in their proposing this tower on the McMasters property. Given this characterization of Bell's desires, it seems even more appropriate that they comply with the zoning regulations proposed under Section 502.7.C.1. Further, in response to questions from the Zoning Commissioner, Frances acknowledged that multiple small towers could readily solve the problem for Bell and that the corporate decision was made to go with one tower based solely upon economic considerations. He also failed to adequately respond to the Zoning Commissioner's inquiry as to the desirability in using shorter antennae on



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multiple commercial sites to solve Bell's problem.

Bell then called Mr. Birch, representing Versar, Inc. Birch testified in regard to the environmental impact of this project on this site. In testifying in regard to the visual aspects of this tower, on cross examination, it became clear that photographs taken when the Petitioners raised a balloon to the alleged height of the tower were misleading and suspect, especially when one examined the same picture taken on different days from the same location. The height difference was substantial between the alleged height of the balloon versus the alleged height from the previous report as evidenced by Protestant's Exhibit 1. Such visual disparity raises serious doubts on the value of the photographs to establish that this tower will not interfere with the adjacaent neighborhoods.

Mr. Ronald Lippman is an appraiser called by the Petitioners to establish that there would be no economic impact from the tower upon the neighbor property values. While testifying that there would be no negative economic impact on the surrounding property owners, Mr. Lippman did acknowledge that given a home with a tower in the backyard versus one that had no tower, the potential purchaser in his opinion would choose the one without the tower. Whether or not ultimately this affects the values of the comparative sites (which Mr. Lippman testified that he did not believe values would be affected); it is clear that at a minimum, it would take longer



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for the site with the tower to be sold, even if it is sold for the same value as the non-tower site. It is submitted that obviously a delay or any negative factor for the sale of property, has an economic value attached to it even if it is simply that it takes longer to sell the property with a tower. Therefore, the tower does present a negative factor upon those neighboring property owners who are within sight of the tower.

Mr. Jerry Balecki was an engineer for Cellular One who was called by Bell to testify that he prepared the original search area map identified as Petitioner's Exhibit 1. He actually testified that there were two search area maps prepared, one in September of 1987 and one in March of 1989 and indicated as Petitioner's Exhibit 1, The 1987 search area which was submitted as an exhibit in the instant case, indicates a much broader search area. It is clear from the testimony of Mr. Balecki that the determination of a search area was an arbitrary determination from the standpoint of Bell, and that was intentionally narrowed to the present search area based solely upon the fact that the McMasters' property with its height and location, suited the economic and profit purposes of Bell. It is equally clear through the testimony of Balecki, that the search area is one based upon arbitrariness of the Petitioner and in the instant case did not even include any consideration of those living in residental zones or from the zoning standpoint, failing to recognize availability of commercial or industrially zoned property along Interstate 83



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north of Seminary Avenue and south of Hereford. Bell established a high ground designation of McMaster's farm east of Interstate 83 and drew the search area on a geographical line around that farm in order to satisfy their own purpose. Balecki again testified that the considerations for the location of the search area excluded any site west of Interstate 83 (where there were suitable sites) and were based on criteria, all of which benefitted Bell, as opposed to the considerations of the Baltimore County Zoning Regulations, Section 502.7.

Bell called George Gavrellis-Daft McCune & Walker and Dr. John M. Osupchuck. The testimony of Gavrellis in regard to the suitability of this site from a planning standpoint is not relevant to the prerequisite issues which are the paramount concerns in regard to Section 502.7.C.1. and the criteria that the Petitioner must meet and therefore little attention will be given to his testimony as well as that of Dr. Osupchuck who testified basically concerning the health aspects of these towers and microwaves.

### B. PROTESTANT'S CASE

In the Protestant's case Mr. Clay M. Barnes, Steve Rosen and David Baker all testified as individuals, as well as on behalf of the named community associations. They all expressed substantially the same opposition to the proposed tower by Bell to include the fact that this facility was



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located in a residential zone without compliance to the requirements of Section 502.7.C.1. They testified that they believed this location was picked by Bell for height consideration only; that it is a commercial fixture which should not be located in a residential area; and that Bell failed to develop a suitable search area. In addition, they expressed concern for the property value for the surrounding homes as well as the aesthetics of having a tower of this nature located in their neighborhood. Bernard Semon, an appraiser, was called by the Protestants to testify on their behalf and he testified as to his opinion that this tower would have a negative impact on the surrounding properties from an economic standpoint. Mr. Semon further disagreed with the testimony of Mr. Lippman by testifying that this project would be of an economic detriment to the property and the surrounding area.

### LEGAL ARGUMENT

The Petitioner's Petition for Special Exception is filed under the provisions of the Baltimore County Zoning Regulations, Section 502, 502.1 and 502.7. The instant Petition involves not only the typical application of the criteria set forth under Section 501..A through H, but additional ones as established by 502.7. Here, prior to the Zoning Commissioner's determination that this proposed facility does or does not impact Section 502.1, the Zoning Commissioner



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must first determine that the procedural requirements as set forth in 502.7C.1 have been complied with by the Petitioner. The Petitioner has the burden of proving to the Commissioner that it has so complied. Once the determination has been made that the procedural requirements have been satisfied, the Commissioner must then turn to the issue of whether or not there is an impact under Section 502.1 and finally, if he determines that the procedural requirements have been met and the conditions of 502.1A through H have been met, he may then impose the conditions of Section 502.7C.2 through 11. It is submitted that the legislative intent and history before the County Council of Baltimore County in 1986 when they enacted Bill No. 64-86, established that the Council intended that the procedural requirements of the Bill be given as much weight and consideration as the existing criteria under Section 502.1. In addition, they then intended to condition or qualify by statute, the operation of such a wireless transmittirg and receiving by the remaining conditions imposed by 502.7C.2 through 11.

The legislative intent for Bill No. 64-86 finds its origin in a case before the Baltimore County Zoning Commissioner concerning a special exception for a proposed 200' tower in Northern Baltimore County. While the community expressed many concerns regarding the tower, the Deputy Zoning Commissioner finally approved the special exception subject to a number of restrictions. Those restrictions ultimately found their way



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**2. Additional Special Exception Requirements Of Section 502.7.C**

As explained above, section 502.7.C provides certain additional special exception requirements for radio transmitting or receiving facilities. The first of these requirements is the so-called "diligent search" requirement which has previously been discussed herein. The remaining requirements will be discussed in question and answer fashion as follows:

1. Will the setback of such structure from the nearest property line equal or exceed two times its height above grade level?

In reality, the distance from the cell site to the nearest property line is well in excess of the minimum requirement. However, due to the operation of B.C.Z.R. section 102.2, a "yard" must be created around the special exception area from which the setback must be measured. In light of this technicality, Cellular One has requested a variance from this requirement.

2. Will the structure be located on a lot of at least 5 acres?

The actual size of the lot is 104.7 acres. However, like the setback requirement, the acreage requirement comes into play due to the requisites of section 102.2. Since this requirement will not be met, Cellular One has requested a variance.

3. Will the structure be enclosed within a locked, chain-link fence or comparable wall or structure, at least eight feet high?



Ms. O'Rourke testified that this requirement will be met. (T2-33).

4. Will a landscape plan designed to minimize the visual impact of accessory buildings and the lower portion of the structure be submitted to the Office of Planning and Zoning?

Ms. O'Rourke indicated that this requirement will be satisfied. (T2-33).

5. Will all Environmental Protection Agency standards and guidelines relating to radiation emissions be met at all times?

Dr. John Osepchuk, an expert in the field of radio transmissions and radiation, testified that the EPA does not currently regulate environmental radio frequency levels. Despite this fact, the FCC has adopted what is known as the "C-95" standard for measuring radio frequency radiation. Dr. Osepchuk further testified that the proposed cell site will operate well below the C-95 safety standard, and that the operation of a facility below the C-95 standard presents no health risks. (T3-49).

6. Will the structure be removed when the use is terminated?

Ms. O'Rourke testified that the structure will be removed when its use is terminated. (T2-34).

7. Will proper safety certifications be filed with the county every five years?

Ms. O'Rourke indicated that Cellular One will comply with this requirement. (T2-34).



8. Will the proposed use utilize white stroboscopic lights?

The proposed monopole will not be lighted in any way. (T2-26).

9. Has an environmental impact statement been submitted to the county, and if so, does such environmental impact statement indicate that the proposed use will not have a substantial adverse impact on the environment?

An environmental impact statement was prepared for the McMaster farm by Carey W. Burch. (T3-12). At the hearing, Mr. Burch was recognized as an expert in the area of environmental matters and the preparation of environmental impact statements. (T3-11, 12). Mr. Burch concluded that the proposed site would not create any adverse affects upon wildlife, vegetation, or water resources.

10. Will the proposed use have a substantial adverse impact on surrounding property values, parklands or open space?

Ronald Lipman, an expert in the field of real estate appraising, testified that he had conducted studies concerning the effect of various transmitting structures upon property values. The conclusion of Mr. Lipman's research was that such structures had no impact upon property values. (T2-97-100). Additionally, George Gavrelis testified that the proposed use would not in any way affect nearby parklands or open space. (T2-143-144).



**V. THE VARIANCES**

As referenced above, Cellular One has applied for three variances applicable to this site. Unlike the special exception application, which is driven largely by Cellular One's technical and economic needs, the variance applications are driven by Mr. McMaster's need to limit the impact on his farm as well as a general intention to make the site as unobtrusive as possible. These goals have been met by placing the proposed special exception site between existing farm buildings and in an area heavily screened by existing natural vegetation and topography. Given its dual benefits of maximum unobtrusiveness and minimum interference with farming, the proposed site provides an optimum location. Despite these positive attributes, the proposed site requires three variances due to a technicality created by B.C.Z.R. section 102.2.

