3/31/98

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY *

PETITION OF AT&T WIRELESS SERVICES *
11710 Beltsville Drive *
Beltsville, Maryland 20705 *

FOR JUDICIAL REVIEW OF THE DECISION OF CIVIL
THE COUNTY BOARD OF APPEALS * ACTION
OF BALTIMORE COUNTY No. 3-C-98-02951
Room 49, Old Courthouse, 400 Washington- *
ton Avenue, Towson, MD 21204 *

IN THE CASE OF: IN THE MATTER *
HENRY M. WITMYER, ET UX, LEGAL OWNER *
AT&T WIRELESS SERVICES, LESSEE
FOR A SPECIAL EXCEPTION AND VARIANCE *
ON PROPERTY LOCATED ON THE NORTHWEST
END GREENWOOD PLACE, 525' NW OF OLD *
COURT ROAD, SW//S WESTERN MARYLAND
RAILROAD (7 GREENWOOD PLACE) *
3RD ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT *

CASE NO. 97-556-XA *

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

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PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Kristine K. Howanski, Donna M. Felling, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review 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 Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY

No. 97-556-XA

June 13, 1997	Petitions for Special Exception and Variance filed by S. Leonard Rottman, Esquire, for Henry W. Witmyer, et ux - Legal Owners and AT&T Wireless Services - Lessee; SE /for a wireless transmitting and receiving facility not permitted in an M.L. zone; and VAR /to permit a principal structure as close as 3 feet to the rear lot line rather than the required 30 feet and to amend previously approved site plan in zoning case #64-126-A.
July 1	Certificate of Posting.
July 14	ZAC Comments.
July 16	Hearing held on Petition by the Zoning Commissioner.
August 8	Order of the Zoning Commissioner in which Petition for Special Exception was GRANTED; and Petition for Variance was GRANTED with restrictions.
August 28	Motion for Reconsideration filed by Betty McDaniels, President of Gwynnvale Association.
September 4	Response letter from Larry Schmidt, Zoning Commissioner; points raised in 8/28/98 letter/Motion were considered; declined to order a rehearing; advised to file an appeal.
September 5	Order for Appeal filed by Nancy E. Paige, Esquire and Michael E. Marino, Esquire, on behalf of Protestants.
September 5	Amended Order for Appeal filed by Nancy E. Paige, Esquire, and Michael E. Marino, Esquire; to add contact names and addresses of Protestants.
December 2	Hearing before the Board of Appeals.
January 23, 1998	Petitioner's Memorandum of Law in Support of its application for Special Exception filed by Paul A. Dorf, Russell G. Alion, Jr., F. Kirk Kolodner and ADELBERG, RUDOW, DORF, HENDLER & SAMETH, LLC, on behalf of AT&T Wireless Services, Inc.
January 23	Memorandum of People's Counsel for Baltimore County filed by Peter Max Zimmerman and Carole S. Demilio.

January 23, 1998	Proposed Findings of Fact and Memorandum of Law filed by Michael E. Marino, Esquire, on behalf of Brittany Properties, Protestant /Appellant.
February 10	Deliberation conducted by the Board.
February 24	Opinion and Order issued by the Board; Petition for Special Exception is DENIED; AND Petition for Variance is DENIED.
March 25	Petition for Judicial Review and **Motion to Shorten Time*** filed in the Circuit Court for Baltimore County by Paul A. Dorf, Esquire, and ADELBERG, RUDOW, DORF, HENDLER & SAMETH, LLC, on behalf of AT&T Wireless Services, Petitioner. ***(Judge Alfred Brennan, Sr. granted Motion to Shorten Time; County Board of Appeals shall transmit the record of proceedings to the Circuit Court within seven (7) days of the date of this Order -- due date: April 1, 1998).**
March 25	Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.
March 25	Certificate of Notice sent to interested parties.

Petitioner's Exhibit Nos.
1-Drive-Test Plat (current state)
2-Map of Search Ring
2A-Overlay of Exh. #1
3-Projected Coverage Map of Sites (circled) **LARGE - IN CBA CLOSET**
4-Site Plan (under protest)
5-Building Permit & Spiral Booklet

Protestant's Exhibit No.
1-Proposed playground site
2-Equipment Order form (Wm. H. Hope Assoc.)
3A-Photo - Entry view of Witmyer Property
3B-Photo - Entry view of Witmyer Property
3C-Photo - Entry view of Witmyer Property
3D-NE/corner of building near RR track
3E-View from RR track to area of pole

(Protestant's Exhibits Continued)	3F-View from RR embankment to W area of building 3G-View down RR track to building site 4-CRG Plan of Woodlawn 5A-F -Photos of AT&T balloon over site
March 31, 1998	Transcript of testimony filed.
March 31, 1998	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,

Charlotte E. Radcliffe

Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals of Baltimore County, Room 49, Basement - Old Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-3180

cc: Paul A. Dorf, Esquire
Nancy E. Paige, Esquire
Michael E. Marino, Esquire
People's Counsel for Baltimore County
Virginia W. Barnhart, County Attorney

1/24/00

97-556-XA /AT&T & H & H Witmyer
CCT [redacted] FIRMS the CBA decision
1/24/00 (Robert E. Cahill, Sr.)

IN THE MATTER OF	*	IN THE
AT&T WIRELESS SERVICES, et al	*	CIRCUIT COURT
Petitioner	*	FOR
	*	BALTIMORE COUNTY
	*	Case No. 03-C-98-002951

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

MEMORANDUM DECISION

In this case, a four-page opinion of the Board of Appeals denying separate Petitions of property owner-lessors (the Witmyers) and their lessee, AT&T Wireless Services (AT&T), for a special exception and a set back variance has spawned legal memoranda totaling just over 100 pages, exclusive of attachments.

Dealing with the sheer volume of the legal arguments opposing and supporting the relatively straightforward decision of the Board was made more difficult by AT&T, at the beginning of its Memorandum, presenting seven questions, numbered 1 through 7, but setting forth its arguments under five roman numerals, the first of which, I, relates to question 7, whereas the last, also titled I, deals with question 1. The Respondents responded in kind by framing their own issues and arguments under headings that are not the same as either the questions or the arguments of AT&T.

It also is worthy to note that this case will have little, if any, precedential value since it involves the location of a wireless telecommunications tower under a regulation, §426 of the BCZR, that was repealed and reenacted with sweeping changes five weeks after the Board signed the Order from which this appeal was

taken.

In June, 1997, AT&T and the Witmyers jointly petitioned for a special exception. They requested authorization to use the Witmyers' ML Zone property for the installation of "a Wireless Transmitting and Receiving Facility not permitted by §426.1 in an ML Zone" because of the proximity of the proposed tower's location to the nearest boundary of a residential zone. They simultaneously petitioned for a variance under §255.1 of the BCZR "to permit a principal structure [to be] as close as three feet to the rear lot line rather than the thirty feet" in light of the "exceptional narrowness and shallowness of the subject property."

Why AT&T found it necessary to file two petitions, each relating to a distance-driven problem, is not easily explained - even by those who deal with zoning matters on a daily basis. However, the Zoning Commissioner, in his opinion, outlined the then existing regulatory scheme that mandated that AT&T proceed as it did.

In 1997, a wireless tower less than 200 feet in height could be erected in an ML Zone as a matter of right, subject to three restrictions, the second of which required a minimum setback of 200 feet "from any boundary of a residential or R-Ozone". BCZR, §426.1B. The location chosen by AT&T and the landlord was considerably less than 200 feet from a residential boundary. AT&T could not seek a variance to waive this "distance" restriction, because §253.2D2 of the BCZR declared that the "use" of property for a tower less than 200 feet from a residential boundary would

be permitted "only" by special exception. This brought into play the additional requirement that the zoning authorities apply the principles and conditions listed in §502.1 before granting any special exception.

The variance was needed because the tower was to be erected three feet from the rear boundary of the triangular-shaped property. This would violate the area regulations for the ML Zone, which were the same as those for "buildings" other than residences in the BR Zone, namely, 30 feet from the property lines of side and rear yards. BCZR §§255.1 and 238.2.

The Zoning Commissioner decided that AT&T was entitled to the special exception and the variance. In explaining the basis for his decision on the variance he said:

> Uniqueness here is based upon the unusual configuration of the property, specifically, its triangular shape and decreasing width from the front property line to the rear property line. The width of the property at its greatest point is less than 200 ft., thereby supporting a finding of practical difficulty. That is, there is no single place on the site where a 200 ft. setback could be maintained. Moreover, as set forth above, I do not believe that the proposed relief will cause detrimental impacts on surrounding properties.
>
> (F/F p.7)

In other words, he found that the "practical difficulty" to justify granting the set back variance was the fact that no portion of the piece of property could be leased as a tower

location due to the 200 foot restriction in §426.1.[1]

The Board conducted a de novo hearing and disagreed with the Zoning Commissioner as to AT&T's entitlement to either the special exception or the variance. The Board's legal reasoning with respect to the special exception is based primarily upon a misinterpretation of the holding in *Umerley v. Peoples Counsel*, 108 Md. App. 497, cert. denied, 342 Md. 584 (1996). The Board felt "constrained" to deny the special exception because "insofar as it is coupled with a variance request, [it] is violative as a matter of law of *Umerley*." (Op.p.3). That legal conclusion is incorrect.

In *Umerley*, the property owners filed for a special exception, and because they could not meet certain conditions for the special exception, also filed for variances from those conditions. When the Court upheld the denial of the variances for lack of proof that the property was unique, it necessarily followed that a special exception dependant upon obtaining that variance relief could not be granted.

In this case, the factual predicate for requesting the variance had nothing to do with AT&T's inability to meet the 200 foot restriction in §426.1. Therefore, the denial of the variance did not *ipso facto* bar AT&T's right to a special exception. That would be the end result, however, if the Board's decision denying the variance is sustained on appeal.

---

[1] That is a practical difficulty of the landlord and the tenant - not of the land itself.

AT&T took inconsistent positions regarding the variance in the post-hearing Memorandum it submitted to the Board and in this appeal. It argued to the Board that the variance was unnecessary because the rear set back requirement only applied to buildings and its tower was a structure - not a building. The Board did not discuss this argument in its opinion other than to state, in the first paragraph, that "the variance is necessary in order to obtain relief from the rear lot setback requirements". Construing that to be an implied rejection of the contention, this court concurs. AT&T never withdrew or amended its petition for the rear set back variance and continues to argue for it here. Therefore, this court accepts the statutory analysis and legal argument on pages 5 to 10 of the Memorandum of People's Counsel as dispositive of the "structure" contention.

AT&T changed the basis for contending that a rear set back variance was not needed in responding to a letter from the attorney for the Pine Ridge Association, one of the protestants. Ms. Paige had written to the undersigned after the hearing to further explain her oral argument that AT&T did need the variance. Counsel for AT&T, at page four of his letter-response, stated:

> More importantly, if the Court were to accept Ms. Paige's interpretation of the BCZR, AT&T still would not need a variance to construct the Tower. AT&T does not intend to construct the Tower in the unoccupied and unobstructed open space (or the "yard") between the rear building line and the rear property line (or the "rear yard") because there is only 3 feet between the

> rear of the building and the rear property line. *See* AT&T's Site Plan. Clearly, the Tower would not fit in this 3 foot space. Instead, the Tower will be built adjacent to the side of the existing building. In other words, it will be built in the "side yard." The Tower will not be built in the "front yard" or the "rear yard," as the term "yard" is defined by §101 of the BCZR. Accordingly, only the "side yard" setback requirement would need to be satisfied. In other words, the only open space or "yard" upon which the Tower would occupy or obstruct is the "side yard."

Comparing this statement to the following averments in footnote 13 in the Memorandum AT&T filed with the Board, clearly shows that AT&T failed to exhaust its administrative remedy in this instance by not presenting this correlative argument to the Board:

> 13 The Petitioner, here, does not need to obtain a variance from the front and side yard setback requirements to §243 because the property already has been granted variance relief with regard to those setback requirements. In 1964, the Zoning Commissioner granted a variance to permit a front building line of 25 feet instead of the required 75 feet and to permit a side yard of 30 feet instead of the required 50 feet. Because of this, Petitioner, here, only requires a variance of the rear yard setback requirement.
>
> (Mem.p.33; emphasis supplied)

The scope of review in this court is limited by the facts and issues presented to the Board. If AT&T changed its mind as to the location of its tower after the Board decided the case, AT&T must start the zoning process anew.

The Board's findings and conclusions with respect to the

variance are set forth in just three paragraphs of its opinion.

> Turning to the variance request, Section 307.1 of the BCZR coupled with Cromwell v. Ward, 102 Md.App. 691, 651 A.2d 424 (1995) and its progeny set the standard for the granting of variances. Prior to assessing the variance itself, this Board must find both that the property itself is somehow unique and that an unreasonable hardship or practical difficulty arises as a result thereof. Moreover, the practical difficulty cannot be self-imposed. Satisfying that, parties then must go on to demonstrate that the variances are in strict harmony with the spirit and intent of the various regulations and do not result in damage to the public.
>
> While Mitchell Kellman did testify to the uniqueness of the property by virtue of the fact that it was quite narrow and triangular and that previous variances were granted thereon, his testimony with respect to the erection of the tower in question, however, was belied by his own admission that the tower could be located elsewhere on the property without requesting a variance.
>
> Equally significant is the dearth of evidence of practical difficulty or unreasonable hardship. The property is fully developed and is being used for light manufacturing and thus does not present as a situation in which the owner has been precluded from using the property. More importantly, the evidence was that the need for the variance was entirely self-imposed. That is, the existence of the building and/or Mr. Witmyer's imposition of the requirement that the tower be located at the requested location artificially have created the need for the variance, and thus violate Cromwell's predisposition against self-inflicted hardships.
>
> (Op.3-4)

Summarizing the above, the Board denied the variance for two

reasons. They found from the evidence that the property itself was not unique and that AT&T and the Witmyers had failed to show the practical difficulty or unreasonable hardship that necessiated placing the tower three feet from the rear property line. The Board also concluded that if there was a hardship, it was of the petitioners' own making and could have been obviated. If the evidence before the Board as to these criteria for obtaining a variance created factual disputes that were fairly debatable, the decision of the Board must be affirmed.

This Court, like the Board, will be guided by Judge Cathell's exhaustive analysis of the Maryland and out-of-state variance cases that led him to note in *Cromwell v. Ward*, 102 Md. App. 691, 711 (1995) that:

> One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. * * * All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago.

And, to conclude that:

> ...nowhere in these five cases, or any others, has the Court of Appeals ever changed the Maryland rule relating to uniqueness and peculiarity of the subject property.
>
> Cases from other jurisdictions are generally in accord.

The *Cromwell* decision also included a specific holding that:

...practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted." 102 Md. App. at 722.

The witness referred to by the Board, Mitchell Kellman, was called by the Petitioners and offered as an expert in the field of zoning (T.61). He based his opinion that the property is unique on its triangular shape and the fact that the zoning authorities granted setback variances to Mr. Witmyer in 1964 to permit him to enlarge the building that now occupies most of the property.

The facts that justified granting variances based upon a finding of uniqueness in 1964 no longer were relevant. The Witmyers and AT&T were asking the Board to approve a new use of the property. The Board correctly concluded that its triangular shape was not unique as to that use since Mr. Kellman admitted that the tower could be placed elsewhere on the property and still comply with the setback requirements. Also, by choosing to place the tower three feet from the rear boundary, and only there, the Petitioners created an artificial hardship that would not have existed otherwise.

Lastly, this court rejects AT&T's argument that the federal statute known as the Telecommunications Act "mandates" the entry of an order that would compel the Board to grant the petition for special exception. Not only did the Board deny the special exception on procedural grounds, it also explained why it would have denied it on the merits and its findings are supported by

the record.

For the reasons stated, the decision of the Board is AFFIRMED.

Date: January 24, 2000

Robert E. Cashill Jr.
Judge

Copies sent to:

Paul A. Dorf, Esq.

Peter Max Zimmerman, Esq.
Carole S. Demilio, Esq.

Michael E. Marino, Esq.

Nancy E. Paige, Esq.

Courtesy copy:
Board of Appeals

7/25/90

PETITION OF:	*	IN THE
AT&T WIRELESS SERVICES 11710 Beltsville Drive Beltsville, Maryland 20705	*	CIRCUIT COURT
Petitioner	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse, Room 49 400 Washington Avenue Towson, Maryland 21204	*	FOR BALTIMORE COUNTY,
IN THE CASE OF:	*	
IN RE: HENRY M. WITMYER, *ET UX*, Legal Owners; AT&T WIRELESS SERVICES, Lessee Case No. 97-556-XA	*	MARYLAND Civil Action No. 03-C-98-2951

* * * *

Petitioner was a party to the proceeding before the Board in which the Opinion and Order was issued.

PAUL A. DORF
Adelberg, Rudow, Dorf, Hendler & Sameth, LLC
600 Mercantile Bank & Trust Bldg.
2 Hopkins Plaza
Baltimore, Maryland 21201
(410) 539-5195

Attorneys for Petitioner,
AT&T WIRELESS SERVICES

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of March, 1998, a copy of the foregoing Petition for Judicial Review was mailed to:

Carole S. Demilio, Esq.
Office of the People's Counsel for Baltimore County
Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204
Attorney for People's Counsel for Baltimore County

Michael Edward Marino, Esq.
609 Bosley Avenue
Towson, Maryland 21204
Attorney for Brittany Properties, Protestant

Nancy E. Paige, Esq.
Gordon, Feinblatt, et al.
233 E. Redwood Street
Baltimore, Maryland 21202
Attorney for Pine Ridge Association, Protestant

PAUL A. DORF

3/25/98

PETITION OF:	*	IN THE
AT&T WIRELESS SERVICES 11710 Beltsville Drive Beltsville, Maryland 20705	*	CIRCUIT COURT
Petitioner	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse, Room 49 400 Washington Avenue Towson, Maryland 21204	*	FOR
	*	
	*	BALTIMORE COUNTY,
IN THE CASE OF:	*	
	*	MARYLAND
IN RE: HENRY M. WITMYER, *ET UX*, Legal Owners; AT&T WIRELESS SERVICES, Lessee Case No. 97-556-XA	*	Civil Action No. 03-C-98-2951
	*	

* * * *

ORDERED, that Petitioner shall file its Rule 7-207 Memorandum within fifteen (15) days after the Clerk of the Court sends notice of the filing of the record; and it is further

ORDERED, that all interested parties shall file their Rule 7-207 Answering Memorandums within fifteen (15) days after service of Petitioner's Memorandum; and it is further

ORDERED, that Petitioner may file a Rule 7-207 Reply Memorandum within seven (7) days after service of any Answering Memorandum; and it is further

ORDERED, that this matter shall be set in for a hearing on the merits within sixty (60) days from the date the record is filed with the Clerk of the Court.

Alfred L. Brennan Jr.
JUDGE, Circuit Court for Baltimore County

True Copy Test
SUZANNE MENSH, Clerk
Mary B Rao
Assistant Clerk

3/25/98

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF AT&T WIRELESS SERVICES *
11710 Beltsville Drive
Beltsville, Maryland 20705

FOR JUDICIAL REVIEW OF THE DECISION OF * CIVIL
THE COUNTY BOARD OF APPEALS ACTION
OF BALTIMORE COUNTY * No. 3-C-98-02951
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204 *

IN THE CASE OF: IN THE MATTER *
HENRY M. WITMYER, ET UX, LEGAL OWNER
AT&T WIRELESS SERVICES, LESSEE *
FOR A SPECIAL EXCEPTION AND VARIANCE
ON PROPERTY LOCATED ON THE NORTHWEST *
END GREENWOOD PLACE, 525' NW OF OLD
COURT ROAD, SW//S WESTERN MARYLAND *
RAILROAD (7 GREENWOOD PLACE)
3RD ELECTION DISTRICT *
2ND COUNCILMANIC DISTRICT

CASE NO. 97-556-XA

RECEIVED AND FILED
98 MAR 25 PM 2:55
CLERK OF THE CIRCUIT COURT

* * * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Kristine K. Howanski, Donna M. Felling, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Paul A. Dorf, Esquire, and ADELBERG, RUDOW, DORF, HENDLER & SAMETH, LLC, 600 Mercantile Bank & Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201, Counsel for Petitioner; AT&T Wireless Services, 11710 Beltsville Drive, Beltsville, Maryland 20705, Petitioner; Michael E. Marino, Esquire, LEVY & MARINO, P.A., 609 Bosley Avenue, Towson, Maryland 21204, Counsel for Brittany Properties, Protestants; Nancy E. Paige, Esquire, GORDON, FEINBLATT, ROTHMAN, HOFFBERGER & HOLLANDER, 233 E. Redwood Street, Baltimore, Maryland 21202, Counsel for Pine Ridge Association, Inc., Protestants; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, MD 21204; a copy of which Notice is attached hereto

and prayed that it may be made a part hereof.

Charlotte E Radcliffe

Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Paul A. Dorf, Esquire, and ADELBERG, RUDOW, DORF, HENDLER & SAMETH, LLC, 600 Mercantile Bank & Trust Building, 2 Hopkins Plaza, Baltimore, Maryland 21201, Counsel for Petitioner; AT&T Wireless Services, 11710 Beltsville Drive, Beltsville, Maryland 20705, Petitioner; Michael E. Marino, Esquire, LEVY & MARINO, P.A., 609 Bosley Avenue, Towson, Maryland 21204, Counsel for Brittany Properties, Protestants; Nancy E. Paige, Esquire, GORDON, FEINBLATT, ROTHMAN, HOFFBERGER & HOLLANDER, 233 E. Redwood Street, Baltimore, Maryland 21202, Counsel for Pine Ridge Association, Inc., Protestants; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204, this 25th day of March, 1998.

Charlotte E. Radcliffe

Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

March 25, 1998

Paul A. Dorf, Esquire
ADELBERG, RUDOW, DORF,
HENDLER & SAMETH, LLC
600 Mercantile Bank & Trust Bldg.
2 Hopkins Plaza
Baltimore, MD 21201

RE: Civil Action No. 3-C-98-002951
AT&T Wireless Services

Dear Mr. Dorf:

In accordance with the March 25, 1998 Order of the Circuit Court granting Petitioner's Motion to Shorten Time (copy enclosed), the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within seven days.

The cost for the transcript has been paid by you, and the original transcript will be transmitted to the Court with the record of proceedings in this matter within the seven days mandated in the Court's Order.

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

Enclosures (2)

c: AT&T Wireless Services

Printed with Soybean Ink
on Recycled Paper

2/24/98

IN THE MATTER OF THE APPLICATION OF HENRY M. WITMYER, ET UX /LEGAL OWNERS; AND AT&T WIRELESS SERVICES /LESSEE FOR SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE NORTH-WEST END GREENWOOD PLACE, 525' NW OF OLD COURT ROAD, SW/S WESTERN MARYLAND RAILROAD (7 GREENWOOD PLACE) 3RD ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 97-556-XA

* * * * * * * * *

O P I N I O N

This matter comes before this Board pursuant to an appeal of the Zoning Commissioner's Order of August 8, 1996 granting a Petition for Special Exception and Variance to permit construction of a 170-foot tall transmission tower on the subject M.L. property. The need for special exception arises from a need to approve the erection of the transmission tower insofar as it cannot meet the 200-foot requisite setback from any residential boundary which would permit its use as a matter of right in M.L. under Section 426.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). Additionally, the variance is necessary in order to obtain relief from the rear lot setback requirements under Section 255.1 of the BCZR. The appeal was heard de novo.

Paul Dorf, Esquire, appeared on behalf of AT&T Wireless Services, Inc., the Contract Lessee, and the property owners, Henry M. and Helen A. Witmyer. Nancy E. Paige, Esquire, appeared on behalf of Pine Ridge Association, and Michael E. Marino, Esquire, appeared on behalf of Brittany Properties. Lastly, the Office of People's Counsel for Baltimore County was represented by Carole S.

Demilio, Esquire.

As a preliminary issue, the Petition is infirm for failure to comply with Appendix E, B.5.o of the BCZR. The surveyor, Anthony Vitti, conceded that he had failed to show the locations of all principal buildings within 200 feet of each joint side property line. While this Board tends to eschew technical defenses in favor of substance, the side yard setbacks are part and parcel of the actual merits of the case. Thus, the Petition cannot be granted. The Board will proceed, however, to analyze the case on its merits.

After reviewing the testimony, exhibits, file and memoranda, the Board makes the following findings of fact. Petitioner AT&T is a corporation engaged in the business of providing wireless and mobile communications. Petitioner, in the course of its business, investigated various sites, rejecting some as unsuitable and not proceeding with others for undisclosed reasons once it settled upon the subject site.

The subject property already is developed and has a business which operates from the site. Virtually the entire site already is improved either by the existing building or various impervious surfaces in part, by virtue of previous variances which essentially eliminated the 30-foot rear yard setback in 1964.

The subject site is zoned M.L., but requires special exception approval herein because the proposed setback of the tower from the nearest residential boundary is less than the 200 feet which would permit its construction as a matter of right. All parties concede that the tower is not violative of Section 502.1(c), (e) and (f).

The parties disputed whether or not evidence adequate to establish Section 502.1(a), (b), (d) and (g) were produced in satisfaction of the standard as espoused in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981).

Before addressing the special exception on the merits, this Board is constrained to deny its granting insofar as it is coupled with a variance request, and thus is violative as a matter of law of Umerley v. People's Counsel, 108 Md.App. 497, cert. denied 342 Md. 584 (1996). By definition, therefore, the Petitioner did not satisfy Section 502.1(g) insofar as the request for the special exception coupled with the variance is inconsistent with the spirit and intent of the zoning regulations. Accordingly, the special exception also must be denied under Section 502.1(g).

Turning to the variance request, Section 307.1 of the BCZR coupled with Cromwell v. Ward, 102 Md.App. 691, 651 A.2d 424 (1995) and its progeny set the standard for the granting of variances. Prior to assessing the variance itself, this Board must find both that the property itself is somehow unique and that an unreasonable hardship or practical difficulty arises as a result thereof. Moreover, the practical difficulty cannot be self-imposed. Satisfying that, parties then must go on to demonstrate that the variances are in strict harmony with the spirit and intent of the various regulations and do not result in damage to the public.

While Mitchell Kellman did testify to the uniqueness of the property by virtue of the fact that it was quite narrow and triangular and that previous variances were granted thereon, his

testimony with respect to the erection of the tower in question, however, was belied by his own admission that the tower could be located elsewhere on the property without requesting a variance.

Equally significant is the dearth of evidence of practical difficulty or unreasonable hardship. The property is fully developed and is being used for light manufacturing and thus does not present as a situation in which the owner has been precluded from using the property. More importantly, the evidence was that the need for the variance was entirely self-imposed. That is, the existence of the building and/or Mr. Witmyer's imposition of the requirement that the tower be located at the requested location artificially have created the need for the variance, and thus violate Cromwell's predisposition against self-inflicted hardships.

There being no satisfactory evidence of either uniqueness or practical difficulty and/or hardship, this Board need not consider the variance on its merits, but would nonetheless observe that the above findings also make clear that its granting would not be in strict harmony with the spirit and intent of the BCZR for the same reasons it does not satisfy Section 502.1(g).

In short, Petitioners cannot obtain a special exception that is coupled with a variance request insofar as it violates Umerley and Section 502.1(g) of the BCZR. Its plan also is flawed for failing to comply with Appendix E, B.5.o of the BCZR. Finally, the variance must be denied for failure to show uniqueness as well as practical difficulty and/or unreasonable hardship, and because it is not in keeping with the spirit and intent of the BCZR.

O R D E R

THEREFORE, IT IS THIS 24rd day of February, 1998 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Exception to permit a wireless transmitting and receiving facility not permitted by right under Section 426.1 of the Baltimore County Zoning Regulations (BCZR) in an M.L. zone be and the same is hereby **DENIED**, and it is further

ORDERED that the Petition for Variance seeking relief from Section 255.1 of the BCZR to permit a principal structure as close as 3 feet to the rear lot line, rather than the required 30 feet be and is hereby **DENIED.**

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Kristine K. Howanski, Chairman

Donna M. Felling

Harry E. Buchheister, Jr.

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

February 24, 1998

Michael Marino, Esquire
LEVY & MARINO, P.A.
609 Bosley Avenue
Towson, MD 21204

RE: Case No. 97-556-XA
Henry M. Witmyer, et ux /Legal Owners;
AT&T Wireless Services /Lessee -Petitioners

Dear Mr. Marino:

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.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,
Charlotte E. Radcliffe for
Kathleen C. Bianco
Administrator

encl.

cc: Nancy C. Paige, Esquire
Pineridge Association, Inc. /Nancy Rosenberg
Gwynnvale Civic Association /Betty McDaniels
Brittany Properties /Helen Fox, Brittany Apts.
Paul A. Dorf, Esquire
Russell G. Alion, Jr., Esquire
Mr. & Mrs. Henry Witmyer
AT&T Wireless Services, Inc.
Paul Umansky
Jerome D'Antoni
Maurice Thompson
People's Counsel for Baltimore County
Pat Keller
Arnold Jablon, Director /PDM
Lawrence E. Schmidt, Zoning Commissioner
Virginia W. Barnhart, County Attorney

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1/22/98

IN THE MATTER OF:	*	IN THE BOARD OF
HENRY M. WITMYER and HELEN WITMYER, Legal Owners	*	APPEALS
	*	FOR
and	*	BALTIMORE COUNTY
AT&T WIRELESS SERVICES, INC., Lessee	*	
	*	Case No. 97-556-XA
Petitioners	*	

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COUNTY BOARD OF APPEALS

* * * *

transmitting and receiving antennas and a small maintenance compound to hold equipment cabinets surrounded by an 8 foot high chain link fence (the "Facility") on the property known as 7 Greenwood Place (the "Proposed Site") in Baltimore County, Maryland.[1]

On July 16, 1997, a hearing on the merits of Petitioner's Application was held before the Honorable Lawrence E. Schmidt, Zoning Commissioner for Baltimore County (the "Zoning Commissioner"). By written Order dated August 8, 1997, the Zoning Commissioner approved Petitioner's Application for special exception and variance relief.

On September 5, 1997, an appeal of the Zoning Commissioner's Order was taken by the PINERIDGE ASSOCIATION, INC., the GWYNNVALE CIVIC ASSOCIATION and BRITTANY PROPERTIES (the "Protestants").

On December 2, 1997, a hearing on the merits was held before the Board. The appeal was heard de novo.

STATEMENT OF THE FACTS

Petitioner is a corporation engaged in the business of providing wireless and mobile communications. Petitioner has been granted a license by the Federal Communications Commission to provide wireless telecommunications services in the Baltimore-Washington Metropolitan area. In connection with the build-out of its wireless PCS (personal communications service) system, Petitioner requires multiple antenna sites for radio link in the system. On October 15, 1997,

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[1] The Proposed Site is located near Old Court Road and the junction of the Baltimore Beltway (Interstate 695) and the Northwest Expressway (Interstate 795) in the Woodholme section of Baltimore County.

Petitioner launched its wireless PCS system, making it available for consumer use on a nationwide basis.

The Proposed Site is a critical component of Petitioner's nationwide wireless PCS system because it covers important segments of the Baltimore Beltway, including Interstates 695 and 795 in Baltimore County, which are not currently covered by any existing AT&T facility.

Prior to selecting the Proposed Site, Petitioner used various engineering criteria to determine the most suitable site, negotiated a lease agreement with the property owners, studied the potential environmental impact of the Facility and consulted with adjoining land owners to obtain their consent to build the Facility.

Special exception approval is required to construct the Facility. The Proposed Site is located in a Manufacturing, Light ("M.L.") zone in Baltimore County. Although §253.1.B.19 of the Baltimore County Zoning Regulations (the "BCZR") permits wireless transmitting structures as a matter of right in a M.L. zone, §426 of the BCZR requires these structures to have a minimum setback of 200 feet from any residential district boundary. In the instant case, the setback of the Facility from the nearest residential zone is less than 200 feet. Accordingly, pursuant to §253.2.D.2 of the BCZR, special exception approval is required to construct the Facility.

Although Petitioner filed an application for variance relief to construct the Facility per the instructions of the Baltimore County Department of Permits and Development Management, Petitioner has determined that under the BCZR, a variance is not required to construct the Facility. This issue is fully briefed in the Argument section of this Memorandum.

Testifying in support of Petitioner's Applications were several expert consultants, namely (a) Michael H. Yglesias, one of Petitioner's radio frequency engineers; (b) Brian S. Parsons, an expert

in development engineering and land use planning with Techstar Communications, Inc; (c) Mitch Kellman, an expert in land planning and zoning with Daft, McCune, Walker, Inc.; (d) Oakleigh Thorne, who is a certified real estate appraiser with Thorne Consultants, Inc.; (e) Peter Neubauer, an expert in structural engineering with Neubauer Consulting Engineers, P.A.; (f) Robert W. Denny, Jr., an expert in radio frequency emissions with Denny & Associates, P.C.; and (g) Anthony J. Vitti, Sr., who is the Vice President of Daft, McCune, Walker, Inc.

On behalf of the Petitioner, testimony also was taken from the owner of the property, Henry M. Witmyer.

On behalf of the Protestants, testimony was offered by (a) Helen Fox, who is the leasing manager for the Brittany Apartments; (b) Martha Poehler, the Executive Vice President of Apartment Services, which is the management company for the Brittany Apartments; and (c) Frederick Newton Chadsey, IV, who is an expert in civil engineering and planning with G.W. Stephens, Jr. & Associates.

THE EVIDENCE PRESENTED TO THE BOARD

The evidence presented by the Petitioner

Michael Yglesias, a radio frequency engineer with AT&T, testified that Petitioner has been granted a license by the Federal Communications Commission to provide wireless telecommunications services in the Baltimore-Washington Metropolitan area. (T.14) Mr. Yglesias testified that Petitioner, pursuant to its FCC license, must build-out its wireless PCS system over the next several years to cover a certain percentage of the population. (T.14) In connection with the build-out of its wireless PCS system, Mr. Yglesias testified that Petitioner needs to place multiple

antenna sites in certain designated areas in Baltimore County in order to provide seamless coverage throughout the County and avoid coverage gaps (or dead spots) in the system. (T.16)

Mr. Yglesias designed Petitioner's PCS system in the Baltimore area and determined that the Proposed Site is a critical component of Petitioner's wireless PCS system because it fills a current "dead spot" along the Baltimore Beltway, including Interstates 795 and 695. (T.19) Mr. Yglesias testified that the phone call made by a user of the PCS system, driving along the Baltimore Beltway, will be transmitted from one antenna cell site to another. (T.17) Mr. Yglesias testified that in order to provide seamless coverage along the Baltimore Beltway, Petitioner must locate its antennas approximately every three miles. (T.16) The wireless system must provide seamless coverage along the corridor, otherwise the user can not place a phone call or will experience a black out and lose their phone call. (T.17)

Mr. Yglesias testified that antennae already have been installed in various locations along the Baltimore Beltway, and that based on the location of these antennae, a coverage gap or "dead spot" existed in the area surrounding the Proposed Site. (T.17-19) Mr. Yglesias testified that he created a map illustrating the general ring or search area that required a facility which he forwarded to a search team to determine the most suitable site within the search area to construct the Facility. (T.18-19)

Mr. Yglesias testified that AT&T, in designing its PCS system, attempts to locate its antennae either on existing structures or towers or in industrial-commercial areas to minimize intrusion into residential communities. (T.20-22) With regard to the instant Applications, Mr.

Yglesias was advised that no existing structures or industrial-commercial areas were available in the search ring that required coverage. (T.20-22)[2]

Brian S. Parsons, an expert in development engineering and land use planning with Techstar Communications, Inc. ("Techstar"), testified on behalf of the Petitioner. Mr. Parsons testified that Techstar was retained by the Petitioner to locate suitable sites within the search ring that required a facility. (T.36)

Mr. Parsons testified that the search ring area contains a M.L. zone, an OR-2 (Office Building-Residential) zone and that the remainder of the area is zoned residential. (T.37-38) Mr. Parsons testified that Techstar did not search any areas within the residential zone to locate the Facility because that would cause "a lengthy zoning battle" (T.55); rather, Techstar searched for existing structures and towers and industrial-commercial areas to place Petitioner's antennae in order to minimize intrusion into residential communities. (T.36)

Mr. Parsons testified that Techstar studied several alternative sites to place Petitioner's antennae, including McDonough Crossroads, the Pavillion in the Park, Talmudical Academy, the North Oaks apartment complex, the Port City Press, the MARC train station parking lot and additional property located in the OR-2 zone. (T.40-44) None of the alternative sites were acceptable either because they would not provide adequate coverage or lease agreements could not be secured with the property owners. (T.40-44) Mr. Parsons testified that the Proposed Site, known as 7 Greenwood Place, was the most feasible site to construct the Facility because: (1) the Proposed

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[2] Mr. Yglesias testified that the proposed Facility will accommodate other telecommunication providers, thereby eliminating the need for an additional tower in the surrounding area. (T.101)

Site was zoned industrial; (2) the Proposed Site occupied a chemical products company; (3) the Proposed Site was adjacent to a medical products company, a printing plant and a railroad; and (4) the proposed use was very innocuous, generating no noise, smoke or sewage. (T.44;49)[3]

Mr. Parsons testified that he filed Petitioner's Applications and a foundation design of the Facility with the Baltimore County Department of Permits and Development Management. (T.223-224) Mr. Parsons testified that Hillis Carnes Engineering prepared a soil report for the subject property, and that the foundation design of the Facility was based upon the submitted soil report. (T.223-224) After review of the submitted Applications and foundation design, the Baltimore County Department of Permits and Development Management issued the Petitioner a building permit to construct the Facility. (T.224)

Mitch Kellman, an expert in land planning and zoning with Daft, McCune, Walker, Inc., testified on behalf of the Petitioner. Mr. Kellman testified that the Proposed Site is located in a M.L. zone. (T.62) Mr. Kellman testified that the proposed Facility is permitted as a matter of right in the M.L. zone and, ordinarily, Petitioner simply would need to file for a building permit to construct the Facility. (T.63) However, because the Facility is located within 200 feet of a residential zone, special exception approval is required. (T.63)[4] Mr. Kellman testified that the establishment, maintenance and operation of the Facility would satisfy all standards for special exception use

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[3] On the southeast (front) portion of the site, the property abuts another M.L. zoned property which contains a single-story brick building used as a light manufacturing plant. On the north side, the property features a significant boundary with the right of way for the Western Maryland Railroad track. To the south, the property abuts, in part, the Brittany Apartments. The subject property is separated from the Brittany Apartments by an existing fence and a roadway, Greenwood Place. See Petitioner's **Exhibit 4.**

[4] Mr. Kellman testified that the Facility would be within 200 feet of a residential zone no matter where the Facility was located on the property. (T.83)

provided in §502.1 of the BCZR. (T.72-74) Mr. Kellman testified that the Facility (1) would not be detrimental to the health, safety or general welfare of the surrounding locality, (2) would not tend to create congestion in roads, streets or alleys, (3) would not create a potential hazard from fire, panic or other dangers, (4) would not tend to overcrowd land and cause undue concentration of population, (5) would not interfere with adequate provisions for schools, parks, water, sewage, transportation or other public requirements, conveniences or improvements, (6) would not interfere with adequate light and air, (7) would not be inconsistent with the purposes of the property's zoning classification nor be inconsistent with the spirit and intent of the BCZR, especially since Petitioner satisfied the criteria of §502.7.C.1 and found a suitable site within an industrial zone, rather than attempting to locate its Facility in a residential zone and (8) would not be inconsistent with the impermeable surface and vegetative retention provisions of the BCZR. (T.72-74)

Mr. Kellman testified that in order to obtain a variance under Maryland law, the property must be found to be "unique." (T.80) Mr. Kellman concluded that the subject property was "unique" because (1) the Zoning Commissioner previously made a finding that the property was "unique" as evidenced by the existing variance on the property which allowed for the construction of the existing building,[5] (2) the property is triangular in shape and (3) the property is very narrow. (T.79-81)[6]

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[5] The variance to permit construction of the existing building on the subject property was granted in 1964. The variance permitted a front yard building line of 25 feet instead of the required 75 feet, a side yard of 30 feet instead of the required 50 feet and a structure to be located 58 feet from the nearest residential zone boundary instead of the required 125 feet. (T.75-76); Petitioner's **Exhibit 4**.

[6] The subject property is improved by a two-story block and metal building which is used by an industrial chemical packaging company. The building occupies the front portion of the site where the property is at its widest. The property is approximately 151 feet in width at the front property line and tapers toward the rear to a width as narrow as 40 feet. See Petitioner's **Exhibit 4**.

Henry M. Witmyer, who is the owner of the subject property, testified on behalf of the Petitioner. Mr. Witmyer testified that he entered into a lease agreement with the Petitioner for the use of his property. (T.03) Mr. Witmyer testified that the proposed Facility would not interfere with the ingress and egress of company trucks[7] traveling in and out of the parking lot of the property onto Greenwood Place and Old Court Road. (T.227) Mr. Witmyer testified that the storage which had been placed on the western end of the property, the same location where the Facility is to be located, has been moved, and the mini tanks which had been stored on the property are no longer of use and would be "disposed of." (T.227)

Oakleigh Thorne, a certified real estate appraiser with Thorne Consultants, Inc., also testified on behalf of the Petitioner. Mr. Thorne testified as an expert in land development and valuation of properties. (T.102-103) Mr. Thorne testified that he visited the Proposed Site on two occasions and inspected the site plan. (T.103) Mr. Thorne testified that the installation of the Facility would have no effect on land values in the surrounding area. (T.103) Mr. Thorne based his opinion on studies performed at the Bais Yaakov School for Girls in Baltimore County (approximately two miles from the Proposed Site) and four studies in other Maryland communities and a Virginia community. (T.103-104) Each study found that the existence of a telecommunication tower, similar to the one proposed in the instant Application, had no effect on property values in the various communities. (T.104) Mr. Thorne testified that he also had appraised apartment projects in Prince George's County and Montgomery County which were adjacent to existing telecommunication towers and

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[7] Mr. Witmyer owns an industrial chemical packaging company located on the property.

which were within sight of the towers. (T.105) Each study revealed that the towers had no effect on the rental income of the rental properties. (T.105)

Peter Neubauer, an expert in structural engineering with Neubauer Consulting Engineers, P.A., also testified on behalf of the Petitioner. Mr. Neubauer testified that the Facility, which would consist of a 190-foot, self-supporting tower made of high strength structural steel with a reinforced concrete foundation, would be designed and built in conformity with local building codes. (T.112-113) Mr. Neubauer testified that the Facility is structurally safe and would not be affected by wind or any other elements. (T.113-117) Mr. Neubauer testified that the tower is designed to collapse upon itself, rather than completely falling over. (T.117) As a result, Mr. Neubauer opined that from a structural standpoint, there is no need for the 200-foot setback requirement. (T.117)

Robert W. Denny, Jr., a consulting engineer and expert in radio frequency emissions with Denny & Associates, P.C., also testified on behalf of the Petitioner.[8] Mr. Denny testified that Petitioner's PCS system is regulated by the federal government. (T.122) Mr. Denny testified that, pursuant to Section 24.52 of Title 47 of the Code of Federal Regulations, the FCC requires every PCS licensee to meet certain regulations for human exposure to radio frequency emissions. (T.122-123) Mr. Denny testified that a licensee is prohibited from operating a facility that generates radio frequency emissions beyond the maximum permissible exposure level established by the FCC. (T.123) Mr. Denny testified that he evaluated Petitioner's proposal at the Proposed Site and determined that Petitioner's proposed Facility meets all FCC regulations for human exposure to radio

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[8] Mr. Denny is a professional engineer registered in the State of Maryland. He has a degree in electrical engineering from Drexell University and has been engaged in the practice of radio engineering since 1976. (T.121)

frequency emissions. (T.123) Mr. Denny testified that the proposed Facility will generate radio frequency emissions equal to 0.03 percent of the maximum permissible exposure permitted under the law. (T.123)

The evidence presented by the Protestants

Helen Fox, the leasing manager for the Brittany Apartments, testified on behalf of the Protestants. Ms. Fox testified that she had received complaints from residents in opposition to the proposed Facility. (T.147) Ms. Fox testified that residents "perceive" the proposed Facility to be dangerous, unsafe, unhealthy and ugly. (T.152-153) No residents appeared before the Board to testify in opposition to the proposed Facility.

Martha Poehler, the Executive Vice President of Apartment Services, which is the management company for the Brittany Apartments, testified on behalf of the Protestants. Ms. Poehler testified that the Brittany Apartments has "proposed" a playground site on their property. (T.162) Ms. Poehler testified that she has had no conversations with any residents of the Brittany Apartments regarding the proposed Facility. (T.168;180) Ms. Poehler testified that she has no contact with prospective tenants of the Brittany Apartments. (T.172) Notwithstanding her testimony that she has no interaction with tenants or prospective tenants, Ms. Poehler testified that construction of the Facility would impact the aesthetics of the area and would cause a detrimental effect on tenant interest at the Brittany Apartments. (T.175) Ms. Poehler testified that the railroad adjacent to the Brittany Apartments has no effect on tenant interest at the Brittany Apartments notwithstanding the inherent danger of the railroad and the noise caused by trains. (T.175-176) Ms. Poehler testified that the proposed playground, if built, would not be surrounded by a fence and that there is no concern regarding children safety because the children could not walk from the playground to the railroad

tracks. (T.178) When asked why she thinks the tower would disturb the children, Ms. Poehler was non-responsive. (T.179)

Frederick Newton Chadsey, IV, an expert in civil engineering and planning with G.W. Stephens, Jr. & Associates, testified on behalf of the Protestants. Mr. Chadsey testified that the subject property is zoned M.L. (T.214), and that if it were his decision, he also would have located the Facility in a manufacturing zone. (T.217) Mr. Chadsey testified that the subject property is a "small property" that primarily consists of an existing building, a driveway, a parking lot and a storage area. (T.184) Mr. Chadsey testified that it was necessary to obtain a variance to locate and build the building that currently exists on the property. (T.185) Mr. Chadsey testified that the subject property is narrow along the western portion of the property. (T.190) Mr. Chadsey testified that if the property "was a nice rectangular piece" of property, as opposed to its triangular shape, the property would meet all setback requirements and a variance would not be necessary to construct the Facility. (T.195)

Mr. Chadsey testified regarding the standards for special exception use provided in §502.1 of the BCZR. As to whether the Facility would be detrimental to the health, safety or general welfare of the surrounding locality, Mr. Chadsey testified: (1) that no evidence was presented regarding the soil condition on the property and the stability of the foundation and (2) that "there is a perceived health risk" by residents of the Brittany Apartments. (T.197;199-200) Mr. Chadsey noted that he was "not going to testify that there is a health risk," only that there was a perceived health risk. (T.199-200)

On the issue of whether the Facility would "tend to create congestion in roads, streets or alleys," Mr. Chadsey testified that the tanker trucks that enter the parking lot of the property "can

back . . . . into the facility," that there is a congestion issue that currently exists on the parking lot of the property and that construction of the Facility would "further exacerbate" the congestion. (T.201) Mr. Chadsey testified that company trucks have difficulty maneuvering in and out of the parking lot onto Greenwood Place. (T.209) Mr. Chadsey testified that the proposed Facility would impede the flow of traffic along Greenwood Place and Old Court Road. (T.213)[9] Mr. Chadsey testified that the Facility will be constructed on the western end of the property which was being used as a storage yard and to park tanker trucks. (T.214) Mr. Chadsey testified that the if the Facility is constructed, the storage area will have to be located elsewhere upon the property creating "further congestion." (T.210-211)

Mr. Chadsey testified that the Facility should not create a potential hazard from fire, panic or other dangers. (T.201) Mr. Chadsey testified that the property was currently "overcrowded" and that the Facility would not cause undue concentration of population. (T.201-202) Mr. Chadsey testified that the Facility would not interfere with the adequate provisions for schools, parks, water, sewage, transportation or other public requirements, conveniences or improvements, would not interfere with adequate light and air, and would not be inconsistent with the impermeable surface and vegetative retention provisions of the BCZR. (T.202-203) Mr. Chadsey testified that the Facility would be inconsistent with the purposes of the property's zoning classification and be inconsistent with the spirit and intent of the BCZR because "the zoning variance is needed to make the special exception work" and "if someone came to build a building in the same fashion, utilizing

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[9] Vehicular access to the subject property is by way of Greenwood Place located on the southeast (front) portion of the site. The Facility will be located on the opposite end of the site, approximately 330 feet away from the entrance to the property. The intersection of Greenwood Place and Old Court Road is approximately 875 feet from the proposed site of the Facility. See Petitioner's **Exhibit 4**.

the side yard to this extent, we wouldn't even be here today, it would never had gotten past the zoning commission. The only reason I believe it's here today is because it's a tower." (T.203-204)

STANDARD OF REVIEW FOR A SPECIAL EXCEPTION

The Proposed Site is located in a Manufacturing, Light zone in Baltimore County. As explained above, a special exception permit is required to construct the Facility.

The applicable standard for judicial review of the grant or denial of a special exception use was established in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981):

> This Court [of Appeals] has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. 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.
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> * * *
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> Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. . . . [I]f there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

Schultz, 291 Md. at 11.

In Schultz, the Court of Appeals defined the appropriate standard of review as follows:

> [T]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the

> particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Id. at 15.

In Mossburg v. Montgomery County, 107 Md.App. 1, 666 A.2d 1253 (1995), the Court of Special Appeals, applying Schultz, simplified the standard of review of an application for special exception use:

> [I]t is not whether a use permitted by way of special exception will have adverse effects (adverse effects are implied in the first instance by making such uses conditional uses or special exceptions rather than permitted uses), it is whether the adverse effects in the particular location would be greater than the adverse effects ordinarily associated with a particular use that is to be considered by the agency.
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> * * *
>
> The question in the case *sub judice*, therefore is not whether a solid waste transfer station has adverse effects. It inherently has them. The question is also not whether the solid waste transfer station at issue here will have adverse effects at this proposed location. Certainly, it will and those adverse effects are contemplated by the statute. The proper question is whether those adverse effects are above and beyond, *i.e., greater here* than they would generally be elsewhere.

Id. at 8-9 (emphasis in original). See also Evans v. Shore Communications, 112 Md.App. 284, 304, 685 A.2d 454 (1996) ("Assuming, *arguendo*, that appellant has produced evidence that the tower will result in an adverse impact on the surrounding properties, the Board was nevertheless obliged to make a finding that the adverse effects would be greater in the proposed location than they would generally be elsewhere within the areas of the county where they may be established.").

In the instant case, Baltimore County has already legislatively determined, by designating wireless communication towers as special exceptions in the M.L. zone, that towers are appropriate,

beneficial and generally compatible with other uses in the zone. Evans, 112 Md. at 303. Since the Facility is designated as a special exception, it is implied that the Facility will have adverse effects. Mossburg, 107 Md.App. at 8. The issue presented in the instant case is whether the adverse effects of the Facility are greater at the Proposed Site than they generally would be elsewhere in the M.L. zone in Baltimore County.

In applying the law to the facts presented, the factual findings must be supported by substantial evidence contained in the record. Evans v. Shore Communications, Inc., 112 Md.App. 284, 299, 685 A.2d 454 (1996); Dundalk Holding Co. v. Horn, 266 Md. 280, 283, 292 A.2d 77 (1972) ("[I]f the action of the County [Zoning] Board was not supported by any substantial evidence, then its action was arbitrary and capricious and a denial of due process of law . . . . "); 47 U.S.C. §332(c)(7)(B)(iii) of the Telecommunications Act of 1996 ("Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.").

ARGUMENT FOR SPECIAL EXCEPTION

I. SPECIAL EXCEPTION RELIEF SHOULD BE GRANTED BECAUSE THE BOARD WAS NOT PRESENTED ANY EVIDENCE THAT THE ADVERSE EFFECTS OF THE FACILITY WOULD BE GREATER AT THE PROPOSED SITE THAN THEY GENERALLY WOULD BE ELSEWHERE IN THE MANUFACTURING, LIGHT ZONE.

The Board was not presented with any evidence that the adverse effects of the Facility would be greater at the Proposed Site than they generally would be elsewhere in the Manufacturing, Light zone. Accordingly, special exception relief should be granted.

In Anderson v. Sawyer, 23 Md.App. 612, 329 A.2d 716 (1974), the Court of Special Appeals reversed the trial court's denial of a special exception to construct a funeral home in a residential zoning district because no evidence was presented to support the conclusion that the requested special exception would adversely affect the surrounding area in any way different than in any other residential district. Anderson, 23 Md.App. at 612-13. The Court explained:

> The presumption that the general welfare is promoted by allowing funeral homes in a residential use district, notwithstanding their inherent depressing effects, cannot be overcome unless there are strong and substantial existing facts or circumstances showing that the particularized proposed use has detrimental effects above and beyond the inherent ones ordinarily associated with such uses. Consequently, the bald allegation that a funeral home use is inherently psychologically depressing and adversely influences adjoining property values, as well as other evidence which confirms that generally accepted conclusion, is insufficient to overcome the presumption that such a use promotes the general welfare of a local community. **Because there were neither facts nor valid reasons to support the conclusion that the grant of the requested special exception would adversely affect adjoining and surrounding properties in any way other than would result from the location of any funeral home in any residential zone, the evidence presented by the protestants was, in effect, no evidence at all.**

Id. (emphasis added). See also Mossburg, 107 Md.App. at 9 ("Once an applicant presents sufficient evidence establishing that his proposed use meets the requirements of the statute, even including that it has attached to it some inherent adverse impact, an otherwise silent record does not establish that that impact, however severe at a given location, is greater at that location than elsewhere."); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 331, 214 A.2d 146 (1965) (overhead high tension electric wires were permitted in rural section of Baltimore County "because there was no evidence produced at hearing which would show that the effect of high tension wires on the future health,

safety and welfare of this area would be in any respect different than its effect on any other rural area").

As in Anderson and Deen, the Board, here, was not presented any evidence that the adverse effects of the Facility would be greater at the Proposed Site than they generally would be elsewhere in the Manufacturing, Light zone. To the contrary, the Board was presented evidence, through testimony from Mitch Kellman, an expert in land planning and zoning, that Petitioner's Application satisfies the mandatory requirements for a special exception permit provided in §502.1 of the BCZR. (T.72-74) Applying the standard under Schultz, the Board can only find that the adverse effects of the Facility would be less at the Proposed Site than they generally would be elsewhere in the M.L. zone in terms of the location, topography and present land use of the property. The Facility will be located to the rear of the existing building and not interfere with the existing manufacturing use on the property. Additionally, the Facility abuts the Western Maryland Railroad line.[10] Moreover, the Zoning Commissioner found that the adverse effects of the Facility would be less at the Proposed Site than they generally would be elsewhere:

> In my judgment, the impact of the proposed special exception here will not be inherently greater than elsewhere in the zone. To the contrary, the anticipated impact will be less. The existence of the manufacturing uses on the subject property and the adjacent parcels are a significant factor, as is the existence of the railroad line immediately abutting this property. Although there are residential uses nearby, this is not the case of an M.L. zone nestled in a purely residential area. I believe that the character of this site, and the properties immediately adjacent thereto are persuasive factors.

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[10] It should also be noted that the Petitioner made a diligent search to locate its Facility within a business, office or industrial zone, as required by §502.7.C.1 of the BCZR. If the instant Application is not granted, Petitioner may need to consider a residential zone to locate its Facility.

See Zoning Commissioner's Order dated August 8, 1997, at 6-7. Accordingly, Petitioner's Application for special exception use should be granted.

II. SPECIAL EXCEPTION RELIEF SHOULD BE GRANTED BECAUSE THE RECORD CONTAINS NO SUBSTANTIAL EVIDENCE TO SUPPORT THE DENIAL OF PETITIONER'S APPLICATION.

In applying the principles of law enunciated in Schultz, to the facts presented, the Board's factual findings must be supported by substantial evidence contained in the record. Evans v. Shore Communications, Inc., 112 Md.App. 284, 299, 685 A.2d 454 (1996); 47 U.S.C. §332(c)(7)(B)(iii) of the Telecommunications Act of 1996.

Substantial evidence to support any resolution "must be more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Western PCS II Corp. v. Extraterritorial Zoning Authority, 957 F.Supp. 1230, 1236 (D.N.M. 1997) (quoting Universal Camera Corp. v. NLRB, 340 U.S. 474, 477, 71 S.Ct. 456, 459 (1952)); Turner v. Hammond, 270 Md. 41, 60, 310 A.2d 543 (1973). See also Illinois RSA No. 3, Inc. v. County of Peoria, 963 F.Supp. 732, 743-44 (C.D.Ill. 1997) (holding that resident's objections to proposed cellular communications tower in residential district based on health concerns, fears about diminished property values and generalized concern that petitioner had not adequately investigated alternative sites did not amount "to more than a scintilla of support" for the denial of petitioner's application).

Here, the only evidence presented to the Board in opposition to Petitioner's Application included (1) testimony from Ms. Fox, the leasing agent for Brittany Apartments, that residents of the Brittany Apartments "perceive" the Facility to be dangerous, unsafe, unhealthy and

ugly, (2) testimony from Ms. Poehler, the Executive Vice President of Apartment Services, which is the management company for the Brittany Apartments, that the Brittany Apartments has "proposed" a playground on their property, and that the Facility would impact the aesthetics of the area and would cause a detrimental effect on tenant interest at the Brittany Apartments and (3) testimony from Frederick Newton Chadsey, IV, an expert in civil engineering and planning with G.W. Stephens, Jr. & Associates, that no evidence was presented regarding the soil condition on the property and the stability of the foundation, that there is a "perceived" health risk by residents of the Brittany Apartments and that the Facility would impede the flow of traffic along Greenwood Place and Old Court Road.

As fully explained below, the record fails to contain any indicia of "substantial evidence" upon which Petitioner's Application could be denied.

A. Residents' generalized concerns that Petitioner's proposed Facility would be aesthetically displeasing do not constitute "substantial evidence" to support the denial of Petitioner's Application.

Ms. Fox testified that residents of the Brittany Apartments raised generalized concerns that Petitioner's proposed Facility would be aesthetically displeasing. Residents' generalized concerns, however, do not constitute "substantial evidence" to support the denial of Petitioner's Application.

In BellSouth Mobility, Inc. v. Gwinnett County, 944 F.Supp. 923, 928 (N.D.Ga. 1996), a cellular communications company filed an application for a permit to install a 197-foot monopole in a residential zoning district. Residents opposed the application, in part, because the proposed tower would be "aesthetically displeasing," and that at least twenty (20) homeowners could

see the proposed tower from their front windows. The county board of commissioners denied petitioner's application. However, the U.S. District Court for the Northern District of Georgia reversed the county commissioner's decision, holding that the resident's "generalized concerns [did] not constitute substantial evidence supporting the board's decision." BellSouth, 944 F.Supp. at 928. The Court noted:

> Although the court is not free to substitute its judgment for that of the [local zoning board,] it must overturn the . . . decision under the substantial evidence test if it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the [zoning board's] view.

Id.

Similarly, in New Brunswick Cellular Telephone Co. v. Township of Edison, 693 A.2d 180 (N.J.Super.Ct.Law Div. 1997), a cellular communications company sought to erect an 80-foot cellular communications tower approximately 100 feet from the nearest adjacent residential area. The local zoning board denied the company's request, in part, because the proposed tower would be aesthetically displeasing to nearby residents. The appellate court reversed, concluding that the board's findings that the proposed tower would be aesthetically displeasing lacked any credible evidence. New Brunswick Cellular, 693 A.2d at 187. The Court further added:

> While the tower will no doubt be aesthetically displeasing to some of the neighboring residents, had the Board performed its quasi-judicial obligation to balance the positive and negative criteria, it could not reasonably have concluded on this record that these detriments substantially outweighed the regional benefits of an improved telecommunications service.