The first variance requested concerns section 1A03.4.B.4, which provides that any principal structure constructed in an R.C.4 zone must be at least fifty feet from any lot line. The site as currently configured impinges on this requirement in three ways, thus requiring a variance. First, the .13 site is merely seven feet from one of the barns located on the McMaster farm. Second, there is a distance of only eight feet from the cell site's equipment building to the yard line of the .13 acre site. Finally, there is only twelve feet separating one of the McMaster farm sheds from the .13 acre site line.



The second variance requested concerns section 502.7.C.2. This section provides that the setback of any radio transmitting or receiving structure from the nearest property line "shall equal or exceed two (2) times its height above grade level". The proposed monopole will be 100 feet in height. (T1-43). Thus, this section requires a setback of 200 feet. (T1-44). Cellular One has requested a variance from this provision to allow a setback of 10 feet from the monopole base to the .13 acre site yard boundary.

The final variance concerns section 502.7.C.3. This section requires that a radio transmitting or receiving facility "shall be located on a lot of at least five (5) acres". Although the proposed site is actually part of a 105 acre lot, the operation of section 102.2 requires that the .13 acre special exception area be considered as a separate "lot" for variance purposes.

**A. THE LAW CONCERNING VARIANCES**

Section 307.1 of the Baltimore County Zoning Regulations gives this Board power to grant variances from the height and area restrictions contained with the Regulations. Such variances may be granted when strict compliance with the Zoning Regulations will result in practical difficulty or unreasonable hardship. Further, the proposed variance must be in strict harmony with the spirit and intent of the height and area regulations. Finally, the proposed variance must not pose any substantial injury to public health, safety, and general welfare.



**B. ALL OF THE PROPOSED VARIANCES MEET THE REQUIREMENTS OF B.C.Z.R. SECTION 307.1**

The McMaster property is currently a working farm. This farm, one of the largest open areas in the region, covers approximately 105 acres. (T1-38). Although approximately 50 per cent (50%) of the farm is wooded, much of the farm contains cattle grazing areas, pig farming facilities, and cropland. (T1-39). Mr. McMaster wishes to continue operating his farm in an efficient manner. In order to do so, he specifically requested that the cell site be placed in the area that is currently proposed. (T2-29). The reason for Mr. McMaster's request was that the proposed site would provide the least impact upon farming and other activities. (T2-29). The proposed site occupies an area of the farm which contains several outbuildings, thereby rendering that area unusable for farm purposes. (T1-40).

The proposed cell site as currently configured is approximately 600 feet from the nearest non-farm property line. (T1-46). It is approximately 700 feet from the nearest non-farm residential structure. (T1-46). Further, the proposed cell site is more than 200 feet from any residential structure on the McMaster property itself. (T2-131).

Thus, it is apparent that the variances are necessary to accommodate Mr. McMaster's need to continue to operate his property as a farm without undue difficulty. It is further apparent that the proposed variances meet the requirements of section 307.1. Since the farm is almost 105 acres, the cell site could be placed in an area which would not require the proposed



variances. However, as the preceding discussion makes clear, such a siting would unnecessarily interfere with the operation of Mr. McMaster's farm. Examples of this were provided at the hearing by David Ransone, a registered surveyor. Mr. Ransone pointed out that there are at least three areas on the farm where the cell site could be placed which would not require any variances. (T1-47). However, Mr. Ransone indicated that all of these parcels were currently being used either for pasture or crop land. (T1-47). Thus, by definition, a placement of the cell site in one of these areas would disrupt Mr. McMaster's ability to farm his property. It simply makes more sense to place the cell site among the existing outbuildings in an area which is already unusable as farmland.

**1. The Two Hundred Foot Setback Requirement**

As explained above, section 502.7.C.2 requires that the proposed monopole be setback at least 200 feet from the nearest property line. Since section 102.2 requires that the special exception area be considered a separate "lot" for variance purposes, the monopole will be set back only ten feet from the cell site "lot" line.

Initially, it should be pointed out that, but for section 102.2, this variance would not be necessary. The special exception site is more than 200 feet from the nearest non-farm property line. (T1-46). In any event, it is clear that strict compliance with the Zoning Regulations will result in practical difficulty or unreasonable hardship to Mr. McMaster. The reason



for such practical difficulty is obvious. As previously explained, the cell site will be placed in an area on the McMaster farm which is currently unusable for farming purposes. The only areas on the McMaster farm sufficiently large to accommodate the 200 foot setback are currently used for farming purposes. Thus, if the site were moved to one of these areas, it would impede Mr. McMaster's ability to farm his property. Further, as Mr. Gavrelis pointed out in his testimony, the monopole tower would be more visible if it were placed in an area which was cleared for farming. (T2-133).

It is further apparent that the proposed variances are within the spirit and intent of the Zoning Regulations. As Mr. Gavrelis indicated, the spirit of the 200 foot setback requirement is to provide "distance between a proposed radio receiving and transmitting tower...and nearby residential property". (T2-130). This purpose is accomplished, since "the proposed monopole site is more than 200 feet from the nearest residential structure which is a garage/apartment structure near the barn and it's over 300 feet from the tower to the McMaster's house itself". (T2-131). As stated above, the special exception area is more than 600 feet from the nearest non-farm property line. Thus, the proposed variances are well within the spirit and intent of Zoning Regulations.

It is also clear that the proposed variance will not cause substantial injury to the public health, safety, and general welfare. Since the actual tower will be more than 200 feet from any residential structure, there will be no health or safety impact from the proposed variance. (T2-131).

**2. The Five Acre Lot Requirement**

Section 502.7.C.3 requires that a radio transmitting and receiving facility must be located on a lot of at least five acres. As stated previously, section 102.2 requires that each principal structure maintain its own "yard" for zoning purposes. Therefore, the proposed special exception site is .13 acres. Compliance with the five acre requirement would cause practical difficulty and/or unreasonable hardship to Mr. McMaster. Again, to relocate the proposed site to an area of five acres or more would require the use of precious farmland. Such a use would clearly be detrimental to Mr. McMaster and cause him practical difficulty and/or unreasonable hardship. Further, as Mr. Gavrelis observed, it must be borne in mind that the special exception site is merely a small part of a very large farm. Thus, "[i]n the context of the larger property, we have a much larger site". (T2-132). Thus, the very nature of the farm will insulate the monopole from adjoining residential properties. (T2-132).

Further, Mr. Gavrelis explored the possibility of placing the cell site on a five acre parcel of the McMaster property. Mr. Gavrelis' conclusion was that "it would be a more visible



site, would be a more obtrusive site, and have less favorable relationships with the adjoining residential area or even adjoining residences than is the case with the petition before the Board". (T2-133).

For all of the reasons stated above, this proposed variance will not cause substantial injury to the public health, safety, and general welfare. Simply put, but for the fiction of "lot lines" created by section 102.2, the proposed special exception area would comply with all of the relevant area requirements. Thus, the site's relationship with true adjoining properties is well within the parameters of the area regulations.

**3. The Fifty Foot Lot Line Variance**

Section 1A03.4.B.4 requires that any principal building constructed in an R.C.4 zone must be at least fifty feet from any lot lines other than a street line. Again, given the operation of section 102.2, the boundary of the .13 acre special exception area constitutes a "lot line". Since the special exception area is so small, the monopole is less than fifty feet from the lot line. Given the unique nature of the McMaster farm, the proposed placement of the cell site is ideal. First, the site as placed will not impede Mr. McMaster's ability to farm his land. Second, the proposed special exception site is in a heavily wooded area which will help to disguise the monopole. Finally, the proposed cell site is surrounded by farm out-buildings which will further help to mask the site.



As for the variance itself, it must be observed that, but for section 102.2, the fifty foot setback requirement would be satisfied. It is undisputed that the proposed cell site is well in excess of fifty feet from the nearest non-farm property line.

Strict compliance with the fifty foot setback requirement will cause practical difficulties and undue hardship to Mr. McMaster. Clearly, a relocation of the site would affect Mr. McMaster's ability to farm his property. Again, as Mr. Gavrelis pointed out in his testimony, compliance with the fifty foot setback requirement "would result in a site that's more visible in terms of the base facilities, less well-screened, and I think, one, that would have more of an impact on the neighborhood than would be the case here". (T2-136).

The proposed variance is within the spirit and intent of the Zoning Regulations. This is so because the intent of the Zoning Regulations is "to provide [divisions] between adjoining properties and uses", and "[a]ll of these setbacks are internal to the cell site and internal to the McMaster property". (T2-137). Thus, the proposed site does not vitiate the spirit and intent of the Zoning Regulations.

Finally, the proposed variance will not cause substantial injury to the public health, safety, and general welfare. No such harm will result as the proposed variance is internal to the large farm and has no affect on the cell site's relationship to adjoining properties. Further, the proposed site will "utilize



existing structures to better blend the facility into the context of its environs and the neighborhood and there will be no substantial injury or harm to anybody". (T2-137).

**VI. CONCLUSION**

Although this case has been longwinded and time-consuming, its essence is actually quite simple. It is undisputed that Cellular One requires a cell site in the Loch Raven area. It is further undisputed that the McMaster farm will satisfy Cellular One's needs. Finally, it must be observed that the Loch Raven search area contains some low-elevation areas that are commercially zoned. While a cell site in such low-lying areas may be technologically feasible, it would require the construction of a 300-400 foot lattice-type tower bearing various lights and markings. Such a tower, in addition to being enormously obtrusive throughout the valley, will cost at least 300% more than the McMaster site. All of these facts are elevation-driven.