Id. at 188. See also Evans v. Shore Communications, Inc., 112 Md.App. at 303-05 (objections by residents that proposed communications tower "would be unsightly in the rural estate setting and

would destroy the scenery and character of the area" did not constitute substantial evidence to support the denial of special exception to construct tower); Western PCS II Corp. v. Extraterritorial Zoning Authority, 957 F.Supp. 1230, 1236-37 (D.N.M. 1997) (zoning authority's denial of request for special exception to mount telecommunications antenna to water tank not supported by substantial evidence where zoning authority relied in part on residents "generalized concerns" that facility might be a visual blight to the neighborhood); Kingwood Township Volunteer Fire Co. Number One v. Board of Adjustment, 640 A.2d 356, 362 (N.J.Super.Ct.Law Div. 1993) (zoning board abused its discretion in denying petitioner's request to expand communications tower to 197 feet because board's finding that the proposed tower "would constitute a significant visual intrusion which would significantly impair the rural character" lacked a credible testimonial foundation); L.I.M.A. Partners v. Borough of Northvale, 530 A.2d 839, 843 (N.J.Super.Ct.App.Div. 1987) (statements of residents that proposed communication facility is aesthetically displeasing are an "inadequate substitute" for appropriate findings based on credible evidence in the record); Westinghouse Electric Corp. v. Council of Township, 686 A.2d 905, 908 (Pa.Commw.Ct. 1996) (complaints by residents that proposed 150-foot tower in residential district would add to the existing poor aesthetics of the area held insufficient to defeat conditional use applied for by telecommunications company).

Additionally, Petitioner has attempted to locate the Facility as far away as possible from the Brittany Apartments to minimize the impact of the Facility. This factor was favorably noted by the Zoning Commissioner:

> An examination of the site plan shows that the Petitioner has attempted to locate the monopole and related equipment as close to the railroad line as possible, so as to provide the largest buffer

> available to the apartment complex. Such an approach is entirely appropriate and logical, and reduces the impact of the pole upon the nearest residential uses.

See Zoning Commissioner's Order dated August 8, 1997, at 7.

The generalized concerns of residents -- that the proposed Facility will be aesthetically displeasing to the community -- do not constitute "substantial evidence" to support the denial of Petitioner's Applications. Accordingly, special exception relief should be granted.

B. In reviewing Petitioner's Application, the Board is precluded, by the Telecommunications Act of 1996, from considering possible health effects of radio frequency emissions generated by Petitioner's Facility.

Ms. Fox and Mr. Chadsey testified that residents of the Brittany Apartments "perceive" the Facility to be a health risk. The Telecommunications Act of 1996 prohibits the Board from considering possible health effects of radio frequency emissions generated by Petitioner's Facility. Section 332(c)(7)(B)(iv) of the Act provides that:

> No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

Courts construing §332(c)(7)(B)(iv) of the Act have consistently held that local zoning authorities are precluded from considering the possible health effects caused by a wireless communication facility as long as the proposed facility meets Federal Communication Commission standards. In Westel-Milwaukee Co. v. Walworth County, 556 N.W.2d 107 (Wis.Ct.App. 1996), the Court of Appeals of Wisconsin explained:

> The Act also contains a provision directed at the health concerns associated with the radio emissions from wireless

> transmitters. The Act plainly prohibits a local authority from considering the possible effects of these emissions in their decision making. As long as the proposed facility meets Federal Communications Commission standards, the local authority may not consider any claim that authorizing a wireless communication facility might cause local health problems.

Westel-Milwaukee Co., 556 N.W.2d at 109-110 (citations omitted). See also Illinois RSA No. 3, Inc. v. County of Peoria, 963 F.Supp. 732, 744-45 (C.D.Ill. 1997) ("Under the Telecom Act, however, the County could not consider potential health effects of Plaintiff's proposed cell site."); BellSouth Mobility, Inc. v. Gwinnett County, 944 F.Supp. 923, 928 (N.D.Ga. 1996); New Brunswick Cellular Telephone Co. v. Township of Edison Zoning Bd., 693 A.2d 180, 189 at n.7 (N.J.Super.Ct. 1997); Westinghouse Electric Corp. v. Council of Township, 686 A.2d 905, 907-908 (Pa.Commw.Ct. 1996); Kapton v. Bell Atlantic Nynex Mobile, 700 A.2d 581, 583-84 (Pa.Commw.Ct. 1997).

Where, as here, evidence was presented that the Facility meets FCC standards, the Board is precluded from considering possible health effects of radio frequency emissions generated by Petitioner's Facility. Bellsouth Mobility, Inc., 944 F.Supp. at 928 (finding no health concerns where the record contained evidence "that the monopole's radio frequency emissions would be well below the limits imposed by federal regulations").

C. There was no substantial evidence presented to support a finding that construction of the Facility will impede the flow of traffic on Greenwood Place and Old Court Road.

Mr. Chadsey testified that there is a congestion issue that currently exists on the parking lot of the property and that construction of the Facility would "further exacerbate" the congestion on the parking lot. (T.201) Mr. Chadsey then testified that company trucks have

difficulty maneuvering in and out of the parking lot of the property onto Greenwood Place and, therefore, the proposed Facility would impede the flow of traffic along Greenwood Place and Old Court Road. (T.213)

Vehicular access to the subject property is by way of Greenwood Place located on the southeast portion of the site. The Facility will be located approximately 330 feet away from the entrance to the property. Moreover, the intersection of Greenwood Place and Old Court Road is approximately 875 feet away from where the Facility will be located.

The Facility will have no effect on current traffic conditions in the surrounding area. The Facility consists of a free-standing tower and base and, thus, generates no traffic. Additionally, the Facility is a considerable distance from the entrance to the property and an even greater distance from the intersection of Greenwood Place and Old Court Road. Mr. Chadsey's concerns that the Facility will impede the flow of traffic on Old Court Road which is approximately 875 feet away are meritless and without foundation. No testimony was presented to support the finding that there is a traffic problem in the area.

It appears that Mr. Chadsey believes that since the Facility will be constructed on the western end of the property, which was being used as a storage yard and to park tanker trucks, there will be further congestion on the parking lot which will in turn impede traffic on Greenwood Place and Old Court Road, approximately 875 feet away. Mr. Chadsey's conclusions are simply illogical and purely speculative. Nonetheless, Henry M. Witmyer, the owner of both the property and the chemical packaging company, testified that the proposed Facility would not interfere with the ingress and egress of company trucks traveling in and out of the parking lot because the storage which had

been placed on the western end of the property has been moved, and the mini tanks which had been stored on the property have been disposed of.

In Mossburg v. Montgomery County, 107 Md.App. 1, 666 A.2d 1253 (1996), the Court of Special Appeals rejected the argument that generic traffic concerns could constitute a basis to deny a special exception permit to operate a solid waste transfer station in Montgomery County. In Mossburg, the applicant filed a special exception permit to operate a solid waste transfer station in an industrial zone in Montgomery County. Residents opposed the application, in part, because the proposed use would generate heavier truck traffic and increase the likelihood of backups along the roads. The Court of Special Appeals rejected the residents' traffic concerns as a basis to deny the special exception:

> The fact that residents of residential areas outside the zone perceive that additional industrial activity in this industrial zone will generate heavier truck traffic, making their attempts to utilize this industrial corridor more difficult, does not make the traffic stemming from appellants' use - a use that is presumed to be in conformity with comprehensive zoning - unique, greater, or above and beyond that which would occur anywhere else in the zone. The generic traffic concerns of appellees do not constitute substantial evidence upon which the Board could have based its decisions.

Mossburg, 107 Md.App. at 27.

Here, the Proposed Site is located in a M.L. zone. The BCZR contemplates truck traffic in a M.L. zone. No evidence was introduced to support the finding that there is a traffic problem in the area. Significantly, the Facility will generate no additional traffic in the area. As in Mossburg, there was no substantial evidence presented to support a finding that the Facility will impede the flow of traffic in the surrounding area, and generic traffic concerns can not constitute substantial evidence upon which to deny Petitioner's Application for special exception.

As to the remaining objections raised by the Protestants, the "proposed" playground on the property of the Brittany Apartments is not a proper consideration for the Board. Mossburg, 107 Md.App. at 18 (holding that "what *may* be" is nothing more than mere speculation and is not entitled to any weight). See also Aspen Hill Venture v. Montgomery County Council, 265 Md. 303, 316-17, 289 A.2d 303 (1972) (recognizing that evidence of developments which would enhance or diminish the evidence supporting or challenging of a zoning application may not be considered by this Court because "upon appeal the Circuit Court in its review of the evidence is bound by the record made before the governmental body from which the appeal is taken"); Bishop v. Bd. of County Comm'rs, 230 Md. 494, 501, 187 A.2d 851 (1963) ("[the appellate court] must review the action of the Board in the light of the facts as presented and conditions as they existed as of the date of the Board's action"). Moreover, no evidence was presented to demonstrate that the proposed Facility would have an adverse impact on the proposed playground. Indeed, the playground, if ever constructed, would be a considerable distance from the Facility and would be separated from the Facility by an existing fence and a roadway, Greenwood Place.

Additionally, Mr. Chadsey's concerns - - that no evidence was presented regarding the soil condition on the property and the stability of the foundation -- are misplaced. Petitioner introduced the testimony of Brian S. Parsons, an expert in development engineering and land use planning with Techstar Communications, Inc., that the foundation design filed with Petitioner's Application in the Baltimore County Department of Permits and Development Management was based upon the soil report submitted by Hillis Carnes Engineering. After reviewing the submitted Application and foundation design, the Baltimore County Department of Permits and Development Management concluded that the foundation design met all building code requirements as evidenced

by the building permit it issued for construction of the Facility. Accordingly, Mr. Chadsey's concerns are without foundation.

Additionally, the residents' fears that the Facility would be dangerous or unsafe were not supported by any evidence, and, in fact, were contradicted by the evidence presented by the Petitioner's experts.

Considered in its entirety, the record does not contain substantial evidence to support the denial of Petitioner's Application as required by Evans, supra, and §332(c)(7)(B)(iii) of the Telecommunications Act of 1996. The residents' fears and concerns and Mr. Chadsey's testimony about the impact of the proposed Facility were unsupported by any substantive facts and "*amount[ed] to nothing more* than vague and generalized expressions of opinions which are lacking in probative value." Anderson v. Sawyer, 23 Md.App. at 618. Accordingly, Petitioner's request for special exception should be granted.

STANDARD OF REVIEW FOR A VARIANCE

The applicable standard for judicial review of the grant or denial of a variance was recently explained in Umerley v. People's Counsel, 108 Md.App. 497, 672 A.2d 173 (1996):[11]

> A variance may only be granted after a two-step inquiry. First, the zoning authority must determine whether the subject *property is unique* and unusual in a manner different from the nature of the surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to have a disproportionate impact on the property. If such a finding is made, the zoning authority must then determine whether an unreasonable hardship results from the disproportionate impact of the ordinance. These general rules are recognized by BCZR 307.1, which provides that a variance *may only be granted if there are* 'special circumstances or

[11] Umerley involved application of the Baltimore County Zoning Regulations.

> conditions . . . peculiar to the land . . . and [if] strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship.'

Umerley, 108 Md.App. at 506 (citations omitted).

ARGUMENT FOR VARIANCE

I. A VARIANCE IS NOT REQUIRED TO CONSTRUCT THE FACILITY UNDER THE BALTIMORE COUNTY ZONING REGULATIONS.

At the time it filed its Application, the Petitioner was advised by the Baltimore County Department of Permits and Development Management that a separate request for variance relief was necessary to construct the Facility pursuant to §255 of the BCZR. A review of the BCZR indicates, however, that no variance is required to construct the Facility.

Section 255 of the BCZR governs area regulations in the M.L. zone. Section 255.1 provides that "[t]he area regulations in M.L. zone shall be the same as those in the B.R. (Business, Roadside) zone . . . ." Section 238 governs area regulations in the B.R. zone. Section 238.2 provides that the "[m]inimum requirements . . . . shall be as follows: Side and Rear Yards for residences, as in Section 302; for other buildings, 30 feet."

Section 101 defines "building" to mean "[a] structure enclosed within exterior walls for firewalls for the shelter, support, or enclosure of persons, animals, or property of any kind." Here, the proposed Facility is not a "building" as that term is defined in the BCZR. Indeed, Protestants' expert, Mr. Chadsey, acknowledged that the Facility is not a "building," and the Board agreed. Mr. Chadsey testified:

> [I]f someone came to build a building in the same fashion, utilizing the side yard to this extent, we wouldn't even be here today, it would

never had gotten past the zoning commission. The only reason I believe it's here today is because it's a tower. (T.203-204)

The Board clarified Mr. Chadsey testimony as follows:

THE BOARD: I think [Mr. Chadsey's] just talking about we're talking about a different kind of animal here, and because it's a different kind of animal, [the Facility] didn't have to go through certain hoops that it might have had to go through had it been a building. I think that's what he's getting at.

* * *

MR. CHADSEY: Yes, that's exactly what I was trying to relay.

(T.204-205)

Accordingly, the area regulations in the M.L. zone apply only to buildings. The Facility is not a "building" as that term is defined by the BCZR. Thus, no variance is required to construct the Facility.[12]

The setback requirements for all wireless transmitting or receiving structures in a M.L. zone are specifically provided for in §426 of the BCZR. Section 426.1 provides that:

> Wireless Transmitting or Receiving Structures with a maximum height of 200 feet above grade level, including all antennas and platforms, are permitted by right in . . . . manufacturing zones subject to the following restrictions:
>
> * * *
>
> B. The minimum setback from any boundary of a residential or R-O zone shall be 200 feet.

Thus, the setback requirements for the Facility are specifically provided for in §426 of the BCZR. In the instant case, the setback of the Facility from the nearest residential zone is less

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[12] The same rationale applies if the area regulations contained in §255.2 of the BCZR govern.

than 200 feet. Accordingly, pursuant to §253.2.D.2 of the BCZR, only special exception approval is required to construct the Facility. No other relief is necessary to construct the Facility.

II. A VARIANCE SHOULD BE GRANTED TO CONSTRUCT THE FACILITY BECAUSE THE SUBJECT PROPERTY IS UNIQUE IN SHAPE AND CONFIGURATION IN A MANNER DIFFERENT FROM THE NATURE OF SURROUNDING PROPERTIES AND PRACTICAL DIFFICULTY AND UNREASONABLE HARDSHIP WOULD RESULT IF THE ZONING REGULATIONS WERE STRICTLY APPLIED.

Even if a variance is required, Petitioner is entitled to a variance because the subject property is unique, and practical difficulty and unreasonable hardship would result from the disproportionate impact of the zoning regulations.

A. The subject property is unique in shape and configuration in a manner different from the nature of surrounding properties.

In North v. St. Mary's County, 99 Md.App. 502, 638 A.2d 1175 (1994), the Court of Special Appeals described the "unique" aspect of a variance requirement as follows:

> 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.

North, 99 Md.App. at 514.

Mitch Kellman, an expert in land planning and zoning with Daft, McCune, Walker, Inc., testified that the subject property was "unique" because (1) the Board previously made a finding that the property was "unique" as evidenced by the existing variance on the property which allowed for the construction of the existing building, (2) the property is triangular in shape and (3) the property is very narrow. (T.79-81) A examination of the site plan substantiates Mr. Kellman's

testimony. The property is approximately 151 feet in width at the front property line and tapers toward the rear to a width as narrow as 40 feet. See Petitioner's **Exhibit 4**.

Additionally, the Zoning Commissioner, in his review of Petitioner's Application for variance relief, concluded that the subject property was "unique":

> The grant of variances are governed by Section 307 of the BCZR. That section requires a finding that the property is unique. Uniqueness here is based upon the unusual configuration of the property, specifically, its triangular shape and decreasing width from the front property line to the rear property line.

See Zoning Commissioner's decision dated August 8, 1997, at 7.

The subject property is unique in shape and configuration in a manner different from the nature of surrounding properties. The property is triangular in shape and exceptionally narrow. The property is approximately 151 feet in width at the front property line and tapers toward the rear to a width as narrow as 40 feet. No other properties in the surrounding area share the same shape and configuration as the subject property. See Petitioner's **Exhibit 4**.

B. Practical difficulty and unreasonable hardship would result if the zoning regulations were strictly applied in the instant case.

If a variance is required in the instant case, the area regulations of §255 of the BCZR apply. Section 255.1 provides:

> The area regulations in M.L. zone shall be the same as those in B.R. zone unless such B.R. zone regulations conflict with the provisions of Section 255.2.

Section 255.2 provides:

> Within 100 feet of any residential zone boundary or the right-of-way of any street abutting such a boundary . . . . the front, side, and rear yards shall be as required in M.R. zone (see Sections 243.1, 243.2, and 243.3).

The subject property is within 100 feet of a residential zone. Accordingly, the area regulations in a M.R. zone, as provided under §243, apply. Section 243 provides:

> 243.1--Front Yard--The front building line shall be not less than 75 feet from the front property line.
>
> 243.2--Side Yard--50 feet measured from the side property line.
>
> 243.3--Rear Yard--50 feet measured from the side property line.

In applying the area regulations set forth in §243, it is obvious that there is no single place on the subject property where the setback requirements could be met, thereby supporting a finding of practical difficulty. The existing building and improvements on the site would not change the fact that a variance is required in the instant case. Indeed, even if the existing building and improvements were removed completely, there is no place on the property where the location of the Facility could satisfy the setback requirements of §243.[13] The width of the property at its greatest point is 151 feet at the eastern end of the property and tapers toward the rear to a width as narrow as 40 feet. Given the shape and configuration of the site and the setback requirements provided under §243, the standard to obtain a variance to construct the Facility is satisfied because of the practical difficulty and unreasonable hardship which would result if the zoning regulations are strictly applied.[14]

---

[13] The Petitioner, here, does not need to obtain a variance from the front and side yard setback requirements to §243 because the property already has been granted variance relief with regard to those setback requirements. In 1964, the Zoning Commissioner granted a variance to permit a front building line of 25 feet instead of the required 75 feet and to permit a side yard of 30 feet instead of the required 50 feet. Because of this, Petitioner, here, only requires a variance of the rear yard setback requirement.

[14] Protestants' expert, Mr. Chadsey, recognized that the shape and configuration of the property would result in practical difficulty if the BCZR were strictly applied. Mr. Chadsey testified that if the property "was a nice rectangular piece," as opposed to its triangular shape, the property would meet all setback requirements and a variance would not be necessary to construct the Facility. (T.195)

Finally, Petitioner has attempted to locate the Facility as far away as possible from the Brittany Apartments to minimize the impact of the Facility. This factor was favorably noted by the Zoning Commissioner:

> An examination of the site plan shows that the Petitioner has attempted to locate the monopole and related equipment as close to the railroad line as possible, so as to provide the largest buffer available to the apartment complex. Such an approach is entirely appropriate and logical, and reduces the impact of the pole upon the nearest residential uses. * * * I do not believe that the proposed relief will cause detrimental impacts on surrounding properties.

See Zoning Commissioner's Order dated August 8, 1997, at 7. Accordingly, variance relief should be granted to construct the Facility.

CONCLUSION

For the reasons stated above, Petitioner's Application for special exception use should be granted. The Board was not presented with any evidence that the adverse effects of the Facility would be greater at the Proposed Site than they generally would be elsewhere in the Manufacturing, Light zone. Moreover, because the record contains no substantial evidence to support the denial of Petitioner's Application, special exception relief should be granted.

Additionally, no variance is required under the BCZR. However, if a variance is required, a variance should be granted because the subject property is unique in shape and configuration in a manner different from the nature of surrounding properties, and practical difficulty and unreasonable hardship would result if the zoning regulations were strictly applied.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23RD day of January, 1998, a copy of the foregoing Petitioner's Memorandum of Law in Support of its Application for Special Exception was mailed postage prepaid to:

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Russell Alion

RUSSELL G. ALION, JR.

1/23/98

IN THE MATTER OF HENRY M. WITMYER, *ET UX*, Legal Owners; AT&T WIRELESS SERVICES, Lessee	*	BEFORE THE BOARD
	*	OF APPEALS OF
Petitioners/Appellees	*	BALTIMORE COUNTY
vs.	*	Case No. 97-556-XA
PINE RIDGE ASSOCIATION, BRITTANY PROPERTIES and PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	*	
	*	
Protestants/Appellants	*	

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

PROPOSED FINDINGS OF FACT AND MEMORANDUM OF LAW

This matter comes before the Board of Appeals (the "Board") as a result of an appeal of the Order dated August 8, 1997 by the Zoning Commissioner of Baltimore County granting a petition for a special exception and variance to permit the construction of a 170 foot tall transmission tower on the subject property. The special exception sought approval for a wireless transmitting and receiving facility not permitted by right under Section 426.1 of the Baltimore County Zoning Regulations ("BCZR") in an ML zone. The need for the special exception emanated from Section 426.1.B. of the BCZR which requires a minimum setback from any boundary of a residential zone to be 200 feet. Here the Appellees seek the 200 feet to be reduced to 44 feet.

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COUNTY BOARD OF APPEALS

The variance requested sought relief from Section 255.1 of the BCZR to permit a principal structure as close as 3 feet to the rear lot line of the subject property rather than the required 30 feet.

The subject property was the subject of a previous zoning case in 1964 (64-126A) wherein variances were granted to virtually eliminate the 30 feet rear yard setback in order to construct the existing two-story block and metal building which currently occupies the property. Henry Witmyer has owned the subject property since at least 1964 and is also the president of the company which currently operates from the site. Mr. Witmyer obtained the variances in 1964 in order to construct the existing building on the subject property. Uncontroverted testimony from both sides indicates the subject property is being fully utilized by a self-sustaining operation. Ninety percent of this property is covered by the existing building or other imperious surfaces used for storage, parking spaces and driveways.

Both the variance and special exceptions were heard *de novo* by the Board.

The subject property is owned by Henry M. Witmyer and Helen A. Witmyer. AT&T Wireless Services, Inc. is the contract lessee. The Appellees were represented by Paul Dorf, Esquire.

The Appellants appearing were the Pine Ridge Association represented by Nancy E. Paige; Brittany Properties, a Maryland general partnership, represented by Michael E. Marino; and People's Counsel for Baltimore County represented by Carole S. Demilio, Esquire, Deputy People's Counsel for Baltimore County.

Petition for Building Setback Line Variance

Section 255.1 of the BCZR (referring to Section 243.3 of the BCZR) requires that a structure (in this case the tower) be set back at least 50 feet. The subject property is zoned ML with a small portion on the west end being zoned DR-16. The Appellees incorrectly requested a variance reducing that "30" setback down to 3 feet.

This variance is requested under the provisions of Section 307.1 of the BCZR. The leading case regarding variances is *Cromwell v. Ward*, 102 Md.App. 691 (1995) and the cases cited therein. In order to obtain the requested variance, Section 307.1 of the BCZR and the prevailing case law provide that the variance process is at least a two-step process.

(1) The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportable finding of uniqueness or unusualness, then the second step in the process is taken.

(2) The second step is a determination whether an unreasonable hardship (or practical difficulty) resulting from the disproportionate impact of the ordinance caused by the property's uniqueness exists. *Cromwell*, *supra.* at 695.

The *Cromwell* Court citing *North v. St. Mary's County*, 99 Md.App. 502 at 512 (1994), the Court spoke at length about the term "unique".

The term "unique" in zoning context means:

> In the zoning context, the 'unique' aspect of a variance requirement **does not refer to the extent of improvements upon the property** (*emphasis added*), or upon neighboring property. 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, *i.e.*, its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

Thus, the party seeking the variance must prove that the property is extraordinarily negatively impacted by virtue of its uniqueness and therefore strict application of the setback requirements would result in practical difficulty or hardship. The *Cromwell* Court citing a line of zoning cases also confirms the position of the appellate courts in Maryland that the practical difficulty cannot be self-imposed.

Section 307.1 of the BCZR goes on to require that variances can only be granted if they are in strict harmony with the spirit and intent of the height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety or general welfare.

In the instant case, the subject property is not unique from others in the area. In point of fact, the Appellees seek to construct a 170 foot transmission structure in a side yard of a completely developed site so as not to interfere with the operations of the existing business on the property. Virtually every ML, ML-IM, MR, O-2, OT, BL and BR (zoning classifications which permit transmission towers) in the surrounding area have yet unused rear yard setback areas.

The only testimony presented by the Appellees as to the subject property's uniqueness from a zoning perspective was from Mitchell Kellman, the Appellees' zoning expert witness. Mr. Kellman stated the property was unique because variances were granted on it before and that the property was a very narrow property. (T80, 19-21; T81, 1-2.)

But, during his direct testimony when questioned by the Chairperson, Mr. Kellman freely admitted that the 170 foot monopole structure which is the subject of the variance request could be located elsewhere on the property thus eliminating the need for the variance. (See T83, 11-19; T84, 1-18, attached hereto as ***Appendix No. 1***.)

The Appellees produced no further testimony as to the uniqueness of the property. The testimony of their own witness clearly confirmed that the Appellees could not meet the first prong "uniqueness" test under *Cromwell, supra.* More devastating, in response to the Chairperson's question, "Can you put it [*the 170 foot monopole*] somewhere and get rid of the bulk standard issue?" (See T84, 6,7 previously attached hereto as ***Appendix No. 1***), Mr. Kellman answered, "You put it [*the 170 foot monopole*] within the permitted building envelope that would meet the underlying zoning requirements." (See T84, 12-14 previously attached hereto as

Appendix No. 1.) Mr. Kellman went on to explain he did not know why that was not done in this case.

Moreover, testimony throughout the case by both sides indicated that the subject property was fully utilized by its existing user, a chemical company owned by Mr. Witmyer. Mr. Kellman confirmed in cross-examination that the existing building on the property was virtually a "zero clearance" lot line building. (See T85, 15-19 attached hereto as *Appendix No. 2*.) The Court in *North, supra.* held that "the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property ...". *North* at 512. Therefore, the Appellees cannot rely on the pre-existence of a building that one of them (Mr. Witmyer) built on the property to establish uniqueness.

Assuming arguendo that the Appellees raised some colorable evidence of uniqueness under the first prong of the test set forth in *Cromwell*, they must prove practical difficulty results from a dispropriate impact of the ordinance caused by the property's uniqueness exists.

Mr. Kellman testified that the owners of the property, Mr. and Mrs. Witmyer, received a series of variances in 1964 allowing them to construct the existing building on the property which is basically a zero lot line clearance building in the rear. (See T85, 15-19 previously attached hereto as *Appendix No. 2*.)

He also testified that the existing building is still fully functioning, (See T86, 19-21; T87-1-2 attached hereto as *Appendix No. 3*) and that the entire site is being used for light manufacturing. (See T87, 20-21; T88, 1 attached hereto as *Appendix No. 4*.)

The owner, Henry Witmyer, testified that the subject property is the home of a viable operation which is self-sustaining. (See T231, 1-2; 8-10 attached hereto as ***Appendix No. 5***.)

The first test for practical difficulty as recited in *Anderson v. Board of Appeals*, 22 Md.App. 28 (1973) is, "Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.". *Anderson, supra.* at 39.

It is uncontroverted that the subject property is being fully utilized by the existing building and its chemical business operations still owned by Mr. Witmyer. Those operations are permitted in the ML zone and bear no relationship whatsoever to the requested variances for the 170 foot monopole structure. The Appellees cannot meet the practical difficulty burden.

Finally, the Appellees' request for a variance must be denied because any practical difficulty is completely self-imposed. Appellees' own expert witness, Mr. Kellman, testified that were it not for the building Mr. Witmyer built (and received 1964 variances for) there would be no need for a variance for the monopole. (See T86, 5-18 attached hereto as ***Appendix No. 6***.)

Henry Witmyer went on to testify and, on cross-examination, that as owner of the property he would only allow the AT&T tower to be located at the requested location thereby forcing a request for a variance when in realty such a variance is unnecessary. (See T226, 7-21 and T229, 1-19 attached hereto as ***Appendix No. 7***.)

The Court in *Cromwell v. Ward, supra.* dealt with the notion of self-inflicted hardship and noted that it was incumbent on the applicant to show that the hardship was not the result of

the applicants' own actions. The *Cromwell* Court citing *Steele v. Fluvanna County Board of Zoning Appeals*, 246 Va. 502, 436, S.E.2nd 453, 456 (1993) wherein the Court dealt with a case similar to the one at hand and held, "The hardship, if any, was self-inflicted. The placement of the improvements ... was within control of the Garrett's and their contractor, Raintree."). The *Cromwell* Court went on to conclude, "We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted." *Cromwell, supra*, at 722.

The Appellants produced as their expert witness, Frederick Newton Chadsey, IV, the Vice President of G.W. Stephens, Jr. and Associates, a civil engineering firm in Baltimore County. Mr. Chadsey is a registered professional engineer in the State of Maryland and was admitted by the Board of Appeals as an expert witness as a civil engineer and planner.

Mr. Chadsey testified that the subject property was used to primarily all of its capacity. The property is covered by either the existing building or storage, yard and parking spaces. Mr. Chadsey testified that the subject property was an active warehouse site and completely developed and utilized. (See T186, 4-12 attached hereto as ***Appendix No. 8***.) Mr. Chadsey lead the Board through his analysis of the site based on his personal visits. He concluded, based on his observation of the property and experience as a civil engineer and planner, that no special circumstances or conditions exist which are particular to this site. (See T193, 11-21 attached hereto as ***Appendix No. 9***.)

Mr. Chadsey went on to testify that the location of this requested variance was not unique in any way and that, in fact, the Appellees were attempting to create "artificial uniqueness" by their own actions in order to attempt to justify the variance. (See T194 and 195, 1-11 attached

hereto as ***Appendix No. 10***.) He noted, as did Mr. Kellman, that the bulk regulations could be satisfied as to his property without the request for this variance. (See T217, 2-17 attached hereto as ***Appendix No. 11***.)

There was no probative evidence submitted to the Board that the subject property was "unique" in order to meet the first prong of the test required by *Cromwell, supra.* at 703. The Appellees do not meet the practical difficulty burden because the subject property is being fully utilized and the request for the variance for the 170 foot transmission structure is unrelated to the current and historic use and not necessary to the owner's reasonable use of the property for its permitted purpose. Finally, the request for variance fails because the Appellees' acknowledge through their own witness that the request for variance is unnecessary in that the bulk regulations can be met but that the Appellees choose not to do so, but rather seek the variance in question. For these reasons the variance should be denied as a matter of law.