In light of this set of facts, the only real issue before this Board is whether Cellular One's decision not to seek a special exception for a low-lying commercially-zoned site was based on "valid considerations" such as "location, economic, elevation, engineering or technologic feasibility". This question can only be answered in the affirmative. Cellular One has provided voluminous evidence that its search was driven by the exact factors listed is valid considerations in section 502.7.C.1.



Although Protestants clearly do not want this cell site in their collective "backyard", they have presented no evidence which indicates that Cellular One was motivated by anything other than considerations of "location, economic, elevation, engineering or technologic feasibility". Since the requisites of section 502.7.C.1 have been satisfied, Cellular One's special exception petition must be granted.

As for the variances, the plain fact is that the proposed site is the best possible location for such a use. The monopole and equipment building will be shielded by both tall trees and existing buildings. Existing vegetation already provides screening along Sherwood Road. The site is 700 feet from the nearest non-McMaster residence. As for Mr. McMaster, he can continue to operate his farm as usual without undue hardship.

Although Cellular One is not required to so prove, the evidence shows that the McMaster farm is simply the best location within the search area for a cell site. It is the least visually obtrusive option which is also technically feasible. As the site meets all of the requisites necessary for the special exception and the variances, Cellular One respectfully requests that all of



these petitions be granted.

Respectfully submitted,

G. Scott Barhight

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CERTIFICATE OF SERVICE

I Hereby Certify that on this 30th day of December, 1991, a copy of the foregoing Memorandum In Support Of Appellants' Petitions For Special Exception And Variances was mailed, postage prepaid, to **J. Carroll Holzer, Esquire,** 305 W. Chesapeake Avenue, Suite 105, Towson, Maryland, 21204.

Karl J. Nelson



| | | |
|---|---|---|
| RE: Petition for Special Exception and Zoning Variance | * | BEFORE THE |
| | * | BOARD OF APPEALS |
| Corner NE/S SHERWOOD ROAD, SE/S of HOLLOW ROAD (426 Sherwood Road), 8th Election District | * | OF |
| | * | BALTIMORE COUNTY |
| | * | Case No.: 90-382-XA |
| Southwestern Bell Mobile Systems, Inc. t/a Cellular One | * | |
| Petitioners | * | |
| | * | |

* * * * * * * * * * * * * *

**PROTESTANTS MEMORANDUM**

Sherwood Hill Improvement Association, Inc., Powers Avenue Community Association and Montview Improvement Association, Clay M. Barnes, David Baker, Tom Basham and Steve Rosen, individuals, Protestants, by **J. Carroll Holzer**, their attorney, hereby submit this Memorandum in lieu of final argument before the Loard of Appeals of Baltimore County.

**STATEMENT OF CASE**

The Petitioner, Southwestern Bell, trading as Cellular One (hereinafter "Bell") has filed a Petition for Special Exception and Variance before the Board of Appeals of Baltimore County to permit the operation of a cellular radio telephone transceiver station on property owned by Joseph B. and Virginia McMasters at 426 Sherwood Road in Cockeysville, Maryland. The variance requests approval for the site to occupy an area of approximately .13 acres. A 100 foot monopole type antenna, mounting structure, a brick veneer building 14 x 30 x 10 feet

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and a single car parking space will be constructed on the site. The facility will be enclosed by an eight foot high chain link fence topped with barbed wire and the site will remain unmanned except for a visit once every two (2) weeks for routine maintenance. According to the Petitioners, the monopole will have no lights or other beacons.

The Protestants herein, consist of Sherwood Hill Improvement Association, Inc., Powers Avenue Community Association and Montview Improvement Association along with Clay M. Barnes, David Baker, Tom Basham and Steve Rosen, individually, residents of the affected communities.

The Petition for Variance requests variances from Sections 502.7.C.2 and 102.2 of the Baltimore County Zoning Regulations, as well as from Section 502.7.C.3 and 102.2 and from Sections 1A03.4.B.4 and 102.2. The Special Exception is requested pursuant to Section 502 which requires the Board of Appeals to review and apply the criteria set forth in Section 502.1 as well as the additional criteria of Section 502.7 created by Baltimore County Council Bill No. 64-86, permitting wireless transmitting and receiving facilities under certain circumstances.

Protestants submit that the extended testimony presented by Bell in this case, should be examined in the light of whether the preconditions concerning the search area, imposed specially under Section 502.7.C.1 of the Baltimore County

into the amended legislation, such as the exterior look of the tower, the set backs, the conditions concerning removal of the tower upon termination of the purpose for which it was erected.

Additionally, it became clear to the Baltimore County Council that these towers presented legitimate concerns for residential areas such as height, appearance, health issues and potential damages to the real estate values for surrounding property owners. Therefore, in the new legislation, it was specifically recognized that while it would not be appropriate to completely eliminate the opportunity for such towers in residential areas, it would be made more difficult to locate a tower in such a residential zone and incentives were provided for prospective towers being located in business, office, or industrial zoned areas. "The Office of Law Report proposing Amendments to the Baltimore County Zoning Regulations concerning Radio Towers and Television Towers and other Wireless Transmission Receiving Facilities," dated August 28, 1985, should be reviewed to determine the legislative intent concerning the significant procedural requirements which were placed in the new legislation. This Report supports the proposition that the drafters of the legislation attached great significance to the procedural requirements for exploring comercially zoned areas before approving a tower in a residential zone. It is stated on page 6 of the report: "An amendment to Zoning Regulations to permit towers by right under specified conditions in certain office,



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business and manufacturing zones, along with more stringent special exception requirements in residential zones would create a situation where non-residential zones would become attractive locations for towers." It is clear that the pre-conditions as set forth in the Baltimore County Zoning Regulations Section 502.7.C.1 be adhered to by the Petitioner.

Therefore, one can conclude that the legislative intent of the County Council and the Council itself were clearly interested in ensuring that the Petitioner, in the case of wireless transmitting and receiving facilities, had the burden of establishing that it made a diligent search for a location within a business, office or industrial zone.

In this case, the evidence in the record before the Zoning Commissioner is devoid of any testimony, exhibit, or other proof which establishes that a diligent search for such a location within a business, office or industrial zone was made. As a matter of fact, by the testimony of Amy O'Rourke and Mr. Balecki, it is very clear that no consideration was given by the Petitioner Bell to developing a suitable search area that would include business, office or industrial zone. Moreover, failure to call Mr. Kruhm by the Petitioner likewise supports the fact and the testimony of O'Rourke upon cross examination, that they selected the McMasters site, signed a lease agreement with McMasters and then looked for appropriate sites only after the issue was raised by the Protestants in March of 1990, that Section 502.7C.1 was not complied with by Bell.



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It is submitted by the Protestants that since the Petitioner has failed to meet the burden that it has made a diligent search for a location within a business, office or industrial zone, the Zoning Commissioner is not required to address the issue of whether or not this project meets the other criteria of 502.1.A through H, nor may the Zoning Commissioner address the issues of a variance or the placing of other conditions upon the Petitioners under Section 502.7.C2 through 10.

While it is not necessary for the Protestants to address the point, it will be noted here that a Petitioner for Variance under Section 307.1 must establish "practical difficulty or unreasonable hardship". In the instant case, the testimony in evidence is clear that there is no undue hardship or burden on the Petitioner; as a matter of fact, the Petitioner has actually leased an amount of ground which would satisfy the zoning regulations and there is no reason why it could not and can not comply with the appropriate setbacks as required by the Baltimore County Zoning Regulations, but for the fact that Mr. McMasters desires to minimize the amount of land surrounding the proposed facility in order that he can continue to farm or develop that area. It is more troublesome in the instant case when one examines the variance issue to find that under the Agreement between Bell and McMasters, that McMasters can utilize the remaining portion of the leased premises for



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whatever purpose would be allowed by the Baltimore County Development Regulations. If that is the case, it is very clear that development could take place on this leased premises which could place the homes to be developed on said site extremely close to the proposed facility and tower. To do that, would clearly circumvent the requirements as imposed in Bill No. 64-86 and codified in Sections 502.7C.2 and 3.

One final comment in this Memorandum. In normal cases involving Section 502.1, the Petitioner customarily cites the case of Schultz v. Pritts, 291 Maryland 1 (1981), for the proposition that before a special exception can be denied, the requested use must have an adverse affect above and beyond those inheritently associated with the use, regardless of its location. While it is submitted by the Protestants that such case is frequently over used by the Petitioners, in the instant case the Zoning Commissioner should not even be guided by this particular decision. The issue before the Commissioner is whether or not Section 501.7.C.1 has been complied with and is a procedural prerequisite to the consideration of the other issues in this case.

Wherefore, it is respectfully submitted by the Protestants, individually and on behalf of the community associations that the Zoning Commissioner find that the procedural aspect of Section 502.7C.1 has not been complied with by the Petitioners and that it has not met the burden of establishing that it has made a diligent search for a location



within business, office or industrial zone and therefore the petition must be denied.

Respectfully submitted,

J. Carroll Holzer,
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September, 1990, a copy of the foregoing Protestants Memorandum was mailed postage pre-paid to G. Scott Barhight, WHITEFORD, TAYLOR & PRESTON, 500 Court Towers, 210 West Pennsylvania Avenue, Towson, Maryland 21204-4515.