Petition for Special Exception

The Appellees request the Board grant a special exception. The Appellees' Petition for Special Exception recites as reasons therefore, to use the subject property for "A Wireless Transmitting and Receiving Facility not permitted by Section 426.1 in an ML zone.". Section 426.1 of the BCZR requires a minimum setback from any boundary of a residential or R-O zone shall be 200 feet.

Prior to a discussion of the criteria for a special exception in the instant case, it should be noted that the Appellees' Petition for Special Exception should be denied because it is dependent upon the Appellees' request for a variance for the same property. The Court of

Special Appeals spoke to the issue of companion petitions for variances and special exceptions, one being used to justify the other, in *Umberly v. People's Counsel*, 108 Md.App. 497 (1996). In *Umberly*, which arises from an appeal from the Circuit Court for Baltimore County, the Court held that where conditions or standards are required to be conformed to in order to receive approval of a special exception, the inability to secure a variance to those standards or conditions requires the special exception to be denied. This is the situation in the instant case. The only way the Appellees can build the 170 foot transmission tower at the location they desire on the subject property is to obtain a variance form the bulk regulations of the BCZR. They cannot meet their legal burden to justify such a variance. Therefore, the special exception cannot be granted as a matter of law.

The Appellees also failed to meet their burden under 502.1 of the BCZR which sets forth the criteria for a special exception. Even though these criteria are frequently characterized as minimal, the Appellees failed to adequately refute expert testimony of the Appellants' expert witness as to such criteria.

The Appellees went to great lengths to present evidence to the Board as to how AT&T went about its site selection process. However, the only Appellees' expert witness who specifically addressed the criteria contained in 502.1 of the BCZR was Mr. Kellman. Mr. Kellman, without any explanation or justification for his answers, merely parroted responses to the questions dealing with the 502.1 special exception criteria. (See T72, 73 and 74, 1-8 attached hereto as ***Appendix No. 12***.)

To refute Mr. Kellman's testimony, Mr. Chadsey testified fairly extensively, specifically to 502.1.a., congestion in roads, streets or alleys, therein. He testified that tanker trucks have difficulty maneuvering as it is on Greenwood and Old Court Road. (See T209, 210, 211, 212, 213 attached hereto as ***Appendix No. 13***.)

There was no expert testimony produced by the Appellees to rebut Mr. Chadsey's testimony as to 502.1.a. Mr. Chadsey further testified citing *Umberly, supra.* that as a civil engineer and planner he found the Appellees' request for the special exception to be inconsistent with the purposes of the property's zoning classification and inconsistent with the spirit and intent of the zoning regulations. The Appellees have the burden of proof under 502.1 of the BCZR to satisfy each and every element of Section 502.1 and they failed. They could not adequately rebut Mr. Chadsey's expert testimony as a civil engineer and planner as to the Appellees' inability to satisfy 502.1.a. and 502.1.g, and therefore, the petition for special exception must be denied.

Procedural Defect

The Appellees' entire case, i.e., the Petition for Variance and the Petition for Special Exception, is fatally flawed procedurally. Appendix E, B.5.o of the BCZR requires that every site plan show, "In cases where yard setbacks or areas are to be determined, the locations of all principal buildings within a distance of at least 200 feet from each joint side property line.". The Appellees' site plan failed to do this. The Appelles' surveyor, Anthony Vitti, concedes this defect. (See T136, 3-5 attached hereto as ***Appendix No. 14***.) In the instant case, the side yard

setbacks go to the very heart of the Appellees' special exception and variance petition. As a result, the Petitions for Variance and Special Exception are defective and should be denied.

Respectfully submitted,

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Attorneys for the Brittany Properties
Protestant/Appellant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23 day of January, 1998, a copy of the aforegoing Proposed Findings of Fact and Memorandum of Law was mailed postage pre-paid to: Nancy E. Paige, Esquire, Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC, The Garrett Building, 233 East Redwood Street, Baltimore, Maryland 21202-3332, Attorney for Pine Ridge Association; Carole S. Demilio, Esquire, Deputy People's Counsel for Baltimore County, Office of People's Counsel, Room 47, Old Court House, 400 Washington Avenue, Towson, Maryland 21204; and Paul A. Dorf, Esquire, Adelberg, Rudow, Dorf, Hendler & Sameth, LLC, 600 Mercantile Bank & Trust Building, Two Hopkins Plaza, Baltimore, Maryland 21201, Attorney for Petitioners/Appellees.

Michael E. Marino

1/23/98

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
PETITION FOR VARIANCE
7 Greenwood Place, NW/end Greenwood Pl., * COUNTY BOARD
525' NW Old Court Rd, SW/S Western Md. RR
3rd Election District, 2nd Councilmanic * OF APPEALS

Legal Owners: Henry M. & Helen A. Witmyer * OF BALTIMORE COUNTY
Lessee: AT&T Wireless Services
Petitioners * CASE NO. 98-556-XA

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

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

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BALTIMORE COUNTY

Statement of the Case

Petitioners HENRY M. and HELEN A. WITMYER, owners, and AT&T WIRELESS SERVICES, lessee, filed Petitions for Variance and Special Exception to construct a wireless transmitting and receiving facility at 7 Greenwood Place.

The site is zoned M.L. and D.R.-16. It is improved with buildings and parking and has been used as a light manufacturing facility since 1964. The transmitting tower would be a second principal use for the site.

The relevant zoning regulations are:

BCZR § 307 (Variance)

BCZR § 253.2D.2 (ML Zone use regulations)

BCZR § 255.1 (ML Zone area requirements)

BCZR § 426 (Wireless transmitting facilities)

BCZR § 502.1 (Special exception)

The Zoning Commissioner granted the relief in a written opinion on August 8, 1997. A timely appeal was filed by citizens and community groups.

The matter was heard in a de novo hearing before the Board of Appeals on December 2, 1997.

The Board panel requested Memoranda in lieu of closing argument. Public deliberations are scheduled for February 10, 1998.

STATEMENT OF FACTS

PEOPLE'S COUNSEL adopts the facts set forth in the Memorandum filed by Michael E. Marino on behalf of Protestants.

ARGUMENT I

DISCUSSION OF SPECIAL EXCEPTION STANDARDS

BCZR 502.1 establishes the general special exception standards. Certain issues were identified in the instant case which refer to specific special exception requirements. Before it can be granted, it must be determined that the proposed tower 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;

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

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;"

It is the burden of AT&T and Witmyer (hereinafter "Petitioner") to produce evidence to satisfy these requirements.

A special exception is a conditional use. Montgomery County v. Merlands 202 Md. 279 (1952); Rockville Fuel and Feed Co. v. Board of Appeals 257 Md. 183 (1970). Building on these earlier cases,

the Court's language in Schultz v. Pritts 291 Md. 1 (1981) underlies special exception law:

"Generally, when a use district is established, the zoning regulations prescribe that certain uses are permitted as of right (permitted uses), while other uses are permitted only under certain conditions (conditional or special exception use) . . . In determining which uses should be designated as permitted or conditional in a given use district, a legislative body considers the variety of possible uses available, examines the impact upon the various purposes of the zoning ordinance, determines which uses are compatible with each other and can share reciprocal benefits, and decides which uses will provide for coordinated, adjusted and harmonious development of the district."

"When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. Such uses cannot be developed if at the particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses."

In Board of County Comm'rs v. Holbrook 314 Md 210 (1988), the Court affirmed denial of a special exception: ". . . where the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its

location within the zone, the applications should be denied."

In Holbrook, supra at 220, the proposed mobile home was visible to a residence 80-150 feet away. This contrasted with "countless locations. . .within the zone" which would not present such problems of proximity and close visibility. That the location was most convenient to the Petitioner did not warrant approval.

The court of Special Appeals also denied a special exception project whose size and scale were incompatible with the adjacent residential community. People's Counsel v. Mangione 85 Md App 738 (1991). The Court stated in footnote 6 "Appellee (Petitioner) disregarded the requirements of Sec. 502.1 of the County Code . . The size and scope of the project are thus relevant considerations. To contend otherwise, as appellee does, is to engage in specious and sophistic reasoning."

In the recent case of Brandywine v. P.G. County 117 Md App. 525 (1997), the Court of Special Appeals' Opinion recited these seminal cases in affirming a denial of a special exception.

The application of the general special exception standards in BCZR 502.1 are aided by more specific wireless communication legislation. See BCZR Section 426. A wireless tower is permitted by right in O-2, OT and all business and manufacturing zones if there is a minimum setback of 200 feet from the boundary of a residential or RO zones. The Petitioner's counsel inferred at the hearing that "but for" the distance factor, the use would be permitted in this zone by right under Section 426. On the contrary, the the 200 foot distance requirement is much more than

a minor requirement. The proposed tower is 44 feet from the residential zone. A setback of this magnitude raises serious questions of compatibility, and of compliance with the intent of the zoning regulations.

If the 200 foot standard connot be met, a special exception is required under BCZR 253.2.D.2. Contrary to its implications at the hearing, the Petitioner is in no better position to obtain special exception relief because the same use is permitted by right in the zone if all conditions are satisfied. The burden to obtain a special exception remains the same; the Petitioner must prove at this de novo hearing that it complies with the requirements of BCZR 502.1.

The impact at this site must be compared to the impact of the use anywhere in the ML zone, including at sites where the use is permitted by right. The impact of a tower 44 feet from residences at this location in the ML zone is most certainly greater than at another location in the zone where the distance requirement of 200 feet is satisfied. See Mossburg v. Montgomery County 107 Md. App 1(1995).

Nonetheless, under any scenerio, the Petitioner's evidence in this case fails under both Mossburg and BCZR 502.1.

ARGUMENT II

THE EVIDENCE IN PETITIONER'S CASE IS DEFICIENT FOR THE SPECIAL EXCEPTION REQUEST

Despite the number of witnesses produced by the Petitioner, incredibly, none of them provided the pertinent testimony required

by BCZR 502.1.

Mr. Michael Yglesias, an engineer with AT&T, described his employer's search for locations for the tower. He admitted "we haven't gone through in detail every sight (sic) . ." (Transcript p.23). He did not know if the Office and Technology zones and business zones were considered as possible sites. (Transcript p. 26). Furthermore, he admitted the MTA site was not rejected, but deferred to another witness. (The Petitioner never produced a witness to discuss the use of the MTA site.) (Transcript pp.28&31).

Mr. Brian Parsons described the search for a site in the preferred radius, but could not explain why certain sites in the radius more acceptable to the community were not pursued. Nine sites were considered. Mr. Parsons did not explain why **McDonough Crossroads** was not pursued. He stated the **Port City Press** site was not 200 feet from residences but never stated that variances were needed. The **Hopkins** site was viable but never pursued when the owner didn't respond to an initial inquiry. Mr. Parsons stated that the owner of the **Gould** property "would not entertain a lease". Again, this site did not require a variance. He was asked specifically about the MTA site, which was considerably farther from the residential zone. Mr. Parsons deferred to other witnesses, but a careful review of all the testimony shows that no subsequent witness testified that the MTA site was not a viable alternative. It was offered by Petitioner that a witness named Kingsbury would testify to this matter but such a witness never appeared. (See Transcript page 43. Mr. Parsons' failure to throughly address the

viability of the nine possible sites that qualified is a failure to prove under the Mossburg standards, that the proposed use at the subject site would have no greater adverse impact than at a nearby location in the zone. The fact that other owners may not have agreed to the economics of the proposed leases does not mean the use has less impact at the instant site. It merely means Mr. Whitmyer was willing to work out a deal acceptable to AT&T.

Moreover, Mr. Parsons clearly had no understanding of Baltimore County geography and zoning laws; his search area focused more on economic factors and AT&T's preferences than zoning regulations.

Mr. Mitch Kellman from the engineering firm of Daft, McCune and Walker admitted that the Petitioner is faced with two distance issues. It must prove under the Special Exception standards that the tower's 44 foot distance from residences has no greater adverse impact than at a site in the zone farther from residences. Additionally, under the general area requirements for the ML zone, Mr. Kellman stated the Petitioner must prove the requested setback of 3 feet in lieu of the required 30 feet is justified. (The setback required is 50 feet not 30 feet, as hereinafter explained on page 12 of this Memorandum).

Mr. Kellman gave no basis whatsoever for his opinion that the proposed use satisfies BCZR 502.1 (See attached Transcript, pages 71-74). He also admitted that under BCZR 426, a tower is permitted by right in numerous zones in the County besides the manufacturing zone.

Mr. Oakleigh Thorne, a real estate appraiser, testified that a tower has no negative effects on residential real estate values. He cited a study (which was never produced or identified) conducted outside Baltimore County to support his position. On cross examination, he acknowledged the study factored in the distance of the towers from the properties, but was unable to recall the distances. (See attached Transcript pages 107,108). He then made the incredible statement that distance was not a factor. Mr Thorne also failed to differentiate between the effect on residential real estate and commercial or industrial real estate. His opinion had no foundation and cannot be considered credible expert testimony. Moreover, his remarks did not overcome the burden that the use does not pose a threat to the welfare of the surrounding community.

Mr. Peter A. Neubauer, a structural engineer, described the structure and its design. He believed its construction to be standard for the industry and that it would be incapable of toppling or breaking. Yet he admitted a site's soil type is relevant but that it was not considered here. Nor was the proximate location of the light rail line considered, although Mr. Neubauer could not rule out its possible effect on the stability of the pole. In fact, his frank testimony raised serious concerns about the Petitioner's lack of attention to the possible risks regarding construction of a 170 foot pole at this location. The witness responed when asked why there is a 200 foot setback: "I don't know the reasoning behind the code. I personally feel it's something just more of a -- just to satiate the public's need for

perceived safety . . ." (Transcript p. 119).

Mr. Robert Denny, an electrical engineer, testified that wireless communication towers present no threat to public health and safety. However, he admitted no long term studies have been conducted to support his position. This is significant for two reasons. First, it casts doubt on the credibility of his "expert" opinion. An expert's opinion is not probative if it is merely conclusory or quasi conclusory. People's Counsel v. Beachwood 107 Md. App.627 (1995). Moreover, an expert's opinion must be dismissed if it is predicated on "immaterial" reasons. Beachwood, supra at 650. An opinion of an expert is sufficiently strong and substantial if the reasons for his opinion or the facts relied on by the expert are strong and substantial. Howard County v. Dorsey 292 Md. 351 (1982).

Second, a lack of conclusive scientific testimony lends credence to citizen concerns about the safety and potential adverse health effects.

Mr. Denny's testimony failed to satisfy the burden that this proposed location presents no greater adverse impact than another location in the zone more distant from residences.

The Petitioner failed to overcome the strong evidence stated by the neighborhood witnesses as to the impact of the tower on the adjoining residence. Moreover, the Petitioner's experts failed to state a basis for their opinions based on the facts of this case that controverted the opinion of the Protestant's expert witness. Without any evidence from the Protestants, the Petitioner's experts

failed to meet their burden of proof; on balance their testimony was refuted by Protestant's expert.

ARGUMENT III

A SPECIAL EXCEPTION USE COUPLED WITH A VARIANCE REQUEST FAILS TO MEET THE CRITERIA TO GRANT A "CONDITIONAL USE"

The rebuttable presumption that a special exception (conditional) use is in the interest of the general public does not apply if the Petitioner cannot satisfy the "conditions". The language concerning a variance request for a wireless communications tower in a recent Court of Special Appeals case, Evans v Shore Communications, 112 Md. App. 284 (1996) supports this interpretation. Quoting North v St. Mary's County, 99 Md.App.502, (1994), the Court in Evans stated at page 309: "The burden on the petitioner [for variance relief] is indeed heavy, and springs from a recognition that variances permit uses that are prohibited and presumed to be in conflict with the ordinance." Such presumption against the use when a variance is needed, overides the rebuttable presumption in favor of a special exception use. This position was stated as well in the earlier case of Chester Haven L.P. v. County Board of Appeals 103 Md. App. 324, at 336: Where special exceptions, as conditional uses are combined with variances, then ". . . the presumption that a conditional use is permitted may well fall by the wayside." See also Umerley v. People's Counsel 108 Md. App. 497 (1996).

The inability of the Petitioner to satisfy the 30 foot setback requirement for uses in the ML zone is, in itself, evidence that

the Petitioner's proposed use "tends to overcrowd the land", "is detrimental to the health, safety and general welfare of the locality involved", "tends to create congestion in roads . . ." and "is contrary to the spirit and intent of the zoning regulations" as set forth in BCZR 502.1. These same standards apply to a special exception request that does not need a variance. How can a proposed use comport with BCZR 502.1 when it fails to meet the bulk standards in the zone? How can the use have no greater impact 3 feet from the property line than 30 feet?

Additionally, the burden of proof for a special exception and a variance are mutually exclusive. For a special exception, the Petitioner must prove that the site is no different than any other site in the zone, and thus the impact at the proposed location will have no greater effect. For a variance, the Petitioner must prove that the site is so unique and different from other sites subject to the same area requirements, that an exception must be made. A single site cannot have both characteristics.

Additionally, the Planning Office expressed these same concerns in its Report dated July 1, 1997, which is part of the Board's file: "In justifying the need for a variance and providing a reason to indicate a hardship or practical difficulty, the applicant states the following: "exceptional narrowness and shallowness of the subject property." This justification for the appropriateness of the variance interestingly provides an excellent rationale for the denial of the requested special exception.

Clearly, the property is too small to accommodate a wireless transmitting and receiving facility. Therefore, this office recommends that the applicant's request be denied."

ARGUMENT IV

THE PETITONER FAILED TO SATISFY THE VARIANCE REQUIREMENTS OF BCZR 307 AND CASELAW

The Petitioner provided scant evidence to support the variance request. He acted as though he was entitled to the variance if he produced enough witnesses to support the special exception. Additionally, the Petition for Variance requests relief under BCZR 238.2 by way of BCZR 255.1. The Petitioner believes he must have a side yard setback of 30 feet, and requests a variance of 3 feet. However, contrary to the Petition, BCZR 255.2 applies because the tower is within 100 feet of a residential zone boundary. Section 255.2 requires compliance with the M.R. zone boundaries found in BCZR 243.2. The actual side yard setback required is **50 feet**, from which Petitioner seeks a setback of 3 feet. (This underlies the necessity of showing the requisite details on the site plan in accordance with the Zoning Regulations).

The only witness who remotely addressed the variance standards was **Mr. Kellman**. Mr Kellman's claim that prior variances granted in 1964 for a separate use is indicative of the site's uniqueness is absurd. The owner sought those variances to build a larger building. The owner's decision in 1964 to extend the manufacturing plant within the setback buffers is evidence that the

site is already overbuilt. There was no evidence the site could not be developed in 1964 without the variances.

Although claiming the site to be "unique", Mr. Kellman admitted the tower could be erected at a location on the property that would satisfy the 30 foot setback requirement. (See Transcript, pages 83-84 attached). This admission is a failure to prove uniqueness and renders unnecessary consideration of the second prong, "practical difficulty or undue hardship".

Additionally, the Protestant's expert engineer and land planner, **Mr. Rick Chadsey**, stated unequivocally that the site was not unique in any way - there are similarly sized and shaped lots throughout Baltimore County.

Even if the property is unique, the Petitioner fails in his burden on the second prong.

In order to show practical difficulty or hardship, the claimant must prove there is otherwise no reasonable use of the property. It is insufficient to suggest that the restriction deprives the owner of maximum use or level of return, or that a part of the property is restricted. Burns v. Mayor & City Council 251 Md. 554 (1968).

Mr. Kellman, as well as Mr. Witmyer, the owner, frankly admitted that the site has enjoyed a productive use for many years. The entire site, including the area proposed for the tower, is currently occupied by the existing manufacturing use. The proposed tower use is squeezed on the site as an added financial benefit to the owner; but the owner has had a reasonable and successful

business on the site for over 30 years. Mr. Witmyer sought to avoid the setback requirements in 1964 and received three significant variances. He now returns claiming an additional variance because he has no remaining area to construct a second unrelated principal use.

This connects to the additional point that the alleged hardship is self-created. The owner chose to construct the improvements on the site at their current location. He also chose the location for the proposed tower. He cannot select the area that fails to comply with setback requirements and claim practical difficulty or hardship.

The Court said in Cromwell v. Ward 102 MD. App. 691, 721-722 (1995) "Self-inflicted or self-created hardship . . . is never considered proper grounds for a variance . . . Were we to hold that self-inflicted hardshhips in and of themselves justified variances, we would effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless." (Citations omitted).

Nor can AT&T claim uniqueness or practical difficulty. Peculiarity or uniqueness is explained in Cromwell, supra. It refers to characteristics of the property rather than the owner. Also, AT&T cannot contend an economic detriment is "practical difficulty". Maintaining a competitive edge to ensure profitability is not a basis to grant a variance. Several zoning cases have rejected the relevance of financial hardship. Cromwell also addressed this issue: "Hardship is not demonstrated by

economic loss alone. It must be tied to a special circumstances, none of which has been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime economic loss is alleged would make a mockery of the zoning program." Id. at 715-716 quoting Xanthos v. Board of Adjustment 685 P.2d 1032, 1036-37 (Utah 1964).

ARGUMENT V

DE NOVO APPEALS

Petitioner mistakenly relies on the Zoning Commissioner's Opinion, and on the evidence introduced at the Zoning Commissioner's hearing to carry its burden, as if the hearing is on the record. This is erroneous. This appeal before the County Board of Appeals is de novo. See Baltimore County Charter Sec. 603. The case starts anew before the Board; it proceeds as if the Zoning Commissioner's opinion did not exist.

The Court of Special Appeals addressed this in Boehm v. Anne Arundel Co. 54 Md. App. 497, 511 (1983): "A trial or hearing "de novo" means trying the matter anew as if it had not been heard before and as if no decision had been previously rendered. Thus, it is said that where a statute provides that an appeal shall be heard de novo such a hearing is in no sense a review of the hearing previously held, but is a complete trial of the controversy, the same as if no previous hearing had ever been held. . . all aspects of the case should be heard anew . . ."

ARGUMENT VI

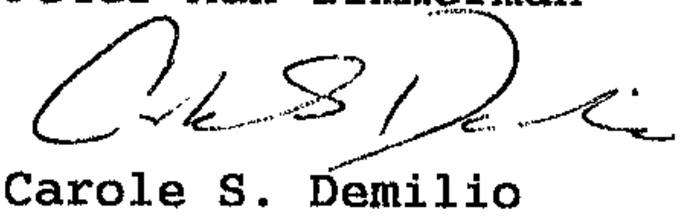
THE SITE PLAN FAILS TO IDENTIFY SPECIFIC INFORMATION REQUIRED BY LAW AND IS DEFICIENT

PEOPLE'S COUNSEL adopts the argument set forth in the Memorandum of Michael E. Marino on behalf of Protestants.

For these reasons, People's Counsel states that the Petitioner **has failed to satisfy the burden of proof for the special exception and the variance and requests that the special exception and the variance be denied.**

Respectfully submitted,

Peter Max Zimmerman



Carole S. Demilio
Office of the People's Counsel
for Baltimore County
Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of January, 1998, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed to Paul A. Dorf, Esq. and S. Leonard Rottman, Esq., 2 Hopkins Plaza, Suite 600, Baltimore, MD 21201, attorneys for Petitioners, and to Nancy E. Paige, Esq., 233 E. Redwood Street, Baltimore, MD 21202, and Michael E. Marino, Esq., Levy & Marino, 609 Bosley Avenue, Towson, MD 21204, attorneys for Protestants.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

IN RE: PETITION FOR SPECIAL EXCEPTION AND VARIANCE

NW/End Greenwood Place, 525 ft. NW Old Court Road, SW/S Western MD. Railroad
(7 Greenwood Place)
3rd Election District
2nd Councilmatic District
Legal Owner: Henry M. Witmyer, *et ux*
Leasee: AT&T Wireless Service

Petitioners

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 97-556-XA

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

ORDER FOR APPEAL

PINERIDGE ASSOCIATION, INC., GWYNNVALE CIVIC ASSOCIATION and BRITTANY PROPERTIES, a Maryland general partnership which owns The Brittany Apartments located at 4 Deauville Court, Pikesville, Maryland 21208, (collectively, the "Protestants"), order an appeal from the Final Order of the Zoning Commissioner for Baltimore County dated August 8, 1997.

Nancy E. Paige
233 E. Redwood Street
Baltimore, Maryland 21202
(410) 576-4294

Michael E. Marino
LEVY & MARINO, P.A.
609 Bosley Avenue
Towson, Maryland 21204
(410) 821-6633

Attorneys for the Protestants

RECEIVED
SEP 15 1997
PDM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of September, 1997, a copy of the aforegoing Order of Appeal was mailed postage prepaid, first class mail to Paul A. Dorf, Esquire and S. Leonard Rottman, Esquire, 600 Mercantile Bank & Trust Building, Two Hopkins Plaza, Baltimore, Maryland 21201, attorneys for the Petitioner; and to Arnold Jablon, Director, Department of Permits and Development Management, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Nancy E. Paige

Nancy E. Paige

Michael E. Marino

Michael E. Marino

IN RE: PETITION FOR SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
	*	ZONING COMMISSIONER
NW/End Greenwood Place, 525 ft. NW Old Court Road, SW/S Western MD. Railroad (7 Greenwood Place)	*	OF BALTIMORE COUNTY
3rd Election District	*	Case No. 97-556-XA
2nd Councilmatic District		
Legal Owner: Henry M. Witmyer, *et ux*	*	
Leasee: AT&T Wireless Service		
	*	
Petitioners		
	*	

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

AMENDED ORDER FOR APPEAL

PINERIDGE ASSOCIATION, INC., c/o Nancy Rosenberg, 7 Peachtree Court, Pikesville, Maryland 21208, GWYNNVALE CIVIC ASSOCIATION, c/o Betty McDaniels, 1201 Idylwood Road, Pikesville, Maryland 21208, and BRITTANY PROPERTIES, a Maryland general partnership which owns The Brittany Apartments located at 4 Deauville Court, Pikesville, Maryland 21208, (collectively, the "Protestants"), order an appeal from the Final Order of the Zoning Commissioner for Baltimore County dated August 8, 1997.

Nancy E. Paige
233 E. Redwood Street
Baltimore, Maryland 21202
(410) 576-4294

Michael E. Marino
LEVY & MARINO, P.A.
609 Bosley Avenue
Towson, Maryland 21204
(410) 821-6633
Attorneys for the Protestants

RECEIVED
PAYMENT
RUE 9/5
ZONING OFFICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of September, 1997, a copy of the aforegoing Amended Order of Appeal was mailed postage prepaid, first class mail to Paul A. Dorf, Esquire and S. Leonard Rottman, Esquire, 600 Mercantile Bank & Trust Building, Two Hopkins Plaza, Baltimore, Maryland 21201, attorneys for the Petitioner; and to Arnold Jablon, Director, Department of Permits and Development Management, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Nancy E. Paige

Michael E. Marino

5/16/97

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE.
NW/end Greenwood Place, 525 ft. NW Old Court Road, SW/S Western Md. Railroad (7 Greenwood Pl.)
3rd Election District
2nd Councilmanic District
Legal Owner: Henry M. Witmyer, et ux
Lessee: AT&T Wireless Services
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 97-556-XA
*
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner on Petitions for Special Exception and Variance, for the property known as 7 Greenwood Place, located near Old Court Road and the junction of the Baltimore Beltway (I-695) and the Northwest Expressway (I-795) in the Woodholme section of Baltimore County. The Petitions were filed by Henry M. Witmyer, Jr. and Helen A. Witmyer, property owners, and AT&T Wireless Services, Inc., Contract Lessee. Special Exception approval is requested to permit a wireless transmitting and receiving facility not permitted by right under Section 426.1 of the Baltimore County Zoning Regulations (BCZR) in an M.L. zone. Variance relief is requested from Section 255.1 of the BCZR, to permit a principal structure as close as 3 ft. to the rear lot line, rather than the required 30 ft. and/or to amend the previously approved site plan in case No. 64-126-A. The subject property and the requested relief are more particularly shown on Petitioners' Exhibit No. 1, the plat to accompany the Petitions for Special Exception and Variance.

Appearing at the requisite public hearing held for this case were Frances Kingsbury, Esquire, Abraham Waranowitz and Michael Yglesias, all from AT&T Wireless Services, Inc. Other individuals present in support of the Petitions were Peter Stickles, Brian Parsons, Robert Denny, Peter Neubauer and Robert Morelock. The Petitioners were represented by Paul Dorf, Esquire.

Date By

Appearing in opposition to the request was Nancy E. Paige, Esquire. Ms. Paige appeared both as an individual property owner in the vicinity, and in a representative capacity on behalf of the Pine Ridge Association. Other individuals appearing as interested persons or in opposition to the request included Paul Umansky, Jerome D'Antoni and Helen Fox.

As is required by the Baltimore County Zoning Regulations, notice of the required public hearing was provided by way of the posting of the property with a sign advertising the time and place of the hearing. A certificate of posting is contained within the file indicating that the sign was posted on or about July 1, 1997, 15 days in advance of July 16 hearing date. A photograph of the sign was also submitted. There was some question raised as to whether the sign was conspicuously posted as is required. The attendance of the above referenced protestants support the conclusion that certain individuals in the neighborhood were able to see the sign and, therefore, appear at the hearing. I am satisfied, based upon the evidence in file and the testimony offered at the hearing, that the posting requirement was satisfied.

ORDER RECEIVED
Date 8/19/97
By SLG

Testifying at the hearing in support of the Petitions was Robert Morelock, a landscape architect employed by Daft-McCune-Walker, Inc. Mr. Morelock's firm prepared the site plan, marked as Petitioner's Exhibit No. 1. He indicated that the property is roughly triangular in shape, .92 acres in area, split zoned D.R.16 and M.L. The predominant portion of the property is zoned M.L., with a small sliver around the perimeter of the site zoned D.R.16. Vehicular access to the property is by way of a small roadway known as Greenwood Place. This roadway leads from the subject site to Old Court Road. On the southeast (front) portion of the site, the property abuts another M.L. zoned property which contains a single story brick building used as a light manufacturing plant. On the north side, the

property features a significant boundary with the right of way for the Western Maryland Railroad track. To the south and the west, the property abuts, in part, the Brittany Park apartment complex and a D.R.16 zone.