J. Carroll Holzer

MICROFILMED



*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

*Dennis F. Rasmussen*
*County Executive*

October 12, 1990

G. Scott Barhight, Esquire
210 W. Pennsylvania Avenue, Suite 500
Towson, Maryland 21204

RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE
NE/Corner Sherwood Road and Hollow Road
(426 Sherwood Road)
8th Election District - 3rd Councilmanic District
Joseph B. McMaster, et ux - Petitioners
Case No. 90-382-XA

Dear Mr. Barhight:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Exception has been denied and the Petition for Zoning Variance dismissed in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH:bjs

cc: All Protestants

People's Counsel

File

MICROFILMED

# PETITION FOR SPECIAL EXCEPTION

I-Sc. 242

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-382-XA

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for a wireless transmitting and receiving facility pursuant to Sections 1A03.3.B.14 and 502.7.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

LESSEE:

~~Contract Purchaser~~

Southwestern Bell Mobile Systems, Inc. (Type or Print Name) t/a Cellular One

By: Emilienne O'Rourke (Signature)

7855 Walker Drive, Suite 100 (Address)

Greenbelt, Maryland 20770 (City and State)

Attorney for Petitioner:

G. Scott Barhight (Type or Print Name)

(Signature)

500 Court Towers
210 W. Pennsylvania Avenue (Address)

Towson, Maryland 21204 (City and State)

Attorney's Telephone No.: 832-2050

Legal Owner(s):

Joseph B. McMaster (Type or Print Name)

Joseph B. McMaster (Signature)

Vivian Baker McMaster (Type or Print Name)

Vivian Baker McMaster (Signature)

426 Sherwood Road (Address) Phone No.

Cockeysville, Maryland 21030 (City and State)

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

G. Scott Barhight (Name)

210 W. Pennsylvania Avenue
Towson, MD 21204 (Address) 832-2050 (Phone No.)

ORDERED By The Zoning Commissioner of Baltimore County, this 21 day of Feb. 1990, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Town, Baltimore County, on the 3 day of April, 1990, at 9:30 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County

Z.C.O.—No. 1

(over)

ORDER RECEIVED FOR FILING
Date 3/2/90
By

3/2/90 - on 4/3/90 ea. item @ 1 hr. each sign item

MICROFILMED

# PETITION FOR ZONING VARIANCE

242

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-382-XA

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) (see attached Page)

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

Hardship or practical difficulty to be presented at the hearing.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

LESSEE:

~~Contract Purchaser~~

Southwestern Bell Mobile Systems, Inc. (Type or Print Name) t/a Cellular One

By: Emilienne O'Rourke (Signature)

7855 Walker Drive, Suite 100 (Address)

Greenbelt, Maryland 20770 (City and State)

Attorney for Petitioner:

G. Scott Barhight (Type or Print Name)

(Signature)

500 Court Towers
210 W. Pennsylvania Avenue (Address)

Towson, Maryland 21204 (City and State)

Attorney's Telephone No.: 832-2050

Legal Owner(s):

Joseph B. McMaster (Type or Print Name)

Joseph B. McMaster (Signature)

Vivian Baker McMaster (Type or Print Name)

Vivian Baker McMaster (Signature)

426 Sherwood Road (Address) Phone No.

Cockeysville, Maryland 21030 (City and State)

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

G. Scott Barhight (Name)

210 W. Pennsylvania Avenue
Towson, MD 21204 (Address) 832-2050 (Phone No.)

ORDERED By The Zoning Commissioner of Baltimore County, this 21 day of Feb. 1990, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 3 day of April, 1990, at 9:30 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County

(over)

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242

PETITION FOR ZONING VARIANCE (continued)

Petitioner: Southwestern Bell Mobile Systems, Inc.
t/a Cellular One

The Petitioner hereby petitions for a variance from Sections 502.7.C.2 and 102.2 to permit a setback to the nearest property line of 10 ft. in lieu of the required 300 ft., from Sections 502.7.C.3 and 102.2 to permit a lot area of 0.13 acres in lieu of the required 5 acres, from Sections 1A03.4.B.4 and 102.2 to permit building setbacks of 12 ft., 7 ft. and 8 ft., respectively, as shown on the plat, in lieu of the required 50 ft.

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242

PHILIP K. CROSS
JOHN F. ETZEL
WILLIAM S. ULRICH
GORDON T. LANSDON
DAVID K. RANSOME

GERHOLD, CROSS & ETZEL
*Registered Professional Land Surveyors*
412 DELAWARE AVENUE
TOWSON, MARYLAND 21204
823-4470

EMERITUS
PAUL G. DOLLENBERG
FRED H. DOLLENBERG
CARL L. GERHOLD

90-382-XA

January 8, 1990

Zoning Description

All that piece or parcel of land situate, lying and being in the Eighth Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same at a point situate the two following lines from the intersection of the centerline of Sherwood Road with the centerline of Hollow Road viz: Southeasterly, measured along the center of Sherwood Road, 915 feet, more or less and North 43 degrees 19 minutes East, measured at a right angle from Sherwood Road, 546 feet thence running from the said point of beginning the six following courses and distances viz: North 49 degrees 32 minutes West 55 feet, North 67 degrees East 55 feet, South 23 degrees East 62 feet, South 67 degrees West 27 feet, South 74 degrees 26 minutes West 81.15 feet and North 23 degrees West 35 feet to the place of beginning.

Containing 0.13 of an Acre of Land, more or less.

STATE OF MARYLAND — DAVID LEONARD RINGENBERG — No. 1948 — REGISTERED — PROPERTY LINE SURVEYOR

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**CERTIFICATE OF POSTING**
**ZONING DEPARTMENT OF BALTIMORE COUNTY**
**Towsen, Maryland**

90-382-XA

District 8th
Date of Posting 3/16/90
Posted for: Special Exception & Variance
Petitioner: Gerard B. Mallon, Esq. & Southwestern Bell Mobile Systems
Location of property: Cor. NE/S Sherwood Rd., SE/S Hollow Rd.
1426 Sherwood Rd.
Location of Signs: Facing Sherwood Rd., approx. 20' Ft. Hollow, on property of Petitioner
Remarks:
Posted by [signature] Signature
Date of return: 3/16/90
Number of Signs: 2

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$122.89

**NOTICE OF HEARING**

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Petition for Special Exception and Zoning Variance
Case number: 90-382-XA
Corner NE/S Sherwood Road, SE/S of Hollow Road
(426 Sherwood Road)
8th Election District
3rd Councilmanic
Legal Owner(s): Joseph B. McMaster, et ux
Lessee/Petitioner: Southwestern Bell Mobile Systems, Inc., t/a Cellular One
Hearing Date: Tuesday, Apr. 3, 1990 at 9:30 a.m.

**Special Exception:** for a wireless transmitting and receiving facility. **Variances:** to permit a setback to the nearest property line of 10 ft. in lieu of the required 300 ft.; to permit a lot area of 0.13 acres in lieu of the required 5 acres; to permit building setbacks of 12 ft., 7 ft., and 8 ft., respectively, in lieu of the required 50 ft.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

T/3/115 Mar. 8

**CERTIFICATE OF PUBLICATION**

TOWSON, MD., March 8, 1990

THIS IS TO CERTIFY, that the annexed advertisement was published in the TOWSON TIMES, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on March 8, 1990.

TOWSON TIMES,
S. Zeke Orlan
Publisher

MICROFILMED

PAGE 4—SEC. B—THURSDAY, MARCH 8, 1990 — THE JEFFERSONIAN

**SALES & LEGAL NOTICES**

Michael P. Mey, Atty.
210 E. Lexington Street
Suite 200
Baltimore, MD 21202

NOTICE OF APPOINTMENT
and
NOTICE TO CREDITORS
and
NOTICE TO UNKNOWN HEIRS

TO ALL PERSONS INTERESTED IN THE ESTATE OF
GRACE VINCI
A/K/A MARY GRACE VINCI
A/K/A MARY GRACE BERGIN

This is to give notice that the undersigned, Karen Bergin, whose address is 241 Whitfield Road, Towson, Maryland 21204 on February 15, 1990 appointed personal representative of the estate of Mary Vinci a/k/a Mary Grace Vinci a/k/a Mary Grace Bergin who died on July 14, 1989 with a will.

Notice is also given to unknown heirs of an will to heirs whose whereabouts are unknown to appear for appointment to be made in the proceeding.

All persons having any objection to the appointment to be made in the proceeding of the decedent's will shall file the same with the Register of Wills for Baltimore County, on or before six months from the date of such appointment.

All persons having claims against the decedent shall file their claims with the Register of Wills and shall serve a copy of the instrument to the Personal Representative on or before the earlier of the following dates:

(1) Nine months from the date of the decedent's death; or

(2) Two months after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that his claim will be barred unless the creditor presents the claim within two months after the mailing or other delivery of the notice.

Any claim not filed on or before that date, or any extension provided by law, is unenforceable thereafter.

KEVIN BERGIN
Personal Representative
Date of first publication:
February 22, 1990
True Copy—Test
PETER J. BASLONE
Register of Wills for
Baltimore County
2-22 Feb. 22—March 1, 8

F. Kirk Kunsdorf, Atty.
20 Crossroads Drive
Suite 315
Owings Mills, Maryland 21117

NOTICE OF APPOINTMENT
and
NOTICE TO CREDITORS
and
NOTICE TO UNKNOWN HEIRS

Frank W. Bernstein, Jr., Atty.
300 Cathedral Street
Suite 206
Baltimore, MD 21201

NOTICE OF APPOINTMENT
and
NOTICE TO CREDITORS
and
NOTICE TO UNKNOWN HEIRS

TO ALL PERSONS INTERESTED IN THE ESTATE OF
ELIZABETH M. WINTERSON

This is to give notice that the undersigned, John P. Winterson, whose address is 607 Hastings Road, Towson, Maryland 21204 was, on February 15, 1990 appointed personal representative of the estate of Elizabeth M. Winterson, who died on May 9, 1989, with a will.

Notice is also given to unknown heirs of an will to heirs whose whereabouts are unknown to appear for appointment to be made in the proceeding.

All persons having any objection to the appointment to be made in the proceeding of the decedent's will shall file the same with the Register of Wills for Baltimore County, on or before six months from the date of such appointment.

All persons having claims against the decedent shall file their claims with the Register of Wills and shall serve a copy of the instrument to the Personal Representative on or before the earlier of the following dates:

(1) Nine months from the date of the decedent's death; or

(2) Two months after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that his claim will be barred unless the creditor presents the claim within two months after the mailing or other delivery of the notice.

Any claim not filed on or before that date, or any extension provided by law, is unenforceable thereafter.

JOHN P. WINTERSON
Personal Representative
Date of first publication:
February 22, 1990
True Copy—Test
PETER J. BASLONE
Register of Wills for
Baltimore County
2-22 Feb. 22—March 1, 8

Frank, Bernstein, Conaway & Goldman
300 E. Lombard Street
Suite 1405
Baltimore, Maryland 21202

NOTICE OF APPOINTMENT
and
NOTICE TO CREDITORS
and
NOTICE TO UNKNOWN HEIRS

TO ALL PERSONS INTERESTED IN THE ESTATE OF
ROSA FIELDS

This is to give notice that the undersigned, Theodore Fields a/k/a Theodore R. Fields, whose address is 2125 Ruxton Avenue, Catonsville, MD 21228 was, on February 23, 1990 appointed personal representative of the estate of Rosa Fields, who died on July 31, 1961, with a will.

Notice is also given to unknown heirs of an will to heirs whose whereabouts are unknown to appear for appointment to be made in the proceeding.

All persons having any objection to the appointment to be made in the proceeding of the decedent's will shall file the same with the Register of Wills for Baltimore County, on or before six months from the date of such appointment.

All persons having claims against the decedent shall file their claims with the Register of Wills and shall serve a copy of the instrument to the Personal Representative on or before the earlier of the following dates:

(1) Nine months from the date of the decedent's death; or

(2) Two months after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that his claim will be barred unless the creditor presents the claim within two months after the mailing or other delivery of the notice.

Any claim not filed on or before that date, or any extension provided by law, is unenforceable thereafter.

ANA THEODORE FIELDS
Personal Representative
Date of first publication:
March 1, 1990
THEODORE FIELDS
PETER J. BASLONE
Register of Wills for
Baltimore County
3-1 Mar. 1, 8, 15

Frank, Bernstein, Conaway & Goldman
300 E. Lombard Street
Suite 1405
Baltimore, Maryland 21202

NOTICE OF APPOINTMENT
and
NOTICE TO CREDITORS
and
NOTICE TO UNKNOWN HEIRS

TO ALL PERSONS INTERESTED IN THE ESTATE OF
WOLFE H. ADLER

This is to give notice that the undersigned, Irvin H. Adler, whose address is 1710 Eastern Boulevard, Baltimore, Maryland 21221 was, on February 23, 1990 appointed personal representative of the estate of Wolfe H. Adler, who died on January 24, 1990, with a will.

Notice is also given to unknown heirs of an will to heirs whose whereabouts are unknown to appear for appointment to be made in the proceeding.

All persons having any objection to the appointment to be made in the proceeding of the decedent's will shall file the same with the Register of Wills for Baltimore County, on or before six months from the date of such appointment.

All persons having claims against the decedent shall file their claims with the Register of Wills and shall serve a copy of the instrument to the Personal Representative on or before the earlier of the following dates:

(1) Nine months from the date of the decedent's death; or

(2) Two months after the personal representative mails or otherwise delivers to the creditor a copy of this published notice or other written notice, notifying the creditor that his claim will be barred unless the creditor presents the claim within two months after the mailing or other delivery of the notice.

Any claim not filed on or before that date, or any extension provided by law, is unenforceable thereafter.

SUSAN J. ADLER
Personal Representative
Date of first publication:
February 22, 1990
PETER J. BASLONE
Register of Wills for
Baltimore County
2-22 Feb. 22—March 1, 8

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

NOTICE IS HEREBY GIVEN, NOTICE THAT ARTHUR GLESS, TRUSTEE OF GLESS SAWKS ENTERPRISES, INC. were received for record on Feb. 2, 1990 in accordance with the provisions of Sec. 3-407 of the Corporations and Associations

**SALES & LEGAL NOTICES**

Irvin H. Caplan, Atty.
1750 Eastern Boulevard
Baltimore, Maryland 21221

CHANGE OF NAME OF
JOHN FRANKLIN CLARK, JR.
2637 Dunmar Court
Baltimore, Maryland 21222

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
Case No. 90-CC-1735

Upon the aforegoing Verified Petition of John Franklin Clark, Jr. it is ORDERED by the Court this 6th day of March, 1990, that the change of name as aforesaid be and is hereby granted, effective with the date of this Order; and it is further

ORDERED, by the Court that a copy of this Order be published in the Jeffersonian, a newspaper of general circulation in Baltimore County, once a week for three successive weeks before the 3rd day of April, 1990; that the aforesaid publication shall constitute sufficient notice to all persons interested to show cause why the prayer of the Petitioner should not be granted.

SUZANNE MENSH, Clerk
True Copy—Test
SUZANNE MENSH, Clerk
3/156 March 8, 15, 22

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Petition for Special Exception and Zoning Variance
Case number: 90-382-XA
Corner NE/S Sherwood Road, SE/S of Hollow Road
(426 Sherwood Road)
8th Election District
3rd Councilmanic
Legal Owner(s): Joseph B. McMaster, et ux
Lessee/Petitioner: Southwestern Bell Mobile Systems, Inc., t/a Cellular One
Hearing Date: Tuesday, Apr. 3, 1990 at 9:30 a.m.

**Special Exception:** for a wireless transmitting and receiving facility. **Variances:** to permit a setback to the nearest property line of 10 ft. in lieu of the required 300 ft.; to permit a lot area of 0.13 acres in lieu of the required 5 acres; to permit building setbacks of 12 ft., 7 ft., and 8 ft., respectively, in lieu of the required 50 ft.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

3/156 March 8

**SALES & LEGAL NOTICES**

BALTIMORE COUNTY
PUBLIC SCHOOLS
Towson, Maryland 21204

ADVERTISEMENT

The Board of Education of Baltimore County announces the following STUDENT DETAIL AND CHAIRS-ANNUAL BID

Bid Number: 3-719-90
Bid Due: 3/22/90
AT 1:00 P.M.

VARIOUS SHAPE AND SIZE TABLES-ANNUAL BID

Bid Number: 3-317-90
Bid Due: 3/22/90
AT 1:15 P.M.

VARIOUS TEACHER AND OFFICE FURNITURE/ANNUAL BID

Bid Number: 3-718-90
Bid Due: 3/22/90
AT 1:30 P.M.

VARIOUS PHYSICAL EDUCATION EQUIPMENT
JOPPA VIEW

Bid Number: 3-719-90
Bid Due: 3/22/90
AT 1:45 P.M.

MISCELLANEOUS FURNITURE/JOPPA VIEW

Bid Number: 3-320-90
Bid Due: 3/22/90
AT 2:00 P.M.

FOOTBALL SUPPLIES & EQUIPMENT

Bid Number: 3-325-90
Bid Due: 3/22/90
AT 1:15 P.M.

Specifications and proposal sheets may be obtained at the Purchasing Department, Room 313, Purchasing Department and Supply Building, 6901 North Charles Street, Towson, Maryland 21204.

Bid proposals shall be accepted by the Purchasing Department at the above address until the time of the above scheduled times.

Special Exceptions: for a wireless transmitting and receiving facility. Variances: to permit a setback to the nearest property line of 10 ft. in lieu of the required 300 ft.; to permit a lot area of 0.13 acres in lieu of the required 5 acres; to permit building setbacks of 12 ft., 7 ft., and 8 ft., respectively, in lieu of the required 50 ft.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

3/156 March 8

**SALES & LEGAL NOTICES**

BALTIMORE COUNTY
PUBLIC SCHOOLS
Towson, Maryland 21204

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In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

3/156 March 8

MICROFILMED

**CERTIFICATE OF POSTING**
**ZONING DEPARTMENT OF BALTIMORE COUNTY**
**Towsen, Maryland**

90-382-XA

District 8th
Date of Posting Mar 4
Posted for: Performance of Hearing
Petitioner: Joseph B. McMaster, et ux & Sw. Bell Mobile Systems
Location of property: 1426 Sherwood Rd.
Location of Signs: Facing Sherwood Rd. at location of prop.
Remarks: Mark 4 post arrival date of Feb hearing
Posted by [signature] Signature
Date of return: 4/6/90
Number of Signs: 1

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt
Account: R-001-6150
№ 1105
Number

Date

1-24-90

PUBLIC HEARING FEES — QTY — PRICE
020 -ZONING VARIANCE (OTHER) — 1 X — $175.00
050 -SPECIAL EXCEPTION — 1 X — $175.00
LAST NAME OF OWNER: NOMASTER — TOTAL: $350.00

MICROFILMED

B B114*****35010:a 2258F
Please make checks payable to: Baltimore County

Cashier Validation:

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt
Account: R-001-6150
№ 2499
Number

Date

90-382-XA

MICROFILMED

Signature

B -B.00*****1978:a 01tcF
Please make checks payable to: Baltimore County

Cashier Validation:

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

DATE March 20, 1990

*Dennis F. Rasmussen*
*County Executive*

Southwestern Bell Mobile Systems, Inc., t/a
Cellular One
7855 Walker Drive Suite 100
Greenbelt, Maryland 20770

ATTN: EMILIENNE O'ROURKE

Re: Petitions for Special Exception and Zoning Variance
CASE NUMBER: 90-382-XA
Corner NE/S Sherwood Road, SE/S of Hollow Road
(426 Sherwood Road)
8th Election District - 3rd Councilmanic
Legal Owner(s): Joseph B. McMaster, et ux
Leesee/Petitioner: Southwestern Bell Mobile Systems, Inc., t/a Cellular One
HEARING: TUESDAY, APRIL 3, 1990 at 9:30 a.m.