The property is improved with a two story block and metal building which is used by an industrial chemical packaging company. The building occupies the front portion of the site where the property is at its widest. The site plan shows that the property is approximately 151 ft. in width at the front property line. The lot then tapers towards the rear and eventually features a width as narrow as 40 ft. The rear portion of the site, behind the manufacturing building, contains an existing macadam paving area which is used for parking and storage.

Mr. Ygeslias testified on behalf of AT&T Wireless and stated that he was assigned by his employer to conduct a search for suitable wireless transmitting and receiving facility sites in Baltimore County. AT&T Wireless is a corporation engaged in the business of providing wireless and mobile communications. This Zoning Commissioner has entertained numerous Petitions submitted by AT&T Wireless and its competitors and is familiar with the company, its technology and services. Essentially, the company offers mobile communication services, including car phone service, mobile fax and wireless transmission services. As is the case with other similar companies, AT&T Wireless is establishing its communication network in Baltimore County. Due to the technical features of the network, the company finds it necessary to establish a series of wireless transmitting and receiving facilities throughout the County. Much of the company's equipment is installed on existing towers, buildings and other structures, however, in some cases, monopoles or towers are constructed. In this case, Mr. Yglesias testified about the search area which he examined and the need for an additional facility in this locale. He indicated that AT&T Wireless

ORDER RECEIVED FOR FILING
Date 8/8/97
By Mi Murphy

has both capacity and coverage problems in the vicinity and that a wireless transmitting and receiving facility was needed in this locale.

Brian Parsons, a zoning analyst retained by AT&T Wireless, also testified. Based on the information provided him by Mr. Yglesias, Mr. Parsons conducted a search to determine appropriate sites in the locale where the company's equipment could be installed. Mr. Parsons testified at length regarding the alternatives which were analyzed. Ultimately, it was determined that the subject property was the most appropriate site, in terms of its location, topography, present land use, etc.

Additional testimony and evidence presented was that the company proposes constructing a 170 ft. tall monopole on the property. In addition to the monopole, a small maintenance equipment compound will be constructed at the base of the pole. This compound will be surrounded by an 8 ft. high chain link fence and will contain equipment cabinets necessary for the operation of the facility. A series of antennas will be installed at the top of the pole so as to provide additional capacity and coverage for the AT&T Wireless communication network in this locale. It is to be noted that the tower will be located to the rear of the existing building, on the macadam storage area which immediately abuts the Western Maryland Railroad line. It was indicated that that location was the most appropriate portion of the site for constructing of the pole in that it will be screened by the building, sits immediately adjacent to the railroad track and will not interfere with the existing manufacturing use on the property.

ORDER RECEIPT FOR FILING
Date 2/3/03
By

Additional testimony was offered by other experts retained by AT&T, including Robert Denny, a communications engineer, and Peter Neubauer, a structural engineer. Mr. Denny described that technical features of the equipment and AT&T's network. His testimony was dispositive that the tower is safe and meets all electronic emissions standards. Mr. Neubauer's

testimony was persuasive that the tower will be structurally sound. Additionally, an environmental impact statement, which fully describes the facility's operation and impact, was submitted. This report states that the facility will meet and/or exceed all governmental standards.

The Protestants offered testimony in opposition to the request. Ms. Paige was particularly concerned about the esthetic impact of the tower on nearby residences. She believes that the area at large is residential in character and that the monopole is out of character for this vicinity. She also questioned whether the Petitioner has satisfied the legal requirements to obtain special exception and variance relief.

Mr. D'Antoni lives approximately 1/2 mile away and expressed similar concerns. He is particularly worried about the operation of the tower and whether it will cause electronic interference. The testimony submitted by the Petitioner was that no such interference will result.

A review of the BCZR discloses that the proposal can be approved only upon the Petitioner obtaining special exception relief. Section 253.1 of the BCZR identifies those uses permitted by right in the M.L. zone. Among the uses identified therein are wireless transmitting and receiving structures 200 ft. or less in height above grade level, pursuant to Section 426 of the BCZR. (See 253.1.B.19). Section 426 of the BCZR provides that wireless transmitting and receiving structures with a maximum height of 200 ft. above grade level are permitted only if a minimum setback of 200 ft. is maintained from any boundary with a residential zone. In this case, although the tower is less than 200 ft. in height, the setback from the nearest residential zone is less than 200 ft. Thus, special exception relief is required. The BCZR, specifically Section 253.2.D.2, provides that wireless transmitting and receiving structures which do not satisfy the requirements of Section 426 are permitted only by special exception.

ORDER RECEIVED FOR FILING
Date 8/27/97
By Arnold

Based upon the testimony and evidence presented, I am persuaded that the Petition for Special Exception should be granted. As is well settled, a special exception use is part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare and, therefore, valid. See Schultz v. Pritts, 291 Md. (1981). Moreover, in considering a proposed special exception, it is not whether the use permitted by way of special exception will have adverse effects, (such effects are assumed by the designation of use as by special exception only) it is whether the adverse effects at the particular location would be greater than the adverse effects ordinarily associated with that particular use. See Mossberg v. Montgomery County, 107, Md. App. 1 (1995).

It is particularly of note that a wireless transmitting and receiving facility with a height of 170 ft., as is the case here, is permitted as of right in an M.L. zone, if a 200 ft. setback to the nearest residential zone is maintained. If the facility is less than 200 ft. in height and the setback cannot be maintained, the use is permitted by special exception only. This is significant, particularly in view of Ms. Paige's argument and the ZAC comment from the Office of Planning. That comment indicates that the special exception should be denied because the lot is narrow and, by inference, the 200 ft. residential setback cannot be maintained. Taken to its conclusion, the Office of Planning would, therefore, recommend a denial of every special exception requested, pursuant to Section 253.2.D.2, in that in every such case, an insufficient setback would exist. Such a result is clearly contrary to the intent of the BCZR.

ORDER RECEIVED FOR FILING
Date 5/9/97
By

In my judgment, the impact of the proposed special exception here will not be inherently greater than elsewhere in the zone. To the contrary, the anticipated impact will be less. The existence of the manufacturing uses on the subject property and the adjacent parcels are a significant factor,

as is the existence of the railroad line immediately abutting this property. Although there are residential uses nearby, this is not the case of an M.L. zone nestled in a purely residential area. I believe that the character of this site, and the properties immediately adjacent thereto are persuasive factors.

Variance relief is also requested. This relief is sought to permit a portion of a structure to be as close as 3 ft. to the rear property line, in lieu of the required 30 ft. An examination of the site plan shows that the Petitioner has attempted to locate the monopole and related equipment as close to the railroad line as possible, so as to provide the largest buffer available to the apartment complex. Such an approach is entirely appropriate and logical, and reduces the impact of the pole upon the nearest residential uses. The grant of variances are governed by Section 307 of the BCZR. That section requires a finding that the property is unique. Uniqueness here is based upon the unusual configuration of the property, specifically, its triangular shape and decreasing width from the front property line to the rear property line. The width of the property at its greatest point is less than 200 ft., thereby supporting a finding of practical difficulty. That is, there is no single place on the site where a 200 ft. setback could be maintained. Moreover, as set forth above, I do not believe that the proposed relief will cause detrimental impacts on surrounding properties. Thus, the Petition for Variance to accommodate the wireless transmitting and receiving facility and related equipment shall be granted.

ORDER RECEIVED FOR FILING
Date 4/27/94
By Wm

Finally, it is of note that variance relief was granted in 1963 for the building on site which presently accommodates the manufacturing use. It appears, from an examination of the site plan, that the building, as constructed, is not consistent with the variances which were granted. If

necessary, the property owner could file a Petition for Special Hearing to bring the existing structures into compliance with the relief previously granted. However, this issue was not the subject of this hearing, nor were the Petitions advertised or posted for such relief. Therefore, I decline to issue any ruling on that issue, notwithstanding that the Petitions for Special Exception and Variance for the wireless transmitting and receiving structure shall be granted as set forth hereinabove.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 8th day of August 1997 that a Petition for Special Exception for, approval of a wireless transmitting and receiving facility not permitted by right under Section 426.1 of the Baltimore County Zoning Regulations (BCZR) in an M.L. zone, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a variance from Section 255.1 of the BCZR, to permit a principal structure as close as 3 ft. to the rear lot line, rather than the required 30 ft., and/or amend the previously approved site plan in case No. 64-126-A, be and is hereby GRANTED, subject, however, to the following restriction:

1. The Petitioners are hereby made aware that proceeding at this time is at its 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.

ORDER RECEIVED FOR FILING
Date 8/8/97
By Mmn

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

LES:mmn

Baltimore County
Zoning Commissioner
Office of Planning

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386

August 7, 1997

Paul A. Dorf, Esquire
S. Leonard Rottman, Esquire
600 Mercantile Bank & Trust Bldg.
Two Hopkins Plaza
Baltimore, Maryland 21201

RE: Petitions for Special Exception and Variance
Case No. 97-556-XA
Property: 7 Greenwood Place
Petitioner: AT&T Wireless Services/Henry M. Witmyer, et ux,
Petitioners

Dear Mr. Dorf:

Enclosed please find the decision rendered in the above captioned case. The Petitions for Special Exception and Variance have been granted, with restriction, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn
att.
c: Frances Kingsbury & Abraham Waranowitz, Michael Yglesias,
AT&T Wireless Services
8403 Colesville Road, Silver Spring, Md. 21090
c: Nancy E. Paige, Esquire, 233 E. Redwood St., Balto. Md. 21202
c: Paul Umansky, 1219 Idylwood Road, Balto. Md. 21208
c: Jerome D.'Antoni, 1204 Cobb Rd., Balto. Md. 21208
c: Helen Fox, The Brittany Apts., 4 Deauville Court, Pikesville 21208

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on Recycled Paper

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 7 Greenwood Place Baltimore 21208
which is presently zoned ML + D.R. 16

This Petition shall be filed with the Department of Permits & Development Management

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 Regulations of Baltimore County, to use the herein described property for

A Wireless Transmitting and Receiving Facility not permitted by section 426.1 in an ML zone

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.

Contract Purchaser/Lessee:
AT&T Wireless Services
by: John M. Andrews, Jr., Agent
(Type or Print Name)

Signature

8403 Colesville Rd, 16th Floor
Address

Silver Spring Md 20910
City State Zipcode

Legal Owner(s):
Henry M Witmyer
(Type or Print Name)

Signature

Helen A Witmyer
(Type or Print Name)

Signature

7 Greenwood Place (410) 484-5865
Address Phone No.

Baltimore Md 21208
City State Zipcode

Name, Address and phone number of representative to be contacted.

S. Leonard Rothman, Esquire
Name

Address Phone No.

Attorney for Petitioner:

S. Leonard Rothman, Esquire
(Type or Print Name)

Signature

600 Mercantile Bank & Trust Bldg
Two Hopkins Plaza 539-5795
Address Phone No.

Baltimore Md 21201
City State Zipcode

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

Revised 9/5/95

556

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 7 Greenwood Place, Baltimore 21208

which is presently zoned ML + D.R.-16

This Petition shall be filed with the Office of Zoning Administration & Development Management.

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)

255.1 to permit a principal structure as close as 3 feet to the rear lot line rather than the required thirty feet and to amend previously approved site plan and zoning case # 69-126A.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or practical difficulty)

exceptional narrowness and shallowness of the subject property

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.

Contract Purchaser/Lessee:

AT&T Wireless Services
(Type or Print Name) by: John M. Andrews, Jr., Agent

Signature

8403 Colesville Rd., 16th Floor
Address

Silver Spring Md 20910
City State Zipcode

Attorney for Petitioner:

S. Leonard Rothman, Esquire
(Type or Print Name)

Signature

600 Mercantile Bank & Trust Bldg
Two Hopkins Plaza 539-5195
Address Phone No.

BALTIMORE MD 21201
City State Zipcode

Legal Owner(s):

Henry M. Witmyer, Jr. ET UX
(Type or Print Name)

Signature

Helen A. Witmyer
(Type or Print Name)

Signature

7 Greenwood Place (410)484-5865
Address Phone No.

Baltimore MD 21208
City State Zipcode

Name, Address and phone number of representative to be contacted.

S. Leonard Rothman, Esquire
Name

Two Hopkins Plaza. 539-5195
Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

Zoning Administration & Development Management

Printed with Soybean Ink on Recycled Paper

556

DMW

Daft·McCune·Walker, Inc.

200 East Pennsylvania Avenue
Towson, Maryland 21286
http://www.dmw.com
410 296 3333
Fax 410 296 4705

A Team of Land Planners, Landscape Architects, Engineers, Surveyors & Environmental Professionals

Description

to Accompany Petition for Special Exception

and Variance

0.92 Acre Parcel

Witmeyer Property

Northeast Side of Breton Hill Road

Northeast of Greenwood Place

First Election District, Baltimore County, Maryland

Beginning for the same at the end of the two following courses and distances measured from a point formed by the intersection of the centerline of Old Court Road (relocated), of variable width, with the centerline of the Western Maryland Railroad main track (1) Northwesterly along the centerline of the main track 540 feet, more or less, thence at a right angle to said main track (2) Southwesterly 40 feet, more or less, to the point of beginning, thence leaving said point of beginning and running the following five courses and distances, viz: (1) South 33 degrees 49 minutes West 151.06 feet, thence (2) Northwesterly by a curve to the right having a radius of 2831.93 for a distance of 210.60 feet (the arc of said curve being subtended by a chord bearing North 42 degrees 48 minutes 47 seconds West 210.56 feet), thence (3) North 38 degrees 27 minutes West 204.91 feet, thence (4) North 33 degrees 49 minutes East 40.00 feet, and thence (5) South 56 degrees 11 minutes East 400.00 feet to the point of the beginning, containing 0.92 acres of land, more or less.

THIS DESCRIPTION HAS BEEN PREPARED FOR ZONING PURPOSES ONLY AND IS NOT INTENDED TO BE USED FOR CONVEY

May 21, 1997

Project No. 96035.43 (L96035.43)

556

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 in Towson, Maryland on the property identified herein as follows:

Case: #97-556-XA
7 Greenwood Place
NW/end Greenwood Place, 525' NW Old Court Road, SW/S Western Maryland Railroad
3rd Election District
2nd Councilmanic
Legal Owner(s):
Henry M. Witmyer and Helen A. Witmyer
Contract Purchaser(s):
AT&T Wireless Services

Special Exception: for a wireless transmitting and receiving facility in an M.L. zone.
Variance: to permit a principal structure as close as 3 feet to the rear lot line rather than the required 30 feet and to amend previously approved site plan in zoning case #64-126-A.
Hearing: Wednesday, July 16, 1997 at 2:00 p.m., Room 407 Courts Bldg., 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call (410) 887-3353.
(2) For information concerning the File and/or Hearing, Please Call (410) 887-3391.

6/405 June 26 C153906

CERTIFICATE OF PUBLICATION

TOWSON, MD., 6/26, 1997

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 6/26, 1997.

THE JEFFERSONIAN,

A. Henderson

LEGAL AD. - TOWSON

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 038195

DATE 13 Jun 97 ACCOUNT R001-6150

97-556

AMOUNT $ 500.00

RECEIVED FROM: ARDHS, LLC

FOR: ATT Wireless Services 7 Greenwood Place SPXA

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
PROCESS ACTUAL TIME
6/13/1997 6/13/1997 09:23:05
REG WS06 CASHIER KMCM KXM DRAWER 6
MISCELLANOUS CASH RECEIPT
Receipt # 001179 OFLN
CR NO. 038195
$500.00 CHECK
Baltimore County, Maryland

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 041006

DATE 30 Jun 97 ACCOUNT R-001-6150

item 556

AMOUNT $ 50.00

RECEIVED FROM: Adelberg, Rudow, Dorf, Hendler & Sarnoff

FOR: 7 Greenwood Place (AT+T Wireless)

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
PROCESS ACTUAL TIME
6/30/1997 6/30/1997 08:34:45
REG WS02 CASHIER JFTC JMR DRAWER 2
MISCELLANOUS CASH RECEIPT
Receipt # 002494 OFLN
CR NO. 041006
50.00 CHECK
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLA
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 042658

DATE 9/8/97 ACCOUNT R-001-6150

AMOUNT $ 460.00

RECEIVED FROM: Levy & Marino, P.A.

FOR: Appeal - Case # 97-556-XA

RYE

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT
PROCESS ACTUAL TIME
9/09/1997 9/08/1997 14:35:29
REG W503 CASHIER VMJ1 VLN DRAWER 7
MISCELLANEOUS CASH RECEIPT
Receipt # 018070 MELN
CR NO. 042658
460.00 CHECK
Baltimore County, Maryland

CERTIFICATE OF POSTING

RE: Case No.: 97-556-XA

Petitioner/Developer: A.T.&T WIRELESS SERVICE
c/o S. LEONARD ROTTMAN, ATTY.

Date of Hearing/Closing: 7/16/97

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

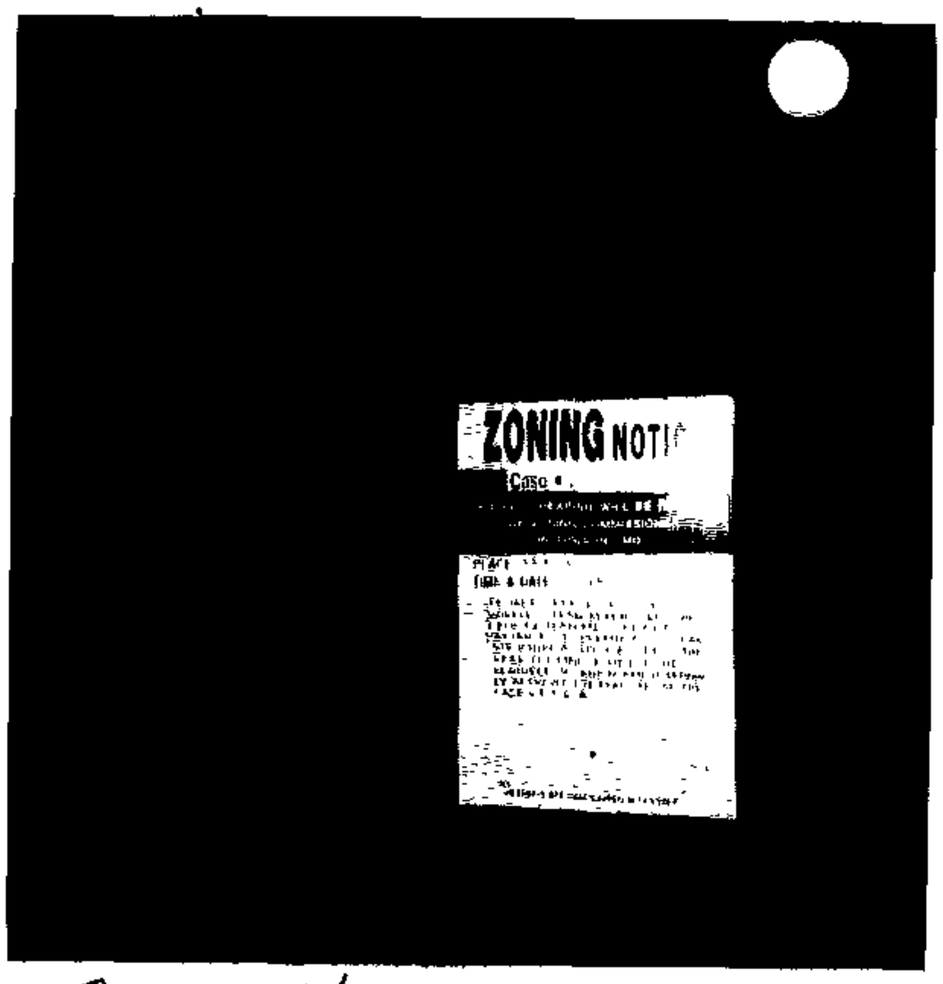
Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at

7 GREENWOOD PLACE

The sign(s) were posted on 7/1/97
(Month, Day, Year)

Sincerely,



Richard E. Hoffman 7/1/97
(Signature of Sign Poster and Date)

RICHARD E. HOFFMAN
(Printed Name)

904 DELLWOOD DR.
(Address)

FALLSTON, MD 21047
(City, State, Zip Code)

(410) 879-3122
(Telephone Number)

CASE NO. 97-556 XA
POSTED 7/1/97
7 GREENWOOD PL.
Richard E. Hoffman 7/1/97

CERTIFICATE OF POSTING

RE: Case No.: 97-556-XA

Petitioner/Developer: _____

HENRY M. WITMYER

Date of Hearing/Closing: _____

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 7 GREENWOOD PL.

The sign(s) were posted on 10/9/97
(Month, Day, Year)

Sincerely,

Gary Freund 10/9/97
(Signature of Sign Poster and Date)

GARY FREUND
(Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

9/96
cert.doc

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Ave
Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of which, lies with the petitioner/applicant) and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 556

Petitioner: AT+T Wireless Services

Location: 7 Greenwood Place

PLEASE FORWARD ADVERTISING BILL TO:

NAME: S.L. ROTTMAN

ADDRESS: 600 Mercantile Bank Bldg.
2 Hopkins Plaza - Balto. 21201

PHONE NUMBER: 410-539-5195

AJ:ggs

(Revised 09/24/96)

55C

Printed with Soybean Ink

Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than *_____.

Format for Sign Printing, Black Letters on White Background:

ZONING NOTICE

Case No.: 97-556-SXA

A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD

PLACE: *

DATE AND TIME: *

REQUEST: Special Exception to Permit a Wireless Transmitting & Receiving Facility in an ML Zone and Variance to permit a principle structure as close as 3 feet to the rear lot line in lieu of the required 30' and to amend previously approved site plan in Zoning case 64-126-A

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY. TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

9/96
post.4.doc

*UPON RECEIPT OF THE NOTICE OF HEARING, THE PETITIONER OR HIS AGENT FILLS IN THIS INFORMATION AND THEN FORWARDS THIS FORM TO THE SIGN POSTER.

554

TO: PUTUXENT PUBLISHING COMPANY
June 26. 19967 Issue - Jeffersonian

Please foward billing to:

S. Leonard Rottman, Esq.
600 Mercantile Bank Bldg.
2 Hopkins Plaza
Baltimore, MD 21201
410-539-5195

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 in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-556-XA
7 Greenwood Place
NW/end Greenwood Place, 525' NW Old Court Road, SW/S Western Maryland Railroad
3rd Election District - 2nd Councilmanic
Legal Owner(s): Henry M. Witmyer and Helen A. Witmyer
Contract Purchaser(s): AT&T Wireless Services

Special Exception for a wireless transmitting and receiving facility in an M.L. zone.
Variance to permit a principal structure as cloase as 3 feet to the rear lot line rather than the required 30 feet and to amend previously approved site plan in zoning case #64-126-A.

HEARING: WEDNESDAY, JULY 16, 1997 at 2:00 p.m., Room 407 Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

June 20, 1997

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 in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-556-XA
7 Greenwood Place
NW/end Greenwood Place, 525' NW Old Court Road, SW/S Western Maryland Railroad
3rd Election District - 2nd Councilmanic
Legal Owner(s): Henry M. Witmyer and Helen A. Witmyer
Contract Purchaser(s): AT&T Wireless Services

Special Exception for a wireless transmitting and receiving facility in an M.L. zone.
Variance to permit a principal structure as cloase as 3 feet to the rear lot line rather than the required 30 feet and to amend previously approved site plan in zoning case #64-126-A.

HEARING: WEDNESDAY, JULY 16, 1997 at 2:00 p.m., Room 407 Courts Building, 401 Bosley Avenue.

Arnold Jablon
Director

cc: Henry Witmyer
AT&T Wireless Services
S. Leonard Rottman, Esq.

NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY JULY 1, 1997.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Printed with Soybean Ink
on Recycled Paper

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

October 3, 1997

NOTICE OF ASSIGNMENT

CASE #: 97-556-XA

IN THE MATTER OF: HENRY M. WITMYER, ET UX -Legal Owners; AT&T WIRELESS SERVICES -Lessee /Petitioners
(7 Greenwood Place, NW of Old Court Rd)
3rd Election District; 2nd Councilmanic

(Petitions for Special Exception and Variance GRANTED by Z.C.)

ASSIGNED FOR: TUESDAY, DECEMBER 2, 1997 at 10:00 a.m.

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellants /Protestants : Nancy C. Paige, Esquire
Michael E. Marino, Esquire
Appellants /Protestants : Pineridge Association, Inc.
c/o Nancy Rosenberg
Gwynnvale Civic Association
c/o Betty McDaniels
Brittany Properties
c/o Helen Fox /Brittany Apts

Counsel for Petitioners : Paul A. Dorf, Esquire
Petitioners /Legal Owners : Mr. & Mrs. Henry Witmyer
Petitioner /Contract Lessee : AT&T Wireless Services

Paul Umansky
Jerome D'Antoni

People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt

Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co Atty

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on Recycled Paper

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

December 5, 1997

NOTICE OF DELIBERATION

Having concluded this matter on December 2, 1997, deliberation has been scheduled by the Board as follows:

HENRY M. WITMYER, ET UX /Legal Owner; AT&T WIRELESS /Lessee
CASE NO. 97-556-XA

DATE AND TIME : **Tuesday, February 10, 1998 at 9:30 a.m.**

LOCATION : **Room 48, Basement, Old Courthouse**

(NOTE: BRIEFS ARE DUE FROM COUNSEL ON THURSDAY, JANUARY 15, 1998; please submit Original and three (3) copies.)

Kathleen C. Bianco
Administrator

cc: Counsel for Appellants /Protestants : Nancy C. Paige, Esquire
Michael E. Marino, Esquire
Appellants /Protestants : Pineridge Association, Inc.
c/o Nancy Rosenberg
Gwynnvale Civic Association
c/o Betty McDaniels
Brittany Properties
c/o Helen Fox /Brittany Apts

Counsel for Petitioners : Paul A. Dorf, Esquire
Petitioners /Legal Owners : Mr. & Mrs. Henry Witmyer
Petitioner /Contract Lessee : AT&T Wireless Services

Paul Umansky
Jerome D'Antoni

People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt

Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co Atty

Copied: K.B.F.

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on Recycled Paper

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

July 14, 1997

S. Leonard Rottman, Esquire
600 Mercantile Bank & Trust Building
Two Hopkins Plaza
Baltimore, MD 21201

RE: Item No.: 556
Case No.: 97-556-XA
Petitioner: Henry Witmyer, et ux

Dear Mr. Rottman:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on June 13, 1997.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Roslyn Eubanks in the zoning office (410-887-3391).

Sincerely,

W. Carl Richards, Jr.

W. Carl Richards, Jr.
Zoning Supervisor

WCR/re
Attachment(s)

Printed with Soybean Ink
on Recycled Paper

7/16/97

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits
and Development Management

Date: July 1, 1997

FROM: Arnold F. "Pat" Keller, III, Director
Office of Planning

SUBJECT: 7 Greenwood Place

INFORMATION

Item Number: 556

Petitioner: AT&T Wireless Services

Zoning: ML & DR-1

Requested Action: Special Exception

Summary of Recommendations:

In justifying the need for a variance and providing a reason to indicate a hardship or practical difficulty, the applicant states the following: "exceptional narrowness and shallowness of the subject property." This justification for the appropriateness of the variance interestingly provides an excellent rationale for the denial of the requested special exception. Clearly, the property is too small to accommodate a wireless transmitting and receiving facility. Therefore, this office recommends that the applicant's request be denied.

Prepared by: Jeffrey W. Long

Division Chief: Arnold F. Keller

AFK/JL

C:\MSOFFICE\WINWORD\ZAC\556.DOC

B A L T I M O R E C O U N T Y, M A R Y L A N D

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO: PDM

DATE: Jan 25, 97

FROM: R. Bruce Seeley
Permits and Development Review
DEPRM

SUBJECT: Zoning Advisory Committee
Meeting Date: June 23, 97

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee Items:

Item #'s:

556
554
555
551
558
559
560
561

RBS:sp

BRUCE2/DEPRM/TXTSBP

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Management

Date: July 1, 1997

FROM: Robert W. Bowling, Chief
Development Plans Review Division

ROBERT W. BOWLING

SUBJECT: Zoning Advisory Committee Meeting
for June 30, 1997
Item Nos. 550, 551, 552, 554, 555, 556, 557, 558, 559, 560, & 562

The Development Plans Review Division has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File

ZONE630.NOC

Baltimore County Government
Fire Department

700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

June 25, 1997

Arnold Jablon, Director
Zoning Administration and Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF June 23, 1997

Item No.: SEE BELOW Zoning Agenda:

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.

S. The Fire Marshal's Office has no comments at this time, IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

550, 551, 552, 553, 555, 556, 557, 558, 560, 561, and 562

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File

Printed on Recycled Paper

Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary

Parker F. Williams
Administrator

Ms. Roslyn Eubanks
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County 6.20.97
Item No. 556 COM

Dear Ms. Eubanks:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Please contact Larry Gredlein at 410-545-5606 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

for Ronald Burns, Chief
Engineering Access Permits
Division

LG

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
PETITION FOR VARIANCE
7 Greenwood Place, NW/end Greenwood Pl., * ZONING COMMISSIONER
525' NW Old Court Road, SW/S Western Md. R/R
3rd Election District, 2nd Councilmanic * OF BALTIMORE COUNTY

Legal Owner(s): Henry and Helen Witmyer * CASE NO. 97-556-XA
Contract Purchaser(s): AT&T Wireless Services
Petitioners *

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

ENTRY OF APPEARANCE

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

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio
CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of July, 1997, a copy of the foregoing Entry of Appearance was mailed to S. Leonard Rottman, Esq., 2 Hopkins Plaza, Suite 600, Baltimore, MD 21201, attorney for Petitioners.

Peter Max Zimmerman
PETER MAX ZIMMERMAN

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

September 9, 1997

S. Leonard Rottman, Esquire
600 Mercantile Bank & Trust Building
Two Hopkins Plaza
Baltimore, MD 21201

RE: Petitions for Variance
and Special Exception
NW/end Greenwood Place,
525 ft. NW Old Court Rd.,
SW/S Western Md. Railroad
(7 Greenwood Place)
3rd Election District
2nd Councilmanic District
Henry M. Witmyer, et ux -
Legal Owners
Lessee: AT&T Wireless
Services - Petitioners
Case No. 97-556-XA

Dear Mr. Rottman:

Please be advised that an appeal of the above-referenced case was filed in this office on September 5, 1997 by Michael E. Marino, Esquire and Nancy E. Paige, Esquire on behalf of Pineridge Association, Inc., c/o Nancy Rosenberg, Gwynnvale Civic Association, c/o Betty McDaniels, and Brittany Properties. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you have any questions concerning this matter, please do not hesitate to call 410-887-3180.

Sincerely,

ARNOLD JABLON
Director

AJ:rye

c: Mr. Paul Umansky
Mr. Jerome D. 'Antoni
People's Counsel

Printed with Soybean Ink
on Recycled Paper

APPEAL

COUNTY BOARD OF APPEALS

97 SEP 10 PM 2:29

Petitions for Variance and Special Exception
NW/end Greenwood Place, 525 ft. NW Old Court Road,
SW/S Western Md. Railroad
(7 Greenwood Place)
3rd Election District - 2nd Councilmanic District
Henry M. Witmyer, et ux - Legal Owners
Lessee: AT&T Wireless Services - Petitioners
Case No. 97-556-XA

✓ Petitions for Variance and Special Exception

✓ Description of Property

✓ Certificate of Posting

✓ Entry of Appearance of People's Counsel

✓ Zoning Advisory Committee Comments

✓ Petitioners and Protestants Sign-In Sheets

Petitioners' Exhibits: ✓ 1 - Plan to Accompany Petitions for Variance and Special Exception
2 - No Exhibit Found
3 - No Exhibit Found
4 - One Photograph
5 - One Photograph
6 - Environmental Impact Statement Prepared by AT&T Wireless Services, Inc.

Protestants' Exhibits: ✓ 1 - Medical Devices and EMI: the FDA Perspective
✓ 2 - Letter from Philip M. Kenney

✓ Letter to Request a Motion for Reconsideration from Betty McDaniels, President, Gwynnvale Association to Lawrence Schmidt, Zoning Commissioner dated August 28, 1997

✓ Letter Denying Request for Motion for Reconsideration from Lawrence Schmidt, Zoning Commissioner, to Paul Umansky dated September 4, 1997

✓ Zoning Commissioner's Order dated August 8, 1997 (Granted)

✓ Notice of Appeal received on September 5, 1997 from Michael E. Marino, Esquire and Nancy E. Paige, Esquire on behalf of Pineridge Association, Inc., Gwynnvale Civic Association, and Brittany Properties

✓ E

✓ Amended Notice of Appeal received on September 5, 1997 from Michael E. Marino, Esquire and Nancy E. Paige, Esquire on behalf of Pineridge Association, Inc., c/o Nancy Rosenberg, Gwynnvale Civic Association, c/o Betty McDaniels, and Brittany Properties

c: Paul A. Dorf, Esquire, S. Leonard Rottman, Esquire, 600 Mercantile Bank & Trust Building, Two Hopkins Plaza, Baltimore, MD 21201
Messrs. Frances Kingsbury, Abraham Waranowitz, and Michael Yglesias, AT&T Wireless Services, ~~8403 Colesville Road, Silver Spring, MD 21090~~ (See new address label below ↓)
Nancy E. Paige, Esquire, 233 E. Redwood Street, Baltimore, MD 21202
Michael E. Marino, Esquire, Levy & Marino, P.A., 609 Bosley Avenue, Towson, MD 21204
Mr. Paul Umansky, 1219 Idylwood Road, Baltimore, Md 21208
Mr. Jerome D. 'Antoni, 1204 Cobb Road, Baltimore, MD 21208
Ms. Helen fox, The Brittany Apts., 4 Deauville Court, Pikesville, Maryland 21208
People's Counsel of Baltimore County, M.S. 2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

New address
AT&T Wireless Services
11710 Beltsville Dr, 2nd floor
Beltsville, MD 20705-3102

Copy of CBA Final Order to:
Mr. Maurice Thompson
4131 Bedford Road
Baltimore, MD 21207

Case No. 97-556-XA

SE -Permit wireless TX/RX facility in ML zone;
VAR -Permit principal structure as close as 3' to rear lot line ilo req'd 30' **and/or** Amend plan previously approved in Case No. 64-126-A.

8/08/97 -Zoning Commissioner's Order in which Petitions for Special Exception and Variances GRANTED.

10/03/97 -Notice of Assignment for hearing scheduled for Tuesday, December 2, 1997 at 10:00 a.m. sent to following:

Nancy C. Paige, Esquire
Michael E. Marino, Esquire
Pineridge Association, Inc.
c/o Nancy Rosenberg
Gwynnvale Civic Association
c/o Betty McDaniels
Brittany Properties
c/o Helen Fox /Brittany Apts
Paul A. Dorf, Esquire
Mr. & Mrs. Henry Witmyer
AT&T Wireless Services
Paul Umansky
Jerome D'Antoni
People's Counsel for Baltimore County
Pat Keller — Arnold Jablon, Director /PDM
Lawrence E. Schmidt — Virginia W. Barnhart, Co Atty

12/02/97 -*Hearing concluded before Board (K.B.F.).* Written Briefs due January 15, 1998; to be scheduled for deliberation and notice to be sent.

Briefs filed: Dorf filed 1/23/98
Marino filed 1/23/98
Demilio filed 1/23/98

NOTE: Deadline for Briefs extended to 1/23/98.

12/05/97 -Notice of Deliberation sent to parties; scheduled for Tuesday, February 10, 1998 at 9:30 a.m.

1/23/98 -Proposed Findings of Fact and Memorandum of Law filed by Michael Marino on behalf of Appellants /Protestants.
- Memorandum of People's Counsel for Baltimore Counsel filed.
- Petitioner's Memorandum of Law in Support of its Application for Special Exception filed by Counsel for Petitioner.

1/26/98 -Copies of above submittals sent to K.B.F.

2/10/98 -Deliberation completed. Special and variance petitions denied by unanimous decision of Board. Written Opinion and Order to be issued; appellate period to run from date of written Order. (K.B.F.)

Henry W. Witmyer, et ux, Legal Owner
AT&T Wireless Services, Lessee

97-556-XA

Civil Action No. 3-C-98-02951

June 13, 1997	Petitions for Special Exception and Variance filed by S. Leonard Rottman, Esquire, for Henry W. Witmyer, et ux - Legal Owners and AT&T Wireless Services - Lessee; SE /for a wireless transmitting and receiving facility not permitted in an M.L. zone; and VAR /to permit a principal structure as close as 3 feet to the rear lot line rather than the required 30 feet and to amend previously approved site plan in zoning case #64-126-A.
July 16	Hearing held on Petition by the Zoning Commissioner.
August 8	Order of the Zoning Commissioner in which Petition for Special Exception was GRANTED; and Petition for Variance was GRANTED w/ Rs.
August 28	Motion for Reconsideration filed by Betty McDaniels, President of Gwynnvale Association.
September 4	Response letter from Larry Schmidt, Zoning Commissioner; points raised in 8/28/98 letter/Motion were considered; declined to order a rehearing; advised to file an appeal.
September 5	Order for Appeal filed by Nancy E. Paige, Esquire and Michael E. Marino, Esquire, on behalf of Protestants.
September 5	Amended Order for Appeal filed by Nancy E. Paige, Esquire, and Michael E. Marino, Esquire; to add contact names and addresses of Protestants.
December 2	Hearing before the Board of Appeals.
January 23, 1998	Petitioner's Memorandum of Law in Support of its application for Special Exception filed by Paul A. Dorf, Russell G. Alion, Jr., F. Kirk Kolodner and ADELBERG, RUDOW, DORF, HENDLER & SAMETH, LLC, on behalf of AT&T Wireless Services, Inc.
January 23	Memorandum of People's Counsel for Baltimore County filed by Peter Max Zimmerman and Carole S. Demilio.
January 23, 1998	Proposed Findings of Fact and Memorandum of Law filed by Michael E. Marino, Esquire, on behalf of Brittany Properties, Protestant /Appellant.
February 10	Deliberation conducted by the Board.
February 24	Opinion and Order issued by the Board; Petition for Special Exception is DENIED; AND Petition for Variance is DENIED.
March 25	Petition for Judicial Review and **Motion to Shorten Time*** filed in the Circuit Court for Baltimore County by Paul A. Dorf, Esquire, and ADELBERG, RUDOW, DORF, HENDLER & SAMETH, LLC, on behalf of AT&T Wireless Services, Petitioner. ***(Judge Alfred Brennan, Sr. granted Motion to Shorten Time; County Board of Appeals shall transmit the record of proceedings to the Circuit Court within seven (7) days of the date of this Order -- due date: April 1, 1998).**
March 25	Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.
March 25	Certificate of Notice sent to interested parties.
March 31	Record of Proceedings and transcript of testimony filed in the Circuit Court for Baltimore County.
Jan. 24, 2000	Memorandum Decision issued by the CCt (Robert E. Cahill, Sr., J); decision of the CBA is AFFIRMED.

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

04/11/00

Case Number: 03-C-98-002951 AE
Date Filed: 03/25/1998
Status: Closed/Active
Judge Assigned: To Be Assigned,

In The Matter of: A T & T Wireless Services

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Case Folder ID	C98002951V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
PET	001	A T & T Wireless Services Capacity : Lessee		CT DO 01/27/00	03/25/98
		Mail: 11710 Beltsville Drive Beltsville, MD 20705	03/25/98		
		Attorney: 0011947 Dorf, Paul A Adelberg, Rudow, Dorf, Hendler & Sameth, LLC 600 Mercantile Bk & Trust 2 Hopkins Plaza Baltimore, MD 21201-2927 (410)539-5195		03/25/98	
ITP	001	Brittany Properties		CT DO 01/27/00	03/31/98
		Attorney: 0012373 Marino, Michael E Levy & Marino, P.A. 609 Bosley Avenue Towson, MD 21204		03/31/98	

(410)821-6633

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
ITP	002	Pine Ridge Association		CT DO 01/27/00	05/12/98
		Attorney: 0002839 Paige, Nancy E		05/13/98	
		Gordon, Feinblatt, Rothman, Hoffberger & Hollander, LLC			
		The Garrett Building			
		233 East Redwood Street			
		Baltimore, MD 21202-3332			
		(410)576-4000			
ITP	003	Peoples Counsel For Baltimore County		CT DO 01/27/00	05/12/98
		Attorney: 0005744 Demilio, Carole		05/13/98	
		Deputy People's Counsel For Baltimore County			
		Room 47, Old Courthouse			
		400 Washington Avenue			
		Towson, MD 21204			
		(410)887-2188			
INT	001	Witmyer, Henry M		CT DO 01/27/00	03/25/98
		Capacity : E T U X Legal Owners			
INT	002	County Board Of Appeals Of Baltimore County		CT DO 01/27/00	03/25/98
		Mail: Old Courthouse Room 49	03/25/98		
		400 Washington Avenue			
		Towson, MD 21204			
		Attorney: 0005744 Demilio, Carole		03/27/98	
		Deputy People's Counsel For Baltimore County			
		Room 47, Old Courthouse			
		400 Washington Avenue			
		Towson, MD 21204			
		(410)887-2188			
		0029075 Zimmerman, Peter M		03/27/98	
		People's Counsel For Baltimore County			
		Room 47 Courthouse			
		400 Washington Ave			
		Towson, MD 21204			
		(410)887-2188			

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec	User ID
07/07/98	09:30A	01H	yes	CIVI		TBA	01	/01	VAC	C	05/21/98		P		JD	JD
07/09/98	09:30A	01H	yes	CIVI		REC	01	/01	RES	C	07/09/98		P	05/26/98	JD	LLH

Date	Time	Dur	Cer	Evnt	Lvl	Atty	Jdg	Day	Of	Rslt	By	ResultDt	Jdg T	Notice	Rec	User ID
07/22/98	09:30A	02H	yes	CIVI		REC	01	/01	CON	C		01/27/00		P		LLH
08/24/98	09:30A	02Q	yes	CIVI		TBA	01	/01	RES	C		05/21/98		P		JD JD

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	03/25/98	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review	03/25/98	03/25/98	PET001	TBA		01/27/00	KH PH
0001001	Answer	03/27/98	03/27/98	INT002	TBA		01/27/00	SD PH
0001002	Answer	03/31/98	03/31/98	ITP001	TBA		01/27/00	CB PH
0002000	Motion to Shorten Time	03/25/98	03/25/98	PET001	ALB	Granted	03/26/98	KH JH
0003000	*Certificate of Notice	03/25/98	03/26/98	000	TBA		01/27/00	CB PH
0004000	Transcript of Record from Adm Agency ** copies sent	03/31/98	04/01/98	000	TBA		01/27/00	JH PH
0005000	Notice of Transcript of Record Sent	04/01/98	04/01/98	INT001	TBA		04/01/98	JH JH
0006000	Notice of Transcript of Record Sent	04/01/98	04/01/98	INT002	TBA		04/01/98	JH JH
0007000	Notice of Transcript of Record Sent	04/01/98	04/01/98	ITP001	TBA		04/01/98	JH JH
0008000	Notice of Transcript of Record Sent	04/01/98	04/01/98	PET001	TBA		04/01/98	JH JH
0009000	Memorandum of law	04/17/98	04/20/98	PET001	TBA		04/20/98	PH PH
0010000	Stipulation extending time to file the memorandum	05/05/98	05/06/98	000	TBA		01/27/00	PH PH
0011000	Memorandum of law	05/12/98	05/13/98	ITP001	TBA		05/13/98	PH PH
0012000	Memorandum	05/12/98	05/13/98	ITP003	TBA		05/13/98	PH PH
0012001	Answer	06/18/98	06/18/98	PET001	TBA		01/27/00	PA PH

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0013000	Adoption of memorandums	05/12/98	05/13/98	ITP002	TBA		01/27/00	PH PH
0014000	Scheduling Order	05/14/98	05/14/98	000	TBA		05/14/98	JD JD
0015000	Adoption of Memoranda filed on behalf of Brittany Properties and People's Counsel	05/14/98	05/15/98	ITP002	TBA		01/27/00	DR PH
0016000	Hearing Notice	05/26/98	05/26/98	000	TBA		05/26/98	JD JD
0017000	Open Court Proceeding July 22, 1998 Hon Robert E. Cahill, Sr. Hearing had. Order to be filed.	07/22/98	07/22/98	000	REC		01/27/00	EL PH
0018000	Memorandum and Order affirming decision	01/27/00	01/27/00	000	REC	Granted	01/27/00	PH PH

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	03/25/99	365	no	no	DAAA	D	000	000
1ANS	1st Answer Tickle	CLOSED	03/27/98	0	no	no	DANS	D	001	001
SLTR	Set List For Trial	DONE	03/27/98	0	yes	yes	1ANS	T	001	001
EXPU	Exhibit Pickup Notic	CLOSED	03/27/00	30	no	no			000	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By:		INT	002 County Board Of Appeals Of Ba					
000		B	RETURNED Transcrip		0			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 05/14/98 Order Date : 05/26/98
Start Date : 05/14/98 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		05/29/98	01/27/00	CLOSED
All Motions (excluding Motions in Limine		05/30/98	01/27/00	CLOSED
TRIAL DATE is	07/22/98	08/12/98	01/27/00	CLOSED

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

RECEIVED
BOARD OF APPEALS
COUNTY
98 MAR 27 PM 12:14

Case Number: 03-C-98-002951

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse Room 49
400 Washington Avenue
Towson, MD 21204

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: K. Howanski
H. Buchheister
D. Felling

DATE: January 23, 1998

FROM: Kathi

SUBJECT: Memos in Lieu of Final Argument - Henry M. Witmyer, et ux, Legal Owners; AT&T Wireless Services, Lessee

The subject matter is scheduled for public deliberation on Tuesday, February 10, 1998 at 9:30 a.m. Enclosed are the following documents filed by Counsel, as requested:

1. Proposed Findings of Fact and Memorandum of Law filed by Michael Marino, Esquire, on behalf of Protestants /Appellants;

2. Memorandum of People's Counsel for Baltimore County filed by Peter Max Zimmerman and Carole S. Demilio; and

3. Petitioner's Memorandum of Law in Support of its Application for Special Exception filed by Paul A. Dorf, Russell G. Alion, Jr., F. Kirk Kolodner and ADELBERG, RUDOW, DORF, HENDLER & SAMETH, LLC, on behalf of Petitioner, AT&T Wireless Services, Inc.

The above documents were filed on Friday, January 23, 1998, as requested by the Board.

A copy of the Notice of Deliberation was forwarded to you on December 5, 1997.

Please let me know if you have any questions.

kathi

Attachments

Fax Copy

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director **DATE:** April 19, 2000
Permits & Development Management

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed Files:

Case No. 97-556-XA /AT&T Wireless Services
98-251-X /Robert Long, et ux

Since the above captioned cases have been completed in the upper courts, we are hereby closing and returning herewith, our case files along with the original record which was returned to the Board's office by John Almond, Records Manager /CCt.

Attachments: (File Nos. 97-556-XA w/ large exhibit
& 98-251-X)

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Henry M. Witmyer, et ux /Legal Owners;
AT&T Wireless Services /Lessee -Petitioners
Case No. 97-556-XA

DATE : February 10, 1998 @ 9:30 a.m.

BOARD /PANEL : Kristine K. Howanski, Chairman (KKH)
Harry E. Buchheister, Jr. (HEB)
Donna M. Felling (DMF)

SECRETARY : Kathleen C. Bianco
Administrator

PURPOSE: To deliberate Case No. 97-556-XA /Henry M. Witmyer, et ux /Legal Owners; AT&T Wireless Services /Lessee - Petitioners; Petition for Special Exception and Petition for Variance.

IN ATTENDANCE: Paul A. Dorf, Esquire, and Russell G. Alion, Jr., Esquire, Counsel for Petitioners; Michael E. Marino, Esquire, Counsel for Protestants /Appellants; Peter Max Zimmerman, People's Counsel for Baltimore County; and Carole S. Demilio, Deputy People's Counsel.

KKH: We are here to deliberate Henry M. Witmyer, et ux, and AT&T Wireless in Case No. 97-556-XA. This is a petition for special exception and variance to permit construction of 170' tall transmission tower on the subject property. The particular use is not permitted by right on the property as zoned and configured, and that is why we are here concerning both a special exception as well as the variance of required 30' rear lot line (original 50' requirement was noted); property is developed with business operating on site, and the lion's share of the property is improved by building and/or impervious surfaces which are there as a result of previous variances which eliminated the required rear yard set back in 1964. Harry, do you want to give us your thoughts?

HEB: It is my reading of my notes and the memorandums submitted that the Petition for Special Exception to permit the construction of a 170' tall transmission tower on the Witmyer property has merit. Petitioner goes to some length in explaining why the subject site is a critical component to personal communication services as transmission tower will remove the gap in that area.

As this Board has heard on several occasions, the various engineering criteria, environmental considerations, and zoning as reviewed by the Petitioner are very familiar. Michael Yglesias, a radio frequency engineer with AT&T, testified to

attempts to locate the antenna in an approved area. Brian Parsons, expert in development engineering and land use planning, testified of his search for suitable sites within the area mapped by Mr. Yglesias that required facility to provide coverage. The search appeared to be diligently made as several sites were studied, although there is some question as to why some of the alternative locations were not acceptable, such as Port City Press site, Hopkins site and Maryland Transit site. The search did not include areas within residential zones to avoid zoning disputes. The proposed Witmyer property seems most feasible because it is in an industrial zone surrounded by manufacturing companies of M.L. zoning.

Mr. Kellman testified that the maintenance and operation of the facility would satisfy all the standards for special exception use provided in 502.1 of the zoning regulations.

My observations gave me the impression that this area of light manufacturing adjacent to main railroad right-of-way with little impact as I saw it on roads and traffic could be an acceptable site for the transmission tower.

Other testimony by experts in the field was persuasive that tower is structurally safe; no reason for concern for human exposure to radio frequency emissions.

Protestants are employees of residential property who are opposed to the possibility of danger and adverse perception to Brittany Apartment residents. In particular, Martha Poehler, the Executive Vice President of Apartment Services, testified of a proposed playground and that the tower would be negatively perceived by tenants. She said, that is Mrs. Poehler said, that inherent dangers and noise from the adjacent railroad have no effect on tenants. The tower would impact the aesthetics of the area. The Witmyer property is in a Manufacturing Light zone where wireless tower is permitted by right, there is the minimum setback of 200' from residential zone. In this case, Brittany Apartment complex with only a 44' setback -- requires a special exception under 253.2 and the requirements of 502.1 must be satisfied.

The standard for granting or denying a special exception use was established in Schultz v. Pritts. The question is whether special exception use would have an adverse effect -- whether there are facts and circumstances that show the use at the proposed location would have an adverse effect above and beyond those associated with the special exception use irrespective of its location in the zone. Would the adverse

effects be greater at the Witmyer site than they would generally be anywhere else in the zone.

In my thoughts of the matter, the manufacturing on the Witmyer property and adjacent properties, the railroad line, the rather shielded isolation of the M.L. site -- there is argument to grant the special exception in this matter, which is depending upon the variance permitting the setback far less than the 200' specified in the zoning regulations. The regulation requires that structures be set back at least 50' - requesting 3' setback. To obtain a variance under 307 of the regulations and case law provide a two-step process for variance, which I will briefly paraphrase. The property itself is unique in characteristics not shared by other properties; and (2) strict application of setback requirements will result in practical difficulty and hardship. Testimony justifying the variance is that prior variances were granted in 1964 for building expansion by Witmyer -- indicative of site's uniqueness as a narrow property. Chadsey testified that the location was not unique in any way as there are dozens of similar sites.

If the property is assumed to be unique, the Petitioner must prove practical difficulty. The subject property is presently being fully utilized, and there is no difficulty for the current use of the property. In order for Petitioner to show practical difficulty or hardship, he must prove there is no reasonable use of the property. Here the entire site is occupied by manufacturing use that has been productive for many years. The proposed tower on a site seemingly built to its fullest at the time of the 1964 variance not to be able to comply with setback requirements in this proposed use is not grounds for claiming practical difficulty or hardship.

Any alleged hardship by the owner seems to have been self-created in 1964. A special note -- the owner and Mr. Kellman have testified that 30' setback requirement could be satisfied without the variance. However, Mr. Witmyer testified that he would not allow the monopole at the variance-free location within the permitted building envelope, therefore requiring the need for the subject variance.

Petitioner argues that the variance is not even required, citing Sections 255 and 238 which govern area regulations, referencing setbacks for residences and businesses. The issue raised here is that the proposed transmission facility is not a building as defined in County regulations, but a tower or monopole. Petitioner argues that the regulations in the M.L. zone apply to buildings and in this matter no variance is

needed for the proposed tower facility.

This is kind of confusing to me. In view of questioning the facility's need for variance and the shifting accommodations sought for reduced setbacks, the final deciding factor is whether the standards of 307 have been satisfied. Is this property unique? Will there be practical difficulty or unreasonable hardship if the variance is not granted? It's my view, at this point, that the requested variance should be denied, as well as the requested special exception which requires the variance to set back regulations in order for it to be granted.

KKH: So you would deny both the special exception and variance, but the special exception you would be denying because it is coupled with the need for a variance?

HEB: That's right.

KKH: Okay. Donna?

DMF: I attempted to try to look at the special exception first and in my review of the zoning regulations for a special exception, 502.1, we have quite a number of criteria to try to meet. In my review of the testimony provided, I find that there are several areas under a special exception that I think are not being met that I have some difficulty with, particularly (d), overcrowding of land -- in this case undue concentration of population --

KKH: I think they are talking about population and I think you might be talking about (b) --

DMF: I'm not talking about the people; I'm talking about overcrowding the land. I do also think that (b) applies; testimony that was provided concerning congestion in roads.

KKH: Mr. Chadsey's testimony...

DMF: Yes, and difficulty to trucks and cars to turn around and use the alley in the area -- speaks to Section 502.1, congestion of roads.

I also think that (g) is inconsistent in that I do understand it's allowed by right in that particular zone. However, I think the second part of (g) is inconsistent with spirit and intent -- also brings into play wireless transmission code - where it explains pretty clearly the distance of towers to be 200'. This is not being proposed here. That goes to the

variance part.

Also, I had concerns with (c) -- potential hazards. There was testimony about soil considerations. I do think that Mr. Witmyer's people did admit there was no study on drainage patterns in this area; history of floods in this area. I have questions regarding soils for construction of monopole.

Based on those things, I feel the special exception under 502.1 should not be granted - for that variety of reasons.

I also want to talk about the variance -- I agree with Harry. I had difficulty determining anything unique -- reviewed testimony of Chadsey that this property is not unique; and also testimony that it has number of variances, but that is not uniqueness.

I would also say that if you move beyond the testimony -- move to practical difficulty -- that is where I ran into difficulty. It cannot be proven for the same reasons that the tower could be located elsewhere on the property -- no variance needed. This was Mr. Witmyer's desire not to do that. I know that Cromwell v. Ward talks about self-inflicted hardship -- should never be considered grounds for variance. Based on that information, I would say that the variance should not be granted; it should be denied, as well as the special exception.

I also want to say that the proof of the special exception and variance are, I found, difficult to prove -- from that provided for us -- it was brought to our attention that a special exception must prove it is no different -- and impact at that location has no different effect. In the variance, trying to say the property is unique. It's difficult for that person to move beyond and get value from the property; that's not the case here. He had something going on for many years (Mr. Witmyer's testimony).

I also understand that a single site cannot have the same characteristics and be unique.

KKH: I did find that persuasive as well. It's difficult to argue you can have special exception because it is in fact no different, but have the variance because it is unique.

DMF: That gives me a great deal of difficulty. And the variance and special exception should be denied.

KKH: I don't know how I will go about this. Maybe I'll start where

you left off and Harry ended up as well.

I agree that Umerley applies and I am uncomfortable coupling a special exception with a variance. In that respect, I would have to deny the special exception because it is coupled with a variance. As to the special exception itself, I was somewhat persuaded by Mr. Chadsey -- his testimony did not support (d), overcrowding of land, and you did make an argument about the soil under (c), but that was dealt with by the other side. You did not say that the special exception was not met for those reasons. But I do think he put on testimony about congestion insofar as there is already congestion on this site; backing in and out of trucks - more problematic. And I do agree -- maybe that's where I come in under (g) -- spirit and intent is where you have Umerley apply -- put those two together. I would not have found the testimony amazingly strong, but there was nothing in the face of it to suggest it was wrong. At that point, we are left without satisfactory evidence on the part of the Petitioner; Petitioner did not meet their burden to show that conditions for a special exception were established in that regard.

That is not as strong to me -- I did not have as much a problem with the special exception as the variance. The other thing I would say - Mr. Buchheister talked about -- diligent search and so forth. I'm still troubled; they have not been able to move forward with it -- I don't know what they meant.

The variance is easier -- do have to establish uniqueness. Not sure I would totally rest on that one. It's odd-shaped property, but Chadsey said there are lots shaped this way and there's a use on the property right now. Falls on unreasonable hardship -- there is already a use on the property; no unreasonable hardship in not being able to use the property and in the testimony which was established that need for variance brought about by Mr. Witmyer's insistence that it be constructed at that one particular spot.

There was also technical failure. I don't like doing the technical failures -- improper setting forth of the sites and so forth on the plan. But in this particular instance, where you are talking about adverse impact on neighboring zone, I would view it as a little more serious issue if you do not set forth site so that we can get a visual on the impact to properties. But I'm not sure that would have excited me had that been the only problem. I'm most concerned with the lack of unreasonable hardship evidence.

We appear to have a consensus that special exception would

have to be denied simply because it is coupled with variance. I don't believe we are unanimous in terms of the special exception falling on its own. I gather, Donna, you feel it is not met. I agree with (b) and (g), but not the others.

HEB: I think the special exception has merit. The only question may be, was the spirit of the zoning which obviously was the deciding factor for the variance, and the rather unsettled situation - the monopole could be positioned in a place where a variance would not be needed, yet for reasons talked about, did not accept that. The variance is killing the whole operation.

KKH: You could say it fails under (g) alone.

HEB: In driving the entire length of the site, I could not agree with Mr. Chadsey in terms of traffic and parking. Mr. Witmyer talked about relocating barriers, etc. It seems to me there was a merit for this location, but when you get into the issue of the variance - the ball was fumbled there.

KKH: I think we have consensus on that similar area. For those reasons, we will be issuing an opinion that will be denying the special exception under Umerley, as well as citing that 502.1 (g) was not satisfied. And deny the variance on the practical difficulty /unreasonable hardship aspect more than uniqueness. And even if he passed both of the hurdles, you still get back to spirit and intent on the variance side.

We appear to have reached a consensus. We will be putting together an Opinion, and anybody feeling aggrieved will have 30 days from that date to file an appeal.

We are adjourned.

* * * * * * * * *

Respectfully submitted,

Kathleen C. Bianco
Administrator

Baltimore County
Zoning Commissioner
Office of Planning

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386

September 4, 1997

Mr. Paul Umansky
1219 Idylwood Road
Pikesville, Maryland 21208

RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE
NW/End Greenwood Place, 515' NW Old Court Road, SW/S WM Railroad
(7 Greenwood Place
3rd Election District - 2nd Councilmanic District
Henry M. Witmyer, et ux, Legal Owners, and
AT&T Wireless Services, Contract Lessees - Petitioners
Case No. 97-556-XA

Dear Mr. Umansky:

This letter is to follow-up our recent telephone conversation concerning the above-captioned matter and in response to the correspondence received from the Gwynnvale Civic Association, coauthored by you, dated August 28, 1997. I have reviewed the contents of the letter carefully, the case file and Order issued by me on August 8, 1997. For reasons set forth hereinafter, I am denying your request for a reconsideration of my decision in this matter.

Your letter sets out four reasons as the basis for your request. The first is that the zoning sign was not properly posted on the property so that residents in the community could easily see it and respond appropriately. Section 26-127 of the Baltimore County Code provides that for a period of at least 15 days prior to the hearing date, notice of the time and place of the hearing shall be conspicuously posted on the property which is the subject of the hearing. Testimony and evidence presented at the hearing was that the zoning sign was, in fact, posted on the property on July 1,1997, thereby satisfying this requirement. A photograph of the sign in its location where posted is contained within the case file.