Please be advised that $ 172.89 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.

Be advised that should you fail to return the sign & post set(s), there will be an additional $50.00 added to the above amount for each such set not returned.

Very truly yours,
J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

cc: G. Scott Barhight, Esq.

JRH:gs

MICROFILMED

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

April 5, 1990

*Dennis F. Rasmussen*
*County Executive*

Southwestern Bell Mobile Systems, Inc., t/a
Cellular One
7855 Walker Drive, Suite 100
Greenbelt, Maryland 20770

ATTN: EMILIENNE O'ROURKE

Re: Petitions for Special Exception and Zoning Variance
CASE NUMBER: 90-382-XA
Corner NE/S Sherwood Road, SE/S Hollow Road
(426 Sherwood Road)

Gentlemen:

Please be advised that $197.89* is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign and post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.

Be advised that should you fail to return the sign and post sets, there will be an additional $50.00 added to the above amount for each set not returned.

Very truly yours,
/s/
J. ROBERT HAINES
Zoning Commissioner

cc: G. Scott Barhight, Esq.

*Includes charges for the April 3, 1990 hearing date and the reporting charges rescheduled hearing.

MICROFILMED

WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 West Pennsylvania Avenue
Towson, MD 21204

HAND DELIVERY/PICK UP FORM

DATE: 8/24/90 FROM: Sandy Thomson /GSB FLOOR: 5
CLIENT/MATTER NO: 62330/00108
MESSENGER SERVICE BY:
DELIVERY TO BE ACCOMPLISHED BY: 11:00 A.M.
SUPPORT STAFF (WT&P) HAND: _____ PICK UP: X
NAME: Charlotte FLOOR/ROOM NO.: _____
FIRM: Office of Planning + Zoning BUILDING: County Office Bldg
ADDRESS: 111 W. Chesapeake Avenue
CITY: Towson STATE: MD ZIP: 21204
DESCRIPTION OF DELIVERY: LETTER ___ PACKAGE X OTHER: ___
SPECIAL INSTRUCTIONS: Pick up hearing tapes for Scott Barhight. Case No. 90-382. One clip envelope

MICROFILMED

RECEIPT NEEDED: YES ___ NO ___

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number № 3273

Date

90-382-XA

8/24/90 C9100496

| COPIES: | QTY | | PRICE |
|---|---|---|---|
| 780 -AUDIO TAPE | 06 | X | $15.00 |
| TOTAL: | | | $90.00 |

04A04#0047MICHRC $90.00
BA C008:57AM08-28-90

Please make checks payable to: Baltimore County

Cashier Validation:

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Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number № 2576

Date

V C9000383

| COPIES: | QTY | | PRICE |
|---|---|---|---|
| 780 -AUDIO TAPE | 02 | X | $15.00 |
| TOTAL: | | | $30.00 |

B B107******3000:a 3239F

Please make checks payable to: Baltimore County

Cashier Validation:

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Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number № 3903

Date

MICROFILMED

11/15/90 A9100027

| APPEAL FEES | QTY | | PRICE |
|---|---|---|---|
| 120 -OF A SPECIAL EXC. ORDER | 1 | X | $175.00 |
| 140 -OF ALL OTHER ORDERS | 1 | X | $125.00 |
| 150 -POSTING SIGNS / ADVERTISING | 1 | X | $25.00 |
| TOTAL: | | | $325.00 |

LAST NAME OF OWNER: MCMASTER

04A04#0021MICHRC $325.00
BA C003:25PM11-15-90

Please make checks payable to: Baltimore County NEXT BUSINESS DAY

Cashier Validation:

---

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number № 2555

Date

90-382-XA

B B107******3000:a 3239F

Please make checks payable to: Baltimore County

Cashier Validation:

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**CERTIFICATE OF POSTING**
**ZONING DEPARTMENT OF BALTIMORE COUNTY** 90-382-XA
**Towson, Maryland**

District 8th Date of Posting 11/2/90
Posted for: Appeal
Petitioner: Joseph B. McMaster, et ux
Location of property: NE/cor Sherwood Rd. & Hollow Rd.
2126 Sherwood Rd.
Location of Signs: Facing Sherwood Rd. approx. 25' Fm
roadway on property of P.D. Fields
Remarks:
Posted by [signature] Date of return: 11/20/90
Signature
Number of Signs: 4

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CASE NO. 92-CV-6036
IN THE MATTER OF JOSEPH B. MCMASTER, ET UX
-v-

RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS, BOARD'S RECORD EXTRACT & TRANSCRIPT FILED IN THE ABOVE-ENTITLED CASE, AND ZONING COMMISSIONER'S FILE & EXHIBITS.

[signature]
Clerk's Office

Date: 7/9/93

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Form CA4

**CIRCUIT COURT FOR BALTIMORE COUNTY**
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21285-6754

Irene Summers — 887-2660
Civil Assignment Commissioner

Kathy Rushton — 887-2660
Jury Assignments—Civil
General Settlement Conferences

— 887-2661
Non-Jury Assignments—Civil
Special Settlement Conferences

July 30, 1992

TO:

J. Carroll Holzer, Esq.

County Board of Appeals
of Balto. Co.

Office of Law

RECEIVED
JUL 31 1992
OFFICE OF LAW

RE: Non-Jury 92-CV-6036 Matter of Joseph B. McMaster

HEARING DATE: Friday, October 23, 1992, @ 9:30 a.m.

ON THE FOLLOWING: Appeal: 2 to 3 hours

Please see the below notations.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

If the above Hearing Date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 30 DAYS OF TRIAL should be directed to the attention of Irene Summers. POSTPONEMENTS WITHIN 30 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments-Joyce Grimm-887-3497.

SETTLEMENTS: If a settlement if reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

---

Form CA4

**CIRCUIT COURT FOR BALTIMORE COUNTY**
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21285-6754

Irene Summers — 887-2660
Civil Assignment Commissioner

Kathy Rushton — 887-2660
Jury Assignments—Civil
General Settlement Conferences

— 887-2661
Non-Jury Assignments—Civil
Special Settlement Conferences

July 30, 1992

TO:

J. Carroll Holzer, Esq.

County Board of Appeals
of Balto. Co.

Office of Law

RE: Non-Jury 92-CV-6036 Matter of Joseph B. McMaster

HEARING DATE: Friday, October 23, 1992, @ 9:30 a.m.

ON THE FOLLOWING: Appeal: 2 to 3 hours

Please see the below notations.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

If the above Hearing Date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 30 DAYS OF TRIAL should be directed to the attention of Irene Summers. POSTPONEMENTS WITHIN 30 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments-Joyce Grimm-887-3497.

SETTLEMENTS: If a settlement if reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

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*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

*Dennis F. Rasmussen*
*County Executive*

February 16, 1990

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petitions for Special Exception and Zoning Variance
CASE NUMBER: 90-382-XA
Corner NE/S Sherwood Road, SE/S of Hollow Road
(426 Sherwood Road)
8th Election District - 3rd Councilmanic
Legal Owner(s): Joseph B. McMaster, et ux
Lessee/Petitioner: Southwestern Bell Mobile Systems, Inc., t/a Cellular One
HEARING: TUESDAY, APRIL 3, 1990 at 9:30 a.m.

Special Exception for a wireless transmitting and receiving facility.
Variance to permit a setback to the nearest property line of 10 ft. in lieu of the required 300 ft.; to permit a lot area of .13 acres in lieu of the required 5 acres; to permit building setbacks of 12 ft., 7 ft., and 8 ft. respectively, in lieu of the required 50 ft.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. Robert Haines

J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

cc: Mr. & Mrs. McMaster
Southwestern Bell
G. Scott Barhight, Esq.

---

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

Hearing Room -
Room 301, County Office Bldg. April 24, 1991

**AMENDED NOTICE OF ASSIGNMENT**

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. MCMASTER, ET UX
NE/cor Sherwood & Hollow Rds.
(426 Sherwood Rd.)
8th Election District
3rd Councilmanic District

SE-Wireless transmitting/receiving structure;
SPH-to amend prior SE;
VAR-Setbacks/lot area

10/12/90 -Z.C.'s Order DENYING in part and dismissing in part.

which is scheduled to be heard on June 25, 1991 has been ASSIGNED two additional hearing days and will now be heard as follows:

DAY #1 ASSIGNED FOR: TUESDAY, JUNE 25, 1991 AT 10:00 a.m.

DAY #2 ASSIGNED FOR: TUESDAY, AUGUST 20, 1991 AT 10:00 a.m.

DAY #3 ASSIGNED FOR: WEDNESDAY, AUGUST 21, 1991 AT 10:00 a.m.

cc: G. Scott Barhight, Esquire Counsel for Petitioners/Appellants
Mr. and Mrs. Joseph McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Nancy C. West, Asst. County Attorney
Arnold Jablon, Chief Deputy County Attorney

LindaLee M. Kuszmaul
Legal Secretary

---

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

Hearing Room -
Room 301, County Office Bldg. June 26, 1991

**AMENDED NOTICE OF ASSIGNMENT**

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. MCMASTER, ET UX
NE/cor Sherwood & Hollow Rds.
(426 Sherwood Rd.)
8th Election District
3rd Councilmanic District

TIME CHANGE ONLY AS INDICATED AT 6/25/91 HEARING — SE-Wireless transmitting/receiving structure;
SPH-to amend prior SE;
VAR-Setbacks/lot area

(Cont.'d from 6/25/91)

10/12/90 -Z.C.'s Order DENYING in part and dismissing in part.

which was heard on June 25, 1991 has been REASSIGNED a new start time as discussed at said hearing for day nos. 2 and 3 as follows:

DAY #2 ASSIGNED FOR: TUESDAY, AUGUST 20, 1991 AT 9:00 a.m.

DAY #3 ASSIGNED FOR: WEDNESDAY, AUGUST 21, 1991 AT 9:00 a.m.

cc: G. Scott Barhight, Esquire Counsel for Petitioners/Appellants
Mr. and Mrs. Joseph McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
P. David Fields
Pat Keller
J. Robert Haines
Deputy Zoning Commissioner
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning

LindaLee M. Kuszmaul
Legal Secretary

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

Hearing Room -
Room 301, County Office Bldg. August 13, 1991

NOTICE OF REMOVAL FROM ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. MCMASTER, ET UX
NE/cor Sherwood & Hollow Rds.
(426 Sherwood Rd.)
8th Election District
3rd Councilmanic District

SE-Wireless transmitting/receiving structure;
SPH-to amend prior SE;
VAR-Setbacks/lot area

10/12/90 -Z.C.'s Order DENYING in part and dismissing in part.

The purpose of this Notice is to inform Counsel and all other interested parties in these proceedings that the above-captioned matter scheduled for hearing on August 20 and and August 21, 1991 has been removed from the hearing assignment. This matter will not proceed on the above dates.

cc: G. Scott Barhight, Esquire Counsel for Petitioners/Appellants
Mr. and Mrs. Joseph McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
P. David Fields
Pat Keller
J. Robert Haines
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of
Zoning Administration

Kathleen C. Weidenhammer
Administrative Assistant

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

Hearing Room -
Room 301, County Office Bldg. August 21, 1991

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. MCMASTER, ET UX
NE/cor Sherwood & Hollow Rds.
(426 Sherwood Rd.)
8th Election District
3rd Councilmanic District

SE-Wireless transmitting/receiving structure;
SPH-to amend prior SE;
VAR-Setbacks/lot area

10/12/90 -Z.C.'s Order DENYING in part and dismissing in part.

ASSIGNED FOR: WEDNESDAY, NOVEMBER 13, 1991 AT 9:00 AM TO 4:00 PM
THURSDAY, NOVEMBER 14, 1991 AT 9:00 AM TO 4:00 PM
TUESDAY, NOVEMBER 19, 1991 AT 9:00 AM TO 4:00 PM
WEDNESDAY, NOVEMBER 20, 1991 AT 9:00 AM TO 4:00 PM
(OR UNTIL CONCLUDED)

cc: G. Scott Barhight, Esquire Counsel for Petitioners/Appellants
Mr. and Mrs. Joseph McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
P. David Fields
Pat Keller
J. Robert Haines
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of
Zoning Administration
Ms. Sarah Adams - Added to file 8/22/91

LindaLee M. Kuszmaul
Legal Secretary

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

Hearing Room -
Room 301, County Office Bldg. September 11, 1991

** REVISED NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. MCMASTER, ET UX, NE/cor Sherwood & Hollow Rds. (426 Sherwood Rd.) 8th E; 3rd C

** REVISED NOTICE TO INCLUDE DAY #5 — SE-Wireless transmitting/receiving structure; SPH-to amend prior SE; VAR-Setbacks/lot area

10/12/90 -Z.C.'s Order DENYING in part and dismissing in part.

ASSIGNED FOR: WEDNESDAY, NOVEMBER 13, 1991 AT 9:00 AM TO 4:00 PM
THURSDAY, NOVEMBER 14, 1991 AT 9:00 AM TO 4:00 PM
TUESDAY, NOVEMBER 19, 1991 AT 9:00 AM TO 4:00 PM
WEDNESDAY, NOVEMBER 20, 1991 AT 9:00 AM TO 4:00 PM
WEDNESDAY, FEBRUARY 5, 1992 AT 9:00 AM TO 4:00 PM
(OR UNTIL CONCLUDED)

cc: G. Scott Barhight, Esquire Counsel for Petitioners/Appellants
Mr. and Mrs. Joseph McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
Ms. Sarah Adams
P. David Fields
Pat Keller
J. Robert Haines
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of
Zoning Administration

10/7/91 - Day #1 omitted at req. of Counsel for Protestants

LindaLee M. Kuszmaul
Legal Secretary

4/25/91

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

Hearing Room -
Room 301, County Office Bldg. October 17, 1991

** REVISED NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. MCMASTER, ET UX, NE/cor Sherwood & Hollow Rds. (426 Sherwood Rd.) 8th E; 3rd C

** REVISED NOTICE TO OMIT 11/13/91 DATE — SE-Wireless transmitting/receiving structure; SPH-to amend prior SE; VAR-Setbacks/lot area

10/12/90 -Z.C.'s Order DENYING in part and dismissing in part.

which was scheduled for November 13, 1991 (Day #1) will now be heard on the previous Day Nos. 2 through 5 as Day Nos. 1 through 4 at the request of Counsel for Protestants due to a Court of Special Appeals conflict

ASSIGNED FOR: THURSDAY, NOVEMBER 14, 1991 AT 9:00 AM TO 4:00 PM
TUESDAY, NOVEMBER 19, 1991 AT 9:00 AM TO 4:00 PM
WEDNESDAY, NOVEMBER 20, 1991 AT 9:00 AM TO 4:00 PM
WEDNESDAY, FEBRUARY 5, 1992 AT 9:00 AM TO 4:00 PM
(OR UNTIL CONCLUDED)

cc: G. Scott Barhight, Esquire Counsel for Petitioners/Appellants
Mr. and Mrs. Joseph McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
Ms. Sarah Adams
P. David Fields
Pat Keller
Lawrence E. Schmidt
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Director of
Zoning Administration

LindaLee M. Kuszmaul
Legal Secretary

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

DEC 20 1990

Hearing Room -
Room 301, County Office Bldg. December 17, 1990

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). nO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. McMASTER, ET UX
NE/cor Sherwood & Hollow Rds.
(426 Sherwood Road)
8th Election District
3rd Councilmanic District

SE-Wireless transmitting/receiving structure;
SPH-to amend prior SE;
VAR-Setbacks/lot area

ASSIGNED FOR: TUESDAY, JUNE 25, 1991 at 10:00 a.m.

cc: G. Scott Barhight, Esquire-Counsel for Petitioners/Appellants
Mr. Joseph B. McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
People's Counsel for Baltimore County
P. David Fields
Pat Keller
Public Services
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

No

LindaLee M. Kuszmaul
Legal Secretary

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

Hearing Room -
Room 301, County Office Bldg. December 17, 1990

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). nO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 90-382-XA — JOSEPH B. McMASTER, ET UX
NE/cor Sherwood & Hollow Rds.
(426 Sherwood Road)
8th Election District
3rd Councilmanic District

4/24/91 Amended Notice sent for 273 days

SE-Wireless transmitting/receiving structure;
SPH-to amend prior SE;
VAR-Setbacks/lot area

ASSIGNED FOR: TUESDAY, JUNE 25, 1991 at 10:00 a.m.

cc: G. Scott Barhight, Esquire-Counsel for Petitioners/Appellants
Mr. Joseph B. McMaster " "
Emilienne O'Rourke - Southwestern
Bell Mobile Systems, Inc.
J. Carroll Holzer, Esquire
~~People's Counsel for Baltimore County~~ out per Shirley Hess 1/25/91
P. David Fields
Pat Keller
~~Public Services~~ out per Paula 1/2/91
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

LindaLee M. Kuszmaul
Legal Secretary

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

*Dennis F. Rasmussen*
*County Executive*

March 22, 1990

G. Scott Barhight, Esquire
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Item No. 242, Case No. 90-382-XA
Petitioner: Joseph B. McMaster, et ux
Petition for Special Exception and
Zoning Variance

Dear Mr. Barhight:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,
James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: Mr. & Mrs. Jospeh B. McMaster
Southwestern Bell Mobile Systems, Inc.