I realize that there are frequently allegations regarding whether a sign posting has been "conspicuous". Although I realize that this point may be arguable, it is apparent that at least four individuals from the surrounding community attended the hearing as a result of seeing the sign. Therefore, based upon the preponderance of the testimony and evidence before me, I must conclude that the Petitioner satisfied the requirements of law and that the property was properly posted.

The second point is that the residents have concerns over the safety of the structure and possible health effects of the electronic emissions. As you know from your attendance at the hearing, testimony on these issues was offered by expert witnesses engaged by AT&T. A structural

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engineer testified about the safety of the tower itself and an environmental impact statement was submitted as part of the record which concludes that there will be no adverse health effects. I am persuaded by that testimony.

The third point relates to the installation of additional equipment on the subject site in the future. If AT&T would decide to lease tower space to another cellular communications provider, an additional public hearing would be necessary. The special exception requested in this case is driven not by the monopole, but by the zoning requirement that wireless transmitting and receiving facilities are only permitted after a public hearing. Therefore, if additional equipment other than what has already been approved is proposed, same would only be allowed after an additional public hearing.

Fourth, your letter indicates that there is no assurance that the proposed monopole will be screened. I considered this issue and whether landscaping should be required as a condition precedent to approving the special exception. I concluded that additional landscaping was not required for two reasons. First, the pole will be 170 feet in height, thereby screening would be ineffective for sight lines to the top of the tower. Secondly, the nature of the subject site is manufacturing and the property abuts the Western Maryland Railroad right-of-way. Given the character of this property, I determined that additional screening was not necessary.

Having considered all of the points raised in your letter, I respectfully decline to order a rehearing in this matter. However, the community can file an appeal of my decision in accordance with the applicable provisions of law. Essentially, those provisions require that an appeal be filed within thirty (30) days of the date of the Order, that the appeal be in writing, and that same be accompanied by the requisite fee. In that my Order was issued on August 8, 1997, any appeal must be filed on or before the close of business on Monday, September 8, 1997.

Please do not hesitate to contact me should you have any further questions on this matter.

Very truly yours,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Ms. Betty McDaniels, President, Gwynnvale Civic Assoc.
1201 Idylwood Road, Baltimore, Md. 21208
Paul A. Dorf, Esquire, 600 Mercantile Bank & Trust Bldg.,
2 Hopkins Plaza, Baltimore, Md. 21201
Case File

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

February 10, 1998

Paul A. Dorf, Esquire
ADELBERG, RUDOW, DORF,
HENDLER & SAMETH, LLC
600 Mercantile Bank & Trust Building
2 Hopkins Plaza
Baltimore, MD 21201

RE: Case No. 97-556-XA /Henry M. Witmyer, et ux; AT&T Wireless
Minutes of Deliberation
Glen I. Kendrick, et al

Dear Mr. Dorf:

In response to your request, enclosed is a copy of the Minutes of Deliberation for the subject matter. As I'm sure you are aware, this does not constitute the final decision of the Board nor is it to be considered an official transcript. The attached document serves only as a record of the public deliberation.

Should you have any questions, please call me at 410-887-3180.

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

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on Recycled Paper

97-3055

ADELBERG, RUDOW, DORF, HENDLER & SAMETH, LLC

ATTORNEYS AT LAW

600 MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201

S. LEONARD ROTTMAN

TELEPHONE
410-539-5195

TELECOPIER
410-539-5834

6/23/97 To: Cram 6/27/97 Rec 30 July

June 20, 1997

Baltimore County Department of
Permits and Development Management
Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Attention: Ms. Kate Milton

Re: Item No. 56
AT&T Wireless/7 Greenwood Place
Our File No. 9478-766

Dear Kate:

Per your request, enclosed please find our Attorney Escrow Account check No. 8560 for $50.00 payable to Baltimore County as the additional filing fee in connection with the subject property.

Thank you for your cooperation.

Sincerely,

S. Leonard Rottman

SLR/bnw
Enclosures

073s/at&mil.ltr

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JUN 22 1997

ADELBERG, RUDOW, DORF, HENDLER & SAMETH, LLC

ATTORNEYS AT LAW

600 MERCANTILE BANK & TRUST BUILDING
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PAUL A. DORF

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410-539-5834

September 29, 1997

VIA FACSIMILE 410-887-3182

Ms. Kathleen Bianco
County Board of Appeals
Old Court House, Room 49
Towson, Maryland 21204

In Re: Petition for Special Exception and Variance
NW/End Greenwood Place, 525 ft. NW Old Court Road,
SW/S Western MD Railroad (7 Greenwood Place)
3rd Election District - 2nd Councilmatic District
Legal Owner: Henry M. Witmyer, et ux
Lessee: AT&T Wireless Services

Dear Ms. Bianco:

Please be advised that the above-entitled matter was set in for a hearing before the Zoning Commissioner on July 16, 1997. The final order of the Zoning Commissioner was dated August 8, 1997. On September 5, 1997, an appeal was taken in this matter before the County Board of Appeals.

This is to advise you that the subject matter was a wireless transmitting and receiving facility. It is imperative that this location be set up and in service so that AT&T Wireless can begin transmitting within a few months.

Since time is of the essence of this case, I would appreciate it if the board could expedite this hearing and set it as soon as possible.

If there is any further information you need, please do not hesitate to contact me and I will furnish you with the same.

Thank you for your anticipated cooperation in this matter.

Very truly yours,

Paul A. Dorf

PAD/kah
cc: Mr. Chris Doherty, Director - Public Affairs
Ms. Frances Kingsbury, Site Acquisition Coordinator
S. Leonard Rottman, Esq.

12/02/97

ADELBERG, RUDOW, DORF, HENDLER & SAMETH, LLC

ATTORNEYS AT LAW

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RUSSELL G. ALION, JR.

January 23, 1998

VIA HAND-DELIVERY

Kathleen Bianco, Administrator
County Board of Appeals of Baltimore County
400 Washington Avenue
Old Courthouse, Room 49 (Basement)
Towson, Maryland 21204

Re: AT&T Wireless Services, Inc. (7 Greenwood Place)
In the Board of Appeals for Baltimore County
Case No.: 97-556-XA
Our File No.: 9478-766

Dear Ms. Bianco:

I am enclosing, on behalf of the Petitioner, AT&T Wireless Services, Inc., the original and three (3) copies of its Memorandum of Law in Support of its Application for Special Exception, for filing and consideration in the above-referenced case.

Thank you in advance for your assistance.

Very truly yours,

Russell G. Alion, Jr.

RGA/agr
Enclosures
cc: Carole S. Demilio, Esq.
Michael E. Marino, Esq.
Nancy E. Paige, Esq.
Ms. Frances Kingsbury

075s\at&tbia1.ltr

RECEIVED
COUNTY BOARD OF APPEALS
98 JAN 23 PM 4:21

ADELBERG, RUDOW, DORF, HENDLER & SAMETH, LLC

ATTORNEYS AT LAW

600 MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201

TELEPHONE
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TELECOPIER
410-539-5834

RUSSELL G. ALION, JR.

March 25, 1998

VIA HAND-DELIVERY

Kathleen Bianco, Administrator
County Board of Appeals of Baltimore County
400 Washington Avenue
Old Courthouse, Room 49 (Basement)
Towson, Maryland 21204

Re: AT&T Wireless Services, Inc. (7 Greenwood Place)
In the Board of Appeals for Baltimore County
Case No.: 97-556-XA
Our File No.: 9478-766

Dear Ms. Bianco:

I am enclosing, on behalf of the Petitioner, AT&T Wireless Services, Inc., the original transcript prepared in the above-referenced proceeding. Petitioner has filed a Petition for Judicial Review in the Circuit Court for Baltimore County seeking review of the Board of Appeals Opinion and Order dated February 24, 1998. I have enclosed a copy of the Petition for your convenience. Please file the transcript with the record and prepare the record for transmittal to the Clerk of the Circuit Court.

Should you have any questions, please do not hesitate to contact me. Thank you in advance for your assistance.

Very truly yours,

Russell G. Alion, Jr.

RGA/agr
Enclosure
cc: Carole S. Demilio, Esq.
Michael E. Marino, Esq.
Nancy E. Paige, Esq.
Ms. Frances Kingsbury
075s\at&tbia3.ltr

RECEIVED
COUNTY BOARD OF APPEALS
98 MAR 25 AM 11: 56

Gwynnvale Civic Association

Pikesville, Maryland

RECEIVED
AUG 28 1997
ZONING COMMISSIONER

August 28, 1997

Lawrence E. Schmidt
Zoning Commissioner
Suite 405 County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RE: Case No. 97-556-XA

Dear Commissioner Schmidt:

At a recent meeting of our community, neighbors felt that they were left out of the process in which AT&T was given permission to erect a monopole in our community. You may recall that only two people from Gwynnvale, one from Pine Ridge, and one from the Brittany Apartments were represented because we had heard of your hearing only the day before.

This letter is to request a motion for reconsideration of that permission for the following reasons:

1. The zoning sign was not properly posted so that residents in the community could easily see it, and respond appropriately.
2. Residents have concern about the safety of the structure and the possible health effects of the signals.
3. The lack of assurances from AT&T that their antennae would accommodate other companies' requirements, thereby eliminating a preponderance of structures in our community.
4. Lack of assurances, if the antenna is erected, that AT&T will take every measure to screen the monopole to mitigate its homeliness.

Please call me at 410-484-6946, or Paul Umansky, 410-484-0931, to determine when our community can be heard.

Yours truly,

Betty McDaniels.

Betty McDaniels
President, Gwynnvale Association
1201 Idylwood Rd.
Baltimore, Maryland 21208

Per
Paul
Umansky

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
ROBERT MORELOCK	DMW 200 E. PENNA. AVE, TOWSON
Frances Kingsbury	ATT Wireless 16 th floor. 8403 Colesville Rd Silver Spring MD 21090
Peter Stickles	The Hawthorn Group 1300 N. 17th Suite 1330 Arlington, VA 22209
Robert Denny	Denny & Associates, P.C., Suite 402 1901 Pennsylvania Ave., NW, Washington, DC 20006
Abraham Waranowitz	AT&T WIRELESS SERVICES 8403 Colesville Rd Silver Spring MD 21090
Brian Parsons	TECHSTAR COMMUNICATIONS, INC. 4340 East West HWY, #1000 Bethesda MD 20814
PETER NEUBAUER	NEUBAUER CONSULTING ENGINEERS, PA 7825 TUCKERMAN LN, POTOMAC, MD 20854
MICHAEL YGLESIAS	AT&T Wireless Services, 16th Floor 8403 Colesville Rd, Silver Spring MD 21090

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on Recycled Paper

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PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Nancy E. Paige for Self + David M. Paige + Pine Ridge Assn.	233 E. Redwood St. Balto 21202
PAUL UMANSKY	1219 IDYLWOOD RD BALTIMORE, MD. 21208
JEROME D'Antoni	1204 COBB RD BALTIMORE, MD 21208
HELEN FOX The BRITTANY APTS	4 D EAUVILLE CT PIKESVILLE, MD 21208

HOPKINS
MEDICAL PRODUCTS
5 Greenwood Place • Baltimore • MD • 21208

Philip M. Kenney
PRESIDENT

Phone 1 800 835 1995 • Fax 1 410 484 4036 • E-mail HOPMED83@aol.com

population.

MR. DORF: All right. Thank you.

Witness with you.

MR. MARINO: Thank you, Mr. Dorf.

CROSS-EXAMINATION BY MR. MARINO:

Q Is it Yglesias?

A Yglesias, yes.

Q I believe your testimony was that from everything which was submitted to you, you made some determination that this was the site that was best -- would best suit your company's needs, is that correct?

A Yeah. We haven't gone through in detail every site, but, yes, based on what I needed from a profile for a location height, proximity to the Beltway, 795, yes.

Q And who submitted the material -- how was the submission made to you?

A I issued the search ring that I have here, which we can make exhibit 2, but, basically, we released the search ring to a consulting firm, in this case called Techstar, who actually goes out and does a

Footnotes to Memorandum of
People's Counsel for
Baltimore County
1/23/98

submitted, and we didn't introduce all those candidates right now, but, yes, we did look at some of the O2 also.

Q How about the office and technology zones?

A I'm not familiar with that one. I don't know if they talked to them. You can ask the consultants.

Q How about the business zones?

A Again, ask the consultants as to that part. We did the ML zone and O2 zone; I don't know what else they looked at.

MADAM CHAIRPERSON: Is there someone else that will be testifying today --

THE WITNESS: Yes.

MR. DORF: I would proffer that it's going to do with the next witness to testify. His testimony is he finds where the dead spots are, then he tells somebody else to go find a location.

MR. MARINO: I believe his testimony was this is the only spot in the entire area which suits this and what I'm asking him for is, "Did you look at

site, the Metro site?

A Yes, we did.

Q And that was rejected?

A No, it was not rejected.

Q So, it's still available?

A Yeah, but as of today we still haven't been able to lease one MTA site with anybody.

Q But it is a possibility?

A It's still on the books, but we haven't been able to, you know, move forward with any of them.

MADAM CHAIRPERSON: What does that mean?

MR. DORF: We'll have somebody here who can address that one.

THE WITNESS: I'm not on the leasing side of it.

Q I see.

Did you look at the Weges property on Woodholme Avenue?

A I'm not familiar with that piece of property.

Q Is there someone else we should ask

MADAM CHAIRPERSON: Okay. Good enough.

MR. DORF: That would be 3 then?

MADAM CHAIRPERSON: Yes.

MS. PAIGE: Could I just clarify with this witness what the other witness will say so I know?

MR. DORF: I'll call him right now.

MS. PAIGE: Well, before he leaves the stand.

MADAM CHAIRPERSON: I don't know what you mean when you say what this other witness will say.

MS. PAIGE: I mean the subject area. I'm not sure if this is the witness who knows whether the particular locations will provide the same coverage or whether the other witness can also testify as to whether certain --

MR. DORF: We will have other witnesses who will testify to that or else you can recall him. No objection.

MS. PAIGE: Okay.

MADAM CHAIRPERSON: He'll be here?

THE WITNESS: Yes.

didn't get a response. Again, this is a one-story manufacturing building. We would propose to build a monopole at that particular property.

Number six was the MARC lot, that is shaded in yellow, and I would like to defer to Frances Kingsbury about the history of that, if we want to get into the history of the negotiations with that.

Number 7 is the -- is Mr. Witmyer's property. It's shaded in orange, it's very small. The map is a hundred scale. It's sort of hard to see, but it's within this strip of the ML zones. These two parcels are the OR zoning. So, you see there aren't a whole lot of parcels that are zoned manufacturing or business.

Okay, let's see. Okay. And the last property I looked at was right here and this is zoned OR. It's Mr. Gould's property. Mr. Gould would not entertain a lease. Even if he had entertained a lease, we would still have the problem that we couldn't maintain two hundred feet from this residential zoning line which runs along this road or

A The purpose of the site plan was to submit to the zoning Commissioner for the special exception and the variances.

Q All right. Explain what the special exception and the variances are as to this monopole.

A The special exception is to permit a tower in any ML zone that is closer than two hundred feet to the residential zone. The variance is to permit property line setback of three feet.

Q Is that necessary for this location in order to build this tower?

A Yes, it is.

Q And you're familiar with the fact, you heard the testimony there were other sites that were looked at that were not feasible, is that correct?

A That's correct.

Q Why is this site feasible?

A This site was feasible -- I can't go into explaining what the leases were, but this was -- the property owner was willing to lease the property for this tower.

Q Why was it feasible as far as the zoning aspect was concerned?

A Because of the ML zone.

Q Now, the only problem then is the setbacks, is that correct?

A Yeah.

Q Therefore you need a special exception, is that correct?

A You need a special exception.

Q Therefore under the law you've got to have certain criteria for a special exception?

A That's correct.

Q Are you familiar with these criteria?

A Yes.

Q What are they?

A The criteria?

Q Yes.

A That they're not going to be detrimental to the community, not to create traffic.

Q All right. Let me go though 502.1 with you then. The first one you said is not detrimental

to the health, safety and welfare of the community, is that correct?

A Yes.

Q Would it create any detriment to the health, safety and welfare of the community?

A No.

Q Would this tend to create any congestion of roads, streets or alleys?

A No.

Q Would this tend to create a possible hazard from fire panic?

A In my opinion, no.

Q Would this tend to overcrowd the land and cause undue concentration of the population?

A No.

Q Would this interfere with any school, parks, water source, transportation or other public requirements, conveniences or improvements?

A In my opinion, no.

Q Would this interfere with any light or air?

A In my opinion, no.

Q In your opinion, would this be consistent or inconsistent with the purposes of the property zoning classification and would it be consistent or inconsistent with the spirit and intent of the zoning regulations?

A I think it would be consistent with the ML zoning.

Q Why?

A Because if you were to locate a tower, propose to locate a tower in a DR zone or an RC zone, which requires a special exception, you have to make a diligent search that you tried to find property that was zoned business or manufacturing.

Q All right. Would this in any way be consistent or inconsistent with the surface, protecting the surface and vegetation provisions of the zoning regulation?

A Consistent.

Q Are you aware of the history of the zoning on this piece of property?

vacancies or any lower rent because those tenants have either a visibility or proximity to monopoles.

Q Okay. But have those studies included incidences where the pole was within 180 feet of the rental unit in question?

A The poles have been approximate, but the distances, I at this point cannot respond to that question.

MR. MARINO: Okay. No further questions.

CROSS-EXAMINATION BY MS. DEMILIO:

Q Are you saying, Mr. Thorne, you didn't consider distance in your study?

A Yes, we did.

Q Well, what was the distance considered in the study then? What were the criteria?

A Certainly visibility and reasonable proximity of the poles. They could have been within two hundred feet, three hundred feet, they could have been within a hundred feet.

Q But you don't know?

A I know, but I can't recall at this point.

because I don't have those appraisals in front of me at this point.

Q So, those appraisals could be totally irrelevant to the subject site and the surrounding property because you can't testify as to the distances in the study?

A What we found is that --

Q No, just answer the question. Mr. Thorne, answer the question.

A I would like to answer the question.

MADAM CHAIRPERSON: Well, as a technical matter, Mr. Thorne, Mrs. Demilio is entitled to a yes or no answer. Then after that point, if you feel a need to explain something, I'll even permit it in cross right now.

A Would you please rephrase the question.

Q No, I won't rephrase it; I'll try to repeat it.

If you can't recall the distance requirements in the studies that you conducted, then those studies could very well be irrelevant to the

required for the underlying bulk requirements, okay, the requirements as far as the setbacks in the ML zone, okay? The special exception is required because this tower will be located closer than two hundred feet to a residential zone. Nowhere on this site can you locate a tower that will be at least two hundred feet.

MADAM CHAIRPERSON: Right. I understand all that. I'm saying the bulk issue, that's the question.

THE WITNESS: The bulk issue, yeah, you could put it on there and have the site meet the requirements.

MADAM CHAIRPERSON: Where could you put that and satisfy that? Where could you put it on that property?

THE WITNESS: The corner right here. And that is just the variance. You would still be required to have special exception.

MADAM CHAIRPERSON: I understand. That's not the question. You're saying no matter where you

put it, you have to have a special exception here in this case?

THE WITNESS: Exactly.

MADAM CHAIRPERSON: The question I had was, what do you do to get rid of the bulk standard issue? Can you put it somewhere and get rid of the bulk standard issue?

THE WITNESS: You can float it through the property where it's going to meet the setbacks.

MR. MARINO: Excuse me, I didn't hear that answer.

THE WITNESS: You put it within the permitted building envelope that would meet the underlying zoning requirements.

Q Do you know why that hasn't been done here? Are you aware?

A No, I'm not, I don't know what the dealings were with the property owner.

MR. DORF: We'll have further testimony on that.

All right, witness with you.

Q And you're not aware if there are any ground water problems beneath this monopole tower either, are you?

A I have no idea.

Q Or any drainage patterns, you can't really talk about those?

A No.

Q You haven't done any studies as to any vibration problem which would exist with regard to this railroad that's going by --

A No.

Q -- its impact on the foundation.

Do you know why there is a two hundred foot setback, Baltimore County zoning regulations require a two hundred foot setback for a monopole tower?

A I don't know the reasoning behind the code. I personally feel it's something just more of a -- just to satiate the public's need for perceived safety, but that's my opinion. I have no idea what they had in mind.

required for the underlying bulk requirements, okay, the requirements as far as the setbacks in the ML zone, okay? The special exception is required because this tower will be located closer than two hundred feet to a residential zone. Nowhere on this site can you locate a tower that will be at least two hundred feet.

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MADAM CHAIRPERSON: I understand. That's not the question. You're saying no matter where you

Footnotes to Proposed Findings of Fact and Memorandum of Law 1/27/98

Appendix #1

put it, you have to have a special exception here in this case?

THE WITNESS: Exactly.

MADAM CHAIRPERSON: The question I had was, what do you do to get rid of the bulk standard issue? Can you put it somewhere and get rid of the bulk standard issue?

THE WITNESS: You can float it through the property where it's going to meet the setbacks.

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Q Do you know why that hasn't been done here? Are you aware?

A No, I'm not. I don't know what the dealings were with the property owner.

MR. DORF: We'll have further testimony on that.

All right, witness with you.

CROSS-EXAMINATION BY MR. MARINO:

Q Mr. Kellman, I'm just going to clean this up because I think I know, I understand what the thrust of your testimony was.

Initially you testified that the only problem that this site has is it needs a special exception when, in fact, there is a pending request for a variance here too, is that correct?

A That's correct.

Q So, there are two issues before us.

In 1964, when the previous variance was granted, that allowed the building to be built, is that correct?

A Yes. As far as my knowledge, yes.

Q And the building line on this site plan indicates that the line is very close to the -- it's almost like a zero clearance lot line building, is that correct?

A That's correct.

Q And but for the fact that the building wasn't there, if this were vacant land, you wouldn't

Appendix #2

need the variance, would you?

A You wouldn't need a variance because nothing's proposed. Are you talking about for the building?

Q If the building had not been constructed, you wouldn't need the variance --

A For the tower, no.

Q The fact is, the reason the variance is being requested is because the building exists?

A Right.

Q Which was previously the subject of a previous variance having been granted in 1964 from the zoning commission?

A That's correct.

Q And the petitioner in that case, I believe, was Mr. Witmyer, is that correct?

A I'm not sure. I believe so.

Q Now, this building is still up and it's functioning, is that correct?

A That's correct.

Appendix # 3

Q It's a currently functioning building?
A Yes.
MR. MARINO: That's all I have, Mr. Kellman.
BY MS. DEMILIO:
Q Mr. Kellman, did you visit the site?
A Yes, I did.
Q You keep talking about a building on the site. What is it currently used for?
A Light manufacturing use, chemical.
Q And in the area that is being considered for this special exception request, is that being used for anything at this time?
A I think it's used for parking, loading.
Q In conjunction with the light manufacturing use on the rest of the site?
A Yes.
Q And that's permitted, as far as you know?
A That use, yes.
Q That's permitted. So, the entire site at this moment is being used for light manufacturing?

Q It's a currently functioning building?
A Yes.
MR. MARINO: That's all I have, Mr. Kellman.
BY MS. DEMILIO:
Q Mr. Kellman, did you visit the site?
A Yes, I did.
Q You keep talking about a building on the site. What is it currently used for?
A Light manufacturing use, chemical.
Q And in the area that is being considered for this special exception request, is that being used for anything at this time?
A I think it's used for parking, loading.
Q In conjunction with the light manufacturing use on the rest of the site?
A Yes.
Q And that's permitted, as far as you know?
A That use, yes.
Q That's permitted. So, the entire site at this moment is being used for light manufacturing?

Appendix #4

A Right. The use complies with the zoning.

Q Now, when you talked about the preference for a manufacturing -- to identify a manufacturing site for a wireless transmitting, you're familiar with section 426 of the zoning regulations which address wireless transmitting and receiving structures?

A That's correct.

Q And you will agree that in the same category as manufacturing zones are O2 zones, which are office park zones?

A Yes.

Q So, those are also permitted by right?

A Right.

Q And OT zones, they were called office and technology?

A Yes.

Q So, they're permitted by right if they comply in those zones?

A That's correct.

Q And in all business and manufacturing zones?

Q So, it continues to be a viable operation at this site?

A Yes.

Q Is this your primary business or do you own other businesses?

A Yes. We had two other companies, two in Alabama.

Q But this is a self-sustaining one in Maryland here?

A Yes.

MS. DEMILIO: I have no further questions.

MR. DORF: No further questions.

MADAM CHAIRPERSON: Thank you, Mr. Witmyer.

MR. DORF: That would be our case, Your Honor.

MADAM CHAIRPERSON: That concludes our cases for today. In light of our time crunch and in light of the fact as well there are legal issues involved, I'm going to be looking to counsel to be submitting proposed findings of fact, coupled with a

Appendix #5

need the variance, would you?

A You wouldn't need a variance because nothing's proposed. Are you talking about for the building?

Q If the building had not been constructed, you wouldn't need the variance --

A For the tower, no.

Q The fact is, the reason the variance is being requested is because the building exists?

A Right.

Q Which was previously the subject of a previous variance having been granted in 1964 from the zoning commission?

A That's correct.

Q And the petitioner in that case, I believe, was Mr. Witmyer, is that correct?

A I'm not sure. I believe so.

Q Now, this building is still up and it's functioning, is that correct?

A That's correct.

Appendix #6

negotiations with you as to putting a tower on your property, is that correct?

A Yes, correct.

MR. DORF: And I'm going to lead him, but you can stop me.

MR. MARINO: Go ahead.

Q Is it my understanding that after the various negotiations with Ms. Kingsbury and other people at AT&T, you said this was the only spot you would allow the tower, is that correct?

A Correct.

Q So, there have been requests or AT&T Wireless had requested you to allow them to move the tower someplace else, is that correct?

A That's correct.

Q You have denied that request?

A That's correct.

Q So, if they want to use your property, they're going to use it here or they're not going to use it?

A That's correct.

Appendix #7

Q And you received the previous variance allowing -- did you build the building in 1964?

A Yes.

Q And it was your property in '64, you were the same Witmyer that was part of that same 1964 zoning case?

A Correct.

Q So, you built the building based on the relief that you received in the variance in 1964?

A Correct.

Q And did you put in an additional subsequent to '64?

A Yes.

Q Then, from what I've just heard, this is the only location which you will allow AT&T to put this prospective tower, is that correct?

A That's correct.

Q That's your personal preference?

A Yes. Well, yes.

MR. MARINO: Okay, that's fine.

That's all I have for Mr. Witmyer.

variance.

Q And I think it was your testimony that the site is being used now?

A Currently it is being -- it is an active warehouse site, it appears, of some type, manufacturing use of some type.

Q Is the subject property completely developed?

A In my opinion, the property is completely developed and utilized. Like I said, 90 percent of the site is either covered by building or pavement at this point in time.

Q From your observations after having visited the site, were there any subsequent additions to the building after 1964?

A It appears -- I have not been able to trace a paper trail to that effect and no additional variances appear in the zoning history, but as the building was from the original building with the long covered or enclosed structure along the north property line, there appears to have been at least one

Appendix #8

western cedar fence, photographing down, again, from the railroad embankment -- not on top of the tracks this time, but on the embankment -- down into the subject yard area at the western edge of the building.

And the last photograph, which should be 3G, I'm standing in approximately the same location, but on the railroad track this time, shooting down, trying to get a reference in the proximity of the railroad track and the building to the rear property line.

Q Mr. Chadsey, based on your observation of the property and your experience as a civil engineer and a planner, what special circumstances or conditions, if any, exist that are particular to this particular site?

A None. The site is being used to its capacity. I don't see anything that creates a special circumstance.

Q What, if any, practical difficulty or hardship exists to justify the request for the variance, based on your observations and experience as

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a civil engineer?

A My observation is that the practical difficulty that would be created would be that they've used the site to its fullest extent, and due to the construction of the existing buildings, they've created the fact that the portion of the site that lies within the required zoning setbacks, they can't meet constructing a tower there without the variances. So, they've created, I guess you could say, an artificial uniqueness by their actions of constructing a building and then coming back and saying, "Okay. We can use our whole side yard here, so we need a variance so we can use our side yard."

Q Now, how is that area of side yard different than any other area of any other side yard with the same ML zoning throughout the area, throughout the community?

A Throughout the county you're going to find parcels of different sizes and shapes and every property has a side yard setback and a rear yard setback and a front yard setback that's supposed to be

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met in accordance with the zoning regulations. If this was a nice rectangular piece, they might have a little more opportunity to do something, however they've gone to the extent of obtaining previous variances to be able to do what they can do on there now. If we allowed everyone to come by and say, "Okay, I've got a little piece of side yard I can't use anymore, I want to put something in here," then you're going to see numerous cases running through Baltimore County. I'll be the first one bringing you some.

Q Now, this petition is a two-fold petition, it's one for variance which you've just spoken about, accompanied by a request for a special exception. It needs a special exception because it's within the two hundred feet and other reasons. Now, does that joint request pose any specific problem to you as a civil engineer and a planner?

A Well, I've been involved in numerous cases and since the Cromwell Ward and the Umberly decisions, the industry has rethought their application and their

Q Which one would you have picked?

A I'm not denying that I would have looked at the manufacturing location. As pointed out earlier by one of your witnesses, there was a more appropriate location for the tower that did not need the variance relief. There is -- has been discussed numerous times the MARC train station that's in the vicinity --

Q Talking about this area here?

A -- there's the top of this building. There are numerous opportunities to make this work without having to request variances.

Q Would you call this piece of property unique because of the fact that either all of it or the majority of it doesn't have two hundred feet on either side? Would that be uniqueness?

A No, there are several properties like that in the county.

Q I'm not talking about someplace in Essex, I'm talking about here. The subject piece of property, is it unique because of the way it is? That's all I'm asking you, as an expert, as a planner.

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Q Why was it feasible as far as the zoning aspect was concerned?

A Because of the ML zone.