*Baltimore County*
*Zoning Commissioner*
*Office of Planning & Zoning*
*Towson, Maryland 21204*
*(301) 887-3353*

*J. Robert Haines*
*Zoning Commissioner*

*Dennis F. Rasmussen*
*County Executive*

Your petition has been received and accepted for filing this

21st day of February, 1989.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Received By:
James E. Dyer
Chairman,
Zoning Plans Advisory Committee

Petitioner: Joseph B.McMaster, et ux

Petitioner's Attorney: G. Scott Barhight

MICROFILMED

COPY

LAW OFFICES

WHITEFORD, TAYLOR & PRESTON

SUITE 1600
SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202
TELEPHONE 410-347-8700
FAX 410-752-7092

500 COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410-832-2000
FAX 410-832-2015

SUITE 800
888 17TH STREET, NW
WASHINGTON, D.C. 20006-3939
TELEPHONE 202 659-6800
FAX 202 331-0573

1101 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703-836-5742
FAX 703-836-0265

NATALIE C. MAGDEBURGER
DIRECT NUMBER
410-832-2024

July 21, 1992

Suzanne Mensh, Clerk
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, MD 21204

RE: Appeal of Sherwood Hill Improvement Association
Case No. 26/147/92-CV-6036

Dear Madame Clerk:

Enclosed please find an Answer to Petition on Appeal to be filed on behalf of the Appellees in the above-captioned matter.

Thank you for your assistance in this matter.

Very truly yours,

Karl J. Nelson

KJN/kat
Enclosure
cc: J. Carroll Holzer, Esquire (with enclosure)
County Board of Appeals (with enclosure)

FILED
92 JUL 22 PM 3:00

7-7-92

| | | |
|---|---|---|
| IN THE MATTER OF THE APPLICATION OF JOSEPH B. McMASTER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCES ON PROPERTY LOCATED ON THE NORTHEAST CORNER OF SHERWOOD AND HOLLOW ROADS (426 SHERWOOD ROAD) 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT | * | IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CG Doc. No. 26 Folio No. 147 File No. 92-CV-6036 |
| SHERWOOD HILL IMPROVEMENT ASSOCIATION, ET AL, PLAINTIFFS | * | |

* * * * * * * * * * * * * *

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Michael B. Sauer, Judson H. Lipowitz and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Office of the Zoning Commissioner and the Board of Appeals of Baltimore County:

No. 90-382-XA

| | |
|---|---|
| February 21, 1990 | Petition for Special Exception for a wireless transmitting and receiving facility filed by G. Scott Barhight, Esquire on behalf of Mr. and Mrs. McMaster. Petition for Variances as to property line setbacks, building setbacks and lot area also filed. |
| March 8 | Publications in newspapers. |
| March 22 | Comments of Baltimore County Zoning Plans Advisory Committee. |
| April 6 | Certificate of Posting of property - new hearing date. |
| | Hearing held on Petition by the Zoning Commissioner subsequent to postponement of hearing originally scheduled for April 3, 1990. |



| | |
|---|---|
| October 12, 1990 | Order of the Zoning Commissioner DENYING Peittion for Special Exception and DISMISSING Petition for Variances as moot. |
| November 13 | Notice of Appeal received from G. Scott Barhight, Esquire on behalf of Petitioners. |
| June 25, 1991 | Motion to Separate Issues filed by J. Carroll Holzer, Esquire on behalf of Protestants. |
| November 14 | Hearing before the Board of Appeals. |
| November 19 | Continued hearing before the Board of Appeals. |
| November 20 | Hearing concluded before the Board of Appeals. |
| December 30 | Memorandum in Support of Appellants' Petitions for Special Exception and Variances filed by G. Scott Barhight, Esquire and Karl J. Nelson, Esquire on behalf of Petitioners/Appellants. |
| December 30 | Protestants Memorandum filed by J. Carroll Holzer, Esquire. |
| May 28, 1992 | Opinion and Order of the Board GRANTING Petition for Special Exception with restrictions and GRANTING requested Variances. |
| June 25 | Order for Appeal filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire on behalf of Protestants. Petition to accompany appeal also filed in the Circuit Court for Baltimore County by Mr. Holzer. |
| June 30 | Certificate of Notice sent to interested parties. |
| July 9 | Transcript of testimony filed. |

Petitioners' Exhibit No.
1 -Plat of site 11/14/89.
2 -Aerial Photo of McMaster farm
3 -Cellular One service area
4 -Five transparency overlays of Towson, N. Balto. County area 1" = 1 mile
5-Map 9/10/87 of Search area for calls
6-Map 3/89 of Search area for calls
7-Four Cell Pattern of reuse
8-Grid of Service area map of B a l t o . C o .
9-Proposed Monopole location map
10-Cellular One Booklet p.6, Nos. 1-5
11-Photo of a self-supporting tower



Petitioners' Exhibit No.
12-Photo of Monopole of 150' by Cell One
13-Real Property Lease Agreement - McMasters and Cellular One.
14-Agreement with McMasters as to restrictions.
15-A-D-Photos of crane lifting monopole and crane lifting pole from Bosley Avenue and across field.
16-Video tape of Loch Raven site area
17-Environ. Impact Assess. 7/16/90

Protestants' Exhibit No.
1 - Montview Improvement Assoc.
2 - Sherwood Hill Impr. Assoc.
3 - Sherwood Hill Assoc. Listing of opponents.
4 - A-Report of Office of Planning and Zoning 8/8/85
B-Office of Law report 5/85
C-Report of Balto. Co. Planning Board 7/18/85

July 9, 1992 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals office and upon request of the parties or the Court will be transmitted to the Court by whomever institutes the request.

Respectfully submitted,

Linda Lee M. Kuszmaul

LindaLee M. Kuszmaul, Legal Secretary,
County Board of Appeals, Room 49
400 Washington Avenue - Basement
Towson, Maryland 21204 (410) 887-3180

cc: J. Carroll Holzer, Esquire
Sherwood Hill Improvement Association, et al
G. Scott Barhight, Esquire
Mr. and Mrs. Joseph B. McMaster
Ms. Emilienne O'Rourke-Southwestern Bell Mobile Systems, Inc.

| | | |
|---|---|---|
| IN THE MATTER OF THE APPLICATION OF JOSEPH B. McMASTER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCES ON PROPERTY LOCATED ON THE NORTHEAST CORNER OF SHERWOOD AND HOLLOW ROADS (426 SHERWOOD ROAD) 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT | * | IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CG Doc. No. 26 Folio No. 147 File No. 92-CV-6036 |
| SHERWOOD HILL IMPROVEMENT ASSOCIATION, ET AL, PLAINTIFFS | * | |

* * * * * * * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Michael B. Sauer, Judson H. Lipowitz, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, J. Carroll Holzer, Esquire, Holzer, Maher, DeMilio & Lee, 305 W. Chesapeake Avenue, Suite 105, Towson, Maryland 21204, Counsel for Plaintiffs; Sherwood Hill Improvement Association, et al, c/o J. Carroll Holzer, Esquire, Holzer, Maher, DeMilio & Lee, 305 W. Chesapeake Avenue, Suite 105, Towson, Maryland 21204, Plaintiffs; G. Scott Barhight, Esquire, Whiteford, Taylor and Preston, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204-4515, Counsel for Defendants; Mr. and Mrs. Joseph B. McMaster, 426 Sherwood Road, Cockeysville, Maryland 21030, Defendants; Ms. Emilienne O'Rourke - Southwestern Bell Mobile Systems, Inc., 7855 Walker Drive, Suite 100, Greenbelt, Maryland 20770, Contract Lessee; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.



Linda Lee M. Kuszmaul

LindaLee M. Kuszmaul, Legal Secretary,
County Board of Appeals, Room 49, Old Courthouse, 400 Washington Avenue,
Towson, Maryland 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to J. Carroll Holzer, Esquire, Holzer, Maher, DeMilio & Lee, 305 W. Chesapeake Avenue, Suite 105, Towson, Maryland 21204, Counsel for Plaintiffs; Sherwood Hill Improvement Association, et al, c/o J. Carroll Holzer, Esquire, Holzer, Maher, DeMilio & Lee, 305 W. Chesapeake Avenue, Suite 105, Towson, Maryland 21204, Plaintiffs; G. Scott Barhight, Esquire, Whiteford, Taylor and Preston, 500 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204-4515, Counsel for Defendants; Mr. and Mrs. Joseph B. McMaster, 426 Sherwood Road, Cockeysville, Maryland 21030, Defendants; Ms. Emilienne O'Rourke - Southwestern Bell Mobile Systems, Inc., 7855 Walker Drive, Suite 100, Greenbelt, Maryland 20770, Contract Lessee; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 49, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 on this 30th day of June, 1992.

Linda Lee M. Kuszmaul

LindaLee M. Kuszmaul, Legal Secretary,
County Board of Appeals, Room 49, Old Courthouse, 400 Washington Avenue,
Towson, Maryland 21204 (410) 887-3180

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

June 30, 1992

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, Maryland 21204-4515

Re: Case No. 90-382-XA (Joseph B. McMaster, et ux)

Dear Mr. Barhight:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda Lee M. Kuszmaul

LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: Mr. and Mrs. Joseph B. McMaster
Ms. Emilienne O'Rourke - Southwestern Bell Mobile Systems, Inc.
Ms. Sarah Adams
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr.
Docket Clerk -Zoning
Arnold Jablon, Director of Zoning Administration

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

June 30, 1992

J. Carroll Holzer, Esquire
HOLZER, MAHER & DEMILIO
305 W. Chesapeake Avenue
Suite 105
Towson, Maryland 21204

Re: Case No. 90-382-XA (Joseph B. McMaster, et ux)

Dear Mr. Holzer:

In accordance with Rule B-7(a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within thirty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you file in Court, in accordance with Rule B-7(a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Linda Lee M. Kuszmaul

LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: Sherwood Hill Improvement Association, et al