Q Now, the only problem then is the setbacks, is that correct?

A Yeah.

Q Therefore you need a special exception, is that correct?

A You need a special exception.

Q Therefore under the law you've got to have certain criteria for a special exception?

A That's correct.

Q Are you familiar with these criteria?

A Yes.

Q What are they?

A The criteria?

Q Yes.

A That they're not going to be detrimental to the community, not to create traffic.

Q All right. Let me go though 502.1 with you then. The first one you said is not detrimental

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to the health, safety and welfare of the community, is that correct?

A Yes.

Q Would it create any detriment to the health, safety and welfare of the community?

A No.

Q Would this tend to create any congestion of roads, streets or alleys?

A No.

Q Would this tend to create a possible hazard from fire panic?

A In my opinion, no.

Q Would this tend to overcrowd the land and cause undue concentration of the population?

A No.

Q Would this interfere with any school, parks, water source, transportation or other public requirements, conveniences or improvements?

A In my opinion, no.

Q Would this interfere with any light or air?

A In my opinion, no.

Q In your opinion, would this be consistent or inconsistent with the purposes of the property zoning classification and would it be consistent or inconsistent with the spirit and intent of the zoning regulations?

A I think it would be consistent with the ML zoning.

Q Why?

A Because if you were to locate a tower, propose to locate a tower in a DR zone or an RC zone, which requires a special exception, you have to make a diligent search that you tried to find property that was zoned business or manufacturing.

Q All right. Would this in any way be consistent or inconsistent with the surface, protecting the surface and vegetation provisions of the zoning regulation?

A Consistent.

Q Are you aware of the history of the zoning on this piece of property?

A Yes.

Q You're saying this pole is going to create congestion because of what problem?

A Right now there is a congestion problem due to maneuvering of the tanker trucks in the particular siding. If you would observe the pictures that were handed to The Board, you'll find that there are numerous items stored in that particular location.

Q And that's your interpretation?

A And the movement of the trucks tend, and if you read the word, it says, number one, it says "appears," number two, it says "tend to create congestion."

Q You as an expert interpret that "tend to create congestion in roads, streets or alleys therein" to be a congestion on this parking lot where trucks come in?

A I'm telling you that right now they have difficulty maneuvering in as it is on the roads, which is Greenwood and Old Court, and now you're further constraining the site.

Appendix #13

Q You've already said that. I heard that.

MS. DEMILIO: Objection. He's arguing with the witness.

MR. DORF: He's saying the same thing he said before.

MS. DEMILIO: But you asked him the question.

MADAM CHAIRPERSON: You've asked him the questions about it and he's allowed to reiterate --

Q Go ahead and finish your answer.

A I'll try to regain my thought.

Q I apologize.

A My point is, there's uses on the site as the site exists now. They can barely maneuver into the site as it exists now without creating congestion in the existing road. Now you're going to further utilize the property, relocate where I don't know the existing storage and create -- and I think create further congestion, in my opinion. That's what I'm testifying to, my opinion.

Q That's how you interpret this congestion

in roads, streets or alleys, you don't interpret as streets or roads leading in and alleys contiguous, you don't interpret that? You interpret as to the trailer trucks being on this piece of property?

A I don't know where I'm having difficulty. When we do a design of a site, nowadays we would have to insure that a truck, without inhibiting Greenwood and Old Court, old Old Court, we'll call it, get in without inhibiting that traffic maneuver. They do it today. Now you're taking a whole area out of the picture that they're using for storage and assuming that they're going to be able to store this somewhere else, I guess, and not make any difference the way the traffic movement is. My opinion is the traffic movement will be impacted by this facility, as well as the relocation of the storage that's in that location.

Q Are you telling me that Greenwood and Old Court are going to be impacted by this pole?

A It's going to be more difficult for the trucks to maneuver into the site.

Q Where, down here, at Greenwood and Old

Court?

A Old Court has two pieces, sir; you might need to go to check the site. There's a piece of Old Court that exists right there, just west of existing Old Court. It's old Old Court. That's why I keeping referring to it that way.

Q How far is that going to be from this pole?

A It is at the entry where there are roads, and as it exists today, they pull out, block the traffic in the road, they pull in, block the traffic and then try to maneuver their way in here. Now you've got to relocate all -- more of the same thing. You've got to relocate all of this storage so they can still maneuver and it tends to create congestion.

Q Isn't it all parking here, storage and parking?

A I don't know where you're going with it. I'm saying --

Q Well, my question is, you're telling me it's going to impede the flow of traffic before it

comes into this area from down here at Greenwood and Old Court, which is down here.

A I don't know how to reanswer the question.

Q But is that your answer?

A My answer is --

Q It's just a yes or no. It's perfectly okay.

MR. MARINO: I object and it's not a yes or no question.

A Right there. The entry to the Brittany Apartments is there, the entry to that facility is right there. They're blocking those facilities by the maneuvering of their vehicles.

Q You talked about buildings, residential buildings, being two hundred feet away from this driveway.

A Yes, sir.

Q So, there's residential to the north, there's residential in this area and there's residential down here, is that correct?

A That's correct.

may have an answer for you.

MADAM CHAIRPERSON: Go ahead.

THE WITNESS: If you take the regulation at its worst, this plan does fail to show the actual building, but we have given the setback to the two closest buildings that are within two hundred feet, one to the closest Brittany apartment building, over here to the west, and the plan shows it to be 180 feet to the residential use that is the building, and to the northeast we have a dimension -- dimension line with an arrow that shows that it's 187 feet to the residential use, which is the closest building up here to the northeast.

MR. MARINO: My response would be, those measurements say what they say, but the code says that you have to measure from the property line, not from the tower and those measurements go from the tower. Notwithstanding that --

MADAM CHAIRPERSON: Is that right, Mr. Vitti, they go from the tower?

THE WITNESS: Yeah, they do go from the

Appendix #14

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Case # 97-556-XA

AT&T WIRELESS

Cathleen Eckstein

Pet Exh #1 - Drive-Test Plot (Current Site)

Pet Exh #2 - Map of Search Area

2A - Overlay of Exh #1

Pet Exh #3 - Projected Coverage Map of the site (Color)

Large Exhibit

" " Vitae of Brian Parsons

" " Vitae - Oakleigh J. Thorne

" " Vitae of Dr. Ted Rappaport

Pet Exh #4 - Site Plan (Color)

" " Vitae of Oakleigh Thorne

Pet. Exh #5 - Building Permit & Aerial Photo.

PROTESTANT EXHIBITS

Prot Exh #1 Campground Playground Site

Prot Exh #2 Equipment Odor Form. (Wm H. Hoge Assoc.)

Prot. Exh 3A
B
C } Entry permit to Watery Property

3D - N.E corner bldg near R.R. track

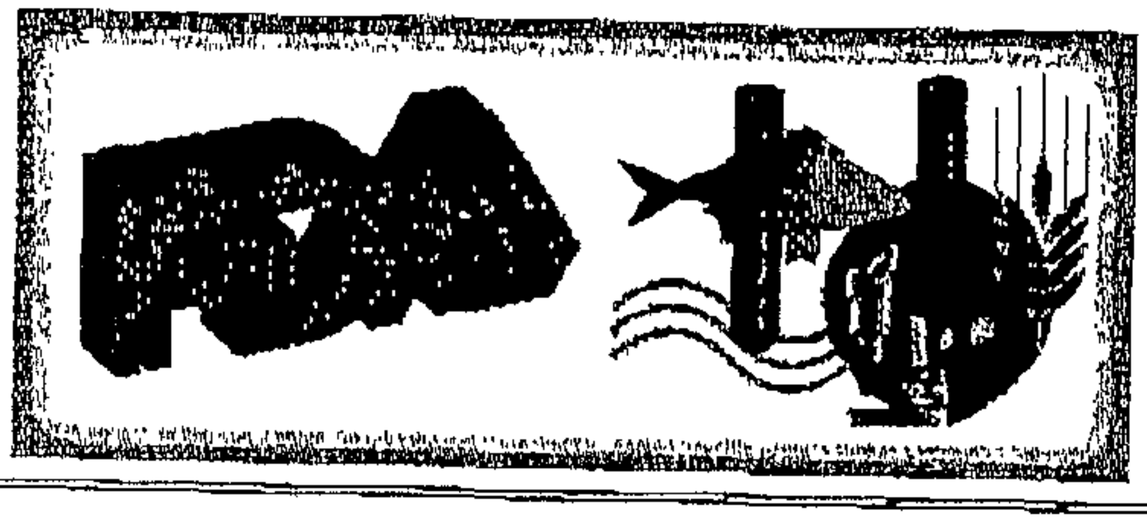
E - View from R.R track to area of Cabs

F - View from R.R embankment to W area of Bldg.

G - View down R.R track to Bldg site.

Prot Exh #4 - CRG Plan of Woodbourne Corp.

Prot Exh #5A-F Photos of AT&T balloon over site



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Center for Devices and Radiological Health

Medical Devices and EMI: the FDA Perspective

Note: The following article is text only. The figures have not been included.

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The EMI Problem

An electric powered wheelchair suddenly veers off course; an apnea monitor fails to alarm; a ventilator suddenly changes its breath rate.[1,2,3] These are just a few examples of the problems that might occur when radiated electromagnetic (EM) energy interacts with the sensitive electronics incorporated into many medical devices. Over the years, many incidents of suspected electromagnetic interference (EMI) with medical devices have been documented.[4] In addition, recent congressional hearings [5] and media attention [6,7] have heightened concern for the safe and effective use of devices in the presence of EMI. For medical devices the environment has become crowded with potential sources of EMI (figure 1).

Because of its concern for the public **health** and safety, the Center for Devices and Radiological **Health** (CDRH) part of the Food and Drug Administration (FDA), has been in the vanguard of examining medical device EMI and providing solutions. Extensive laboratory testing by CDRH [8,9,10], and others [11,12,13,14], has revealed that many devices can be susceptible to problems caused by EMI. Indeed, the CDRH has been investigating incidents of device EMI, and working on solutions (e.g. the 1979 draft EMC standard for medical devices [15]), since the late 1960's, when there was concern for EMI with cardiac pacemakers.[16]

The key to addressing EMI is the recognition that it involves not only the device itself but also the environment in which it is used, and anything that may come into that environment. More than anything else, the concern with EMI must be viewed as a systems problem requiring a systems approach. In this case the solution requires the involvement of the device industry, the EM source industry (e.g., power industry, telecommunications industry), and the clinical user and patient. The public must also play a part in the overall approach to recognizing and dealing with EMI.

The focus of this article is to briefly outline the concerns of the Center for Devices and Radiological **Health**, FDA, for EMI in all medical devices with electrical or electronic systems, and the strategy developed to minimize these problems.

The Complexity of Device EMI

As our society seeks new technology, medical devices can usually be found in the forefront. There is an ever-increasing use of electronics and microprocessors in devices of all kinds, across the vast range of devices: from relatively simple devices like electrical nerve stimulators to the more recent advances in imaging such as magnetic resonance imaging (MRI). In the medical industry there is a tendency toward more automation in devices to monitor patients and help perform diagnosis. Microminiaturization has revolutionized the medical device industry: smaller devices requiring less power that can perform more functions.

At the same time, there is a proliferation of new communications technology: the personal communications systems (PCS), **cellular telephones**, wireless computer links, to name a few. With these advances are coming some unforeseen problems: the interactions between the products emitting the EM energy and sensitive medical devices. Even the devices themselves can emit EM energy which can react with other devices or products.

Electromagnetic compatibility, or EMC, is essentially the opposite of EMI. EMC means that the device is compatible with (i.e., no interference caused by) its EM environment, and it does not emit levels of EM energy that cause EMI in other devices in the vicinity. The wide variation of medical devices and use environments makes them vulnerable to different forms of EM energy which can cause EMI: conducted, radiated, and electrostatic discharge (ESD). Further, EMI problems with medical devices can be very complex [see 17], not only from the technical standpoint but also from the view of public **health** issues and solutions.

A brief overview of radio frequency interference (RFI) can help to illustrate some of the variables that make device EMI so complex and difficult to address effectively. In general, the strength of the EM field at any given distance from the source of the radiated signal (transmitter) is directly proportional to the radiated power of the transmitter and inversely proportional to the distance. The role of distance from the EM energy source is highlighted by Figure 2. The relatively low power **cellular telephone** creates a 3 V/m field strength at 1 m, while a more powerful hand-held CB transceiver creates the same field strength at 5 m. Further, the high power TV transmitter creates this same field strength at a distance of 1000 m. It is easy to see then, at small distances from the radiator where EM field strength can be very high, even the best protected devices (i.e., with a high level of immunity) may be susceptible to EMI. However, the device may be susceptible to only some of the variations (e.g., frequency or modulation) in the EM energy. This is why some devices may be affected by a nearby transmitter of a certain frequency, and other devices at the same location may not be affected. Add to RFI the other forms of EMI and it quickly becomes apparent that devices can face a fairly hostile environment, which can ultimately affect the patient or device user.

FDA Concern with EMI

The consequence of EMI with medical devices may be only a transient "blip" on a monitor, or it could be as serious as preventing an alarm from sounding or inappropriate device movement leading to patient injury or death. With the increasing use of sensitive electronics in devices, and the proliferation of sources of EM energy, there is heightened concern about EMI in many devices. While the numbers of reports with possible links to EMI have been steady, these numbers are generally not indicative of the actual occurrence of incidents. Indeed, in investigating possible EMI-related problems it is usually the case that the EM energy which caused the event has dissipated (e.g. the EM energy source was shut off or removed from the area). Only through careful measurement and testing can the true nature of EMI susceptibility be determined. The complexity of the testing, and the vast range of devices encountered, make it a very difficult task indeed to address EMI.

The CDRH has regulatory authority over several thousand different kinds of medical devices, with thousands of manufacturers and variations of devices. The very nature of this range of devices does not lend itself to "generic" approaches. For example, an apnea monitor is very different from a powered wheelchair, in form, function, and configuration.

The EM environment that envelops the devices can vary widely, from the rural setting to the commercial setting, to the urban setting, and of course, the hospital setting. The International Electrotechnical Commission (IEC) has classified the EM environment into eight areas and defined the typical EM environment in each area. [18] Within each area there are conditions for the location and power of local EM energy sources (e.g., transmitters), which if exceeded would result in higher EM field strengths. Figure 3 indicates the general classifications and the upper range of radiated EM field strength specified for each environment.

Formation of the CDRH EMC Working Group

Concern in the CDRH has led to the formation of an EMC Working Group. This group was charged by the Deputy Center Director, Dr. Elizabeth Jacobson, to:

- assess all device areas to identify EMC concerns;

  coordinate the development of a strategy to assure EMC in all appropriate devices;

- provide a focal point for actions;

- keep the Center Director and his staff informed of activities involving EMI/EMC.

This initiative involves virtually all of the CDRH offices and functions. The formation and subsequent accomplishments of the Group have already had an impact on the regulatory approach, research, and interactions with the device industry. [19]

The EMC Working Group has developed a draft strategy to address EMC concerns across all appropriate device areas. This involves awareness (and education), regulation, research, cooperation with other agencies and organizations, and coordination and cooperation with manufacturers and users.

CDRH has long recognized that the majority of devices likely do not have major problems with EMI. Nonetheless, there are some critical device areas where the threat from EMI could directly impact upon the life and well-being of the patient. Rather than implement additional burdensome requirements over a broad spectrum of devices, CDRH is focusing on those areas where EMI has an established presence, is problematic, or could affect the critical function of the device.

Plans for Device EMC

A comprehensive plan for addressing medical device EMC needs to focus on the primary aspects of device safety and effectiveness. Although many manufacturers in certain device areas have been addressing EMC for some time (e.g. cardiac pacemakers), based on discussions with users, manufacturers, and EMC test facilities there still appears to be a general lack of awareness of the EMI problem. Thus, one key element in our plan includes raising this awareness and educating the users, manufacturers, and regulators about EMC.

Awareness

The CDRH has always placed a high priority on providing information to the public. For example, when the CDRH developed information that some apnea monitors could fail to alarm due to EMI, an FDA Safety Alert [figure 4] was sent out to large numbers of clinicians and users of these devices, warning of the problem and providing tips for the safe use of the devices. [20] Following

the extensive investigations into EMI with powered wheelchairs and motorized scooters, the FDA published an article in its Medical Bulletin, which goes to over 1 million clinicians, providing information about device EMI. [21] In addition, a question-and-answer document was developed for the users of powered wheelchairs and motorized scooters. [22]

Pre-Market

The pre-market approach to device regulation was charged to the former Bureau of Medical Devices by the 1976 Amendments to the Food, Drug, and Cosmetics Act. In the early 1980s, this bureau was merged with the Bureau of Radiological **Health** to form the Center for Devices and Radiological **Health**. Under the 1976 Amendments, and the more recent Safe Medical Device Act of 1990 [23], CDRH has authority to require device manufacturers to submit information about the safety and effectiveness of their devices. EMI has implications in both the safe and effective use of devices. Thus, a central part of the strategy for dealing with EMC concerns is to address these concerns in pre-market submissions.

In some device areas, notably the respiratory and anesthesia area, concern with EMI has evolved over a period of years because of problems with such devices as the apnea monitor. Indeed, there is a draft FDA standard for apnea monitors with EMC requirements that grew out of our investigations of EMI problems. This draft standard is presently undergoing public comment. [24]

Because of the vast range of devices, and the time and resources it takes to develop mandatory standards, a more general approach is being planned to address EMC in all appropriate device areas with respect to the pre-market concerns. This approach includes the development of priorities and guidelines for pre- and post- market and research activities.

Development of the guidelines for the regulators and manufacturers have been proposed in phases, including:

- a general guideline to address EMC across a broad range of devices which would be harmonized with prevailing national and international standards; and
- ultimately, specific guidelines tailored to concerns in each device area and developed in accordance with pre- market priorities for EMC.

Post-Market

For devices already in use, the post-market domain, plans are being formulated to address EMC utilizing the Good Manufacturing Practice (GMP) requirements [Title 21 Code of Federal Regulations (CFR) 820] and inspection guidance [FDA, CDRH Compliance Policy Guidance Manual 7382.830, 5/94]. There are also plans to gather information from the manufacturers of radiation emitting products, such as electronic article surveillance systems, to examine the implications for device EMI.

In addition, the collection of incident reports, mandatory in the cases of patient death or injury [23], is another major tool to assess the post-market use of devices. With the large numbers of devices being used today, and the steady number of incident reports, plans are underway to better distinguish EMI incidents from other types of device incidents. The plans involve building a separate database of carefully scrutinized incident reports, which would form the foundation that would grow with later reports. A system to separate and analyze EMI reports will serve as a resource in making decisions and setting priorities.

Research and Standards

Research and work with voluntary standards organizations have been ongoing in CDRH for several years. Present investigations include examinations of suggested EMI to cardiac pacemakers from digital **cellular telephones**, EMI to ventilator devices, and follow-up on powered wheelchair EMC.

The CDRH laboratory is equipped to perform these kinds of investigations and has the experienced staff to develop test protocols. Indeed, the CDRH work with powered wheelchair EMC has contributed greatly to draft test requirements and procedures for a national (ANSI/RESNA) and an international (ISO) standard. [25,26]

National and international standards activities play an important role in medical device EMC, which is why CDRH has promoted and supported the development of voluntary EMC product family standards for medical devices and EMC requirements for device- specific standards. In addition to ANSI/RESNA and ISO, CDRH has worked with AAMI, the ANSI-Accredited Standards Committee C63, and the International Electrotechnical Commission (IEC). In many cases, the Center s EMC laboratory findings and environmental measurements are utilized in proposals and recommendations to these voluntary standards organizations. The Center has been particularly interested and active in the development of IEC 601- 1-2 [27], and has attempted to harmonize our recommendations with this document to the extent possible, given the FDA mandate to assure safety and effectiveness. The European equivalent of this standard will become especially important as of January 1996, when the European Community EMC Directive becomes effective. [17] IEC 601-1-2 is an important step towards assuring EMC of medical devices; however, CDRH has some critical concerns about this document, and is participating in the development of the first amendment to this document.

Work with Other Agencies

There are additional plans to work with other Federal agencies and professional organizations to promote medical device EMC. Present activities include participation in the EMC Risk Assessment project ongoing at the Walter Reed Army Medical Center. Engineers at Walter Reed have begun an ambitious program to document the incidents of EMI in devices and address solutions. CDRH scientists have brought laboratory data and a rich history of experience to the meetings with Walter Reed staff. In addition, CDRH is continuing its dialog with the Federal Communications Commission (FCC) to promote medical device EMC.

Some Accomplishments to Date

The CDRH EMC Working group, and previous work on device EMC, have accomplished much in a short time frame. Chief among the accomplishments is the formulation of strategies to address EMC in all appropriate device areas. By taking a more comprehensive approach, the CDRH has been proactive in raising awareness and concern for EMC/EMI in devices. The EMC Working Group cooperated with AAMI to present a one and one-half day forum on medical device EMC. The objective of the forum was simple: make known the concern for device EMC, and provide a forum for interaction by the users, clinicians, manufacturers, EM source industries, the public, and CDRH to address the concern.

The EMC Working Group has also been busy assessing the various device areas in the pre-market domain to help in devising priorities for guidance development and laboratory testing. In addition, the Group has provided training for the CDRH staff about EMC, developed strategies, and made recommendations for CDRH/FDA policy toward EMC. Various members of the EMC Working Group have been taking the lead in activities outside the CDRH to address EMC in medical devices.

The laboratory investigation of powered wheelchair EMI, and subsequent standards efforts, illustrates that device EMC can be achieved through cooperation among CDRH, manufacturers, and users. Below is a brief overview of this work.

Experience with Powered Wheelchair EMC

CDRH became aware of suspected EMI in powered wheelchairs and motorized scooters in mid-1992. By late 1993 CDRH laboratory investigations and testing had revealed serious EMI reactions by these devices over a wide range of radio frequencies (1 MHz to 1000 MHz). The

evidence indicated that these devices could experience incidents of uncontrolled movement or electromechnical brake release in the presence of moderate radiated EM fields (as low as 3 to 10 V/m). This was sufficient to warrant notifying powered wheelchair users, through user organizations, [28] of the potential for EMI, and to solicit information concerning actual incidents. Further testing revealed that the EMI seemed to affect the control system of the powered wheelchairs resulting in electromechanical brake release and unintended wheel movement.

In many cases, motorized scooters utilize the same type of control systems as the powercd wheelchairs. Thus, there was concern that the scooter devices could also suffer from EMI. EMC tests were performed on samples of motorized scooters. The results revealed that these devices could also exhibit EMI problems.

Experience from EMC testing of other devices led CDRH researchers to develop testing procedures which fully challenge the devices. These procedures became the basis for the 1993 CDRH proposals to the RESNA and the ISO for EMC tests and requirements in their respective standards. The proposals were made to harmonize as much as possible with the IEC 801-3 standard (recently renumbered to IEC 1000-4-3) [29] for radiated immunity testing. However, in the process of performing the laboratory tests, CDRH created unique procedures which take into account the relatively slow response time of powered wheelchairs. Through careful scrutiny of submissions of EMC test data by the device manufacturers, and verification testing by CDRH, it became clear that the procedures devised by CDRH were more accurate in determining EMI problems than the existing standard procedures.

Additional testing procedures were developed to examine the device response as the wheels were kept at a constant speed, to simulate normal movement of the wheelchair. Figure 5 represents the results of testing on one device (before modifications were made by the manufacturer). In this case the wheels were fixed at a constant speed of 30 RPM during the exposure of the device. Note that there are several places where the motion of the wheels deviated from the 30 RPM baseline, indicating EMI to the wheelchair. These tests were performed at the EM field strength of 20 V/m. This level was chosen because the device manufacturers had stated they could build devices immune to this level, which is approximately the field strength from a hand-held transceiver at 0.6 m (2 ft). Many powered wheelchair users utilize radio transceivers and **cellular telephones** for communications, any of which could be placed within this distance of the device's control system.

Following careful EMC modifications to the powered wheelchair by the manufacturer, with the appropriate shielding and circuit modifications, the same powered wheelchair was retested and found to be immune (no EMI reactions) across the entire frequency range (figure 6). This demonstrated that these devices could indeed be made immune to 20 V/m. With such findings in hand, CDRH notified powered wheelchair and scooter manufacturers in May 1994 [30] that future submissions for these type devices should address EMC in labeling and testing. Additional work with the RESNA subcommittee for EMC refined the original CDRH EMC test proposal and reduced the number of test points, to make the procedure more affordable to perform, without compromising the test reliability.

The experience with powered wheelchair EMI demonstrates the ability of CDRH to work with the device manufacturers to recognize and address an EMI problem. Many of these device manufacturers were helpful in sharing information, providing samples, bringing together interested parties, and working towards a solution of the problem. CDRH was able to develop a new and more accurate test procedure in a relatively short time frame, building upon its years of experience in the laboratory and EMC testing of devices.

Summary

There is still much work to be done to reach the goal of assuring device EMC across the broad range of devices. The CDRH EMC Working Group has been charged by the Deputy Center Director to continue this effort, which will likely last some time into the future and impact all electrical and electronic medical devices. Given the nature of the EMI problem, and the quick pace

of technology, plans for this program must be dynamic and flexible. The very nature of EMI is complex, with large uncertainties in nearly every aspect. The CDRH approach will reflect these constraints and rely in large measure on the cooperation of all of the parties.

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10. Ruggera P.S., E.R O'Bryan, J.P. Casamento, Automated Radio frequency Electromagnetic Interference Testing of Apnea Monitors Using an Open Area Test Site, Proceedings of the 14th Annual International Conference of the IEEE Engineering in Medicine and Biology Society (1992) pages 2839-41.

11. Tan KS and I. Hinberg, Radio frequency Susceptibility Tests on Medical Equipment, Proceedings of the 16th Annual International Conference of IEEE Engineering in Medicine and Biology Society (1994).

12. Clifford K.J., K.H. Joyner, D.B. Stroud, M. Wood, B. Ward, C.H. Fernandez, Mobile Telephones Interfere with Medical Elcctrical Equipment, Australian Physical & Engineering Sciences in Medicine Vol. 17 No. 1 (1994) pages 23-27.

13. Capuano M., P Misale, D. Davidson, Case Study: Patient Coupled Device Interaction Produces Arrhythmia-like Artifact on Electrocardiographs, Biomedical Instrumentation &

Technology (November/December 1993) pages 475-483.

14. Nave M.J., Consultant on Call: The Case of the Talking EEG Machine, Compliance Engineering (July/August 1994) pages 65- 70.

15. Electromagnetic Compatibility Standard for Medical Devices MDS-201-004, An FDA Medical Services Standards Publication, Rockville, MD U.S. Dept. of **Health**, Education, and Welfare, October 1, 1979.

16. Ruggera P.S. and R. Elder, Electromagnetic Radiation Interference with Cardiac Pacemakers, DHEW publication BRH DEP 71-5 (April 1971).

17. Kimmel D.D., D.D. Gerke, Protecting Medical Devices From Electromagnetic Interference, Designer's Handbook: Medical Electronics 3rd Ed. (1994) pages 34-43.

18. International Electrotechnical Committee IEC/TC or SC: TC77, Electromagnetic Compatibility Between Electrical Equipment Including Networks, Classification of Electromagnetic Environments (1991).

19. CDRH's War on Electromagnetic Interference, An Interview with Donald Witters, CDRH, Medical Design & Diagnostic Industry, Vol. 17 No. 2 (February 1995) pages 34-40.

20. FDA Safety Alert: Important Tips for Apnea Monitor Users, (February 16, 1990).

21. Electromagnetic Interference with Medical Devices, FDA Medical Bulletin Vol. 24 No. 2 (September 1994) pages 5-6.

22. Radio Waves May Interfere with Control of Powered Wheelchairs and Motorized Scooters, sent with Dear Powered Wheelchair/Scooter or Accessory/Component Manufacturer letter and Dear Colleague letter, James Morrison, Director Office of **Health** and Industry Programs, CDRH (September 20, 1994).

23. The Safe Medical Devices Act (SMDA) of 1990, Public Law 91- 4243.

24. Proposed Standard for Apnea Monitors 21 CFR Part 896, published in the Federal Register Vol. 60 No. 34 (February 21, 1995) pages 9762-9771.

25. American National Standards Institute (ANSI)/ Rehabilitation Engineering Society of North America (RESNA) Proposal Addition to ANSI/RESNA WC/14 Electromagnetic Compatibility Requirements for Powered Wheelchairs and Motorized Scooters, draft version 1.5 (November 1994).

26. Draft International Organization of Standards (ISO) EMC Working Group Proposal Electromagnetic Compatibility Addition to ISO 7176-14, draft version 1.0 (April 1995).

27. Medical Electrical Equipment, Part 1: General Requirements for Safety, Collateral Standard: Electromagnetic Compatibility, International Electrotechnical Commission IEC 601-1-2 (1993).

28. Radio-Frequency Interference, Readers Respond, Paraplegia News, Paralyzed Veterans of America (September 1993) page 6.

29. Draft IEC 1000-4-3 Electromagnetic Compatibility (EMC)- Part
30. Testing and measurement techniques- Section 3: Radiated, Radio frequency, electromagnetic field immunity test (Revision of 801-3), SC65A/SC 77B (1994).

31. Dear Powered Wheelchair/Scooter or Accessory/Component Manufacturer letter, Susan

HOPKINS
MEDICAL PRODUCTS/UNIFORM COMPANY

Dear Sirs,

My Company was approached one year ago by AT & T and one other Communications Company to pay us substantial money to place a relay tower on our property. Although it was an attractive proposal and my Company could get money for leasing space, I did not do it for the following reasons:

1. Since my property is adjacent to a residential neighborhood, I felt that the tower would be a "commercial" addition and would not favorably impact the careful balance that we have between commercial and residential.

2. I am not convinced that the radio frequency waves are not harmless and I did not want to expose my employees to the possible hazard in an effort to make income.

I do not expect you to fully adopt my personal view, and my decision not to have a tower on my property, but I would ask you to visit the neighborhood and see the blend of residential and commercial, and please consider this in granting the variance set back as proposed in case #97-556-XA.

If you have any questions, please call me at 410-484-2036.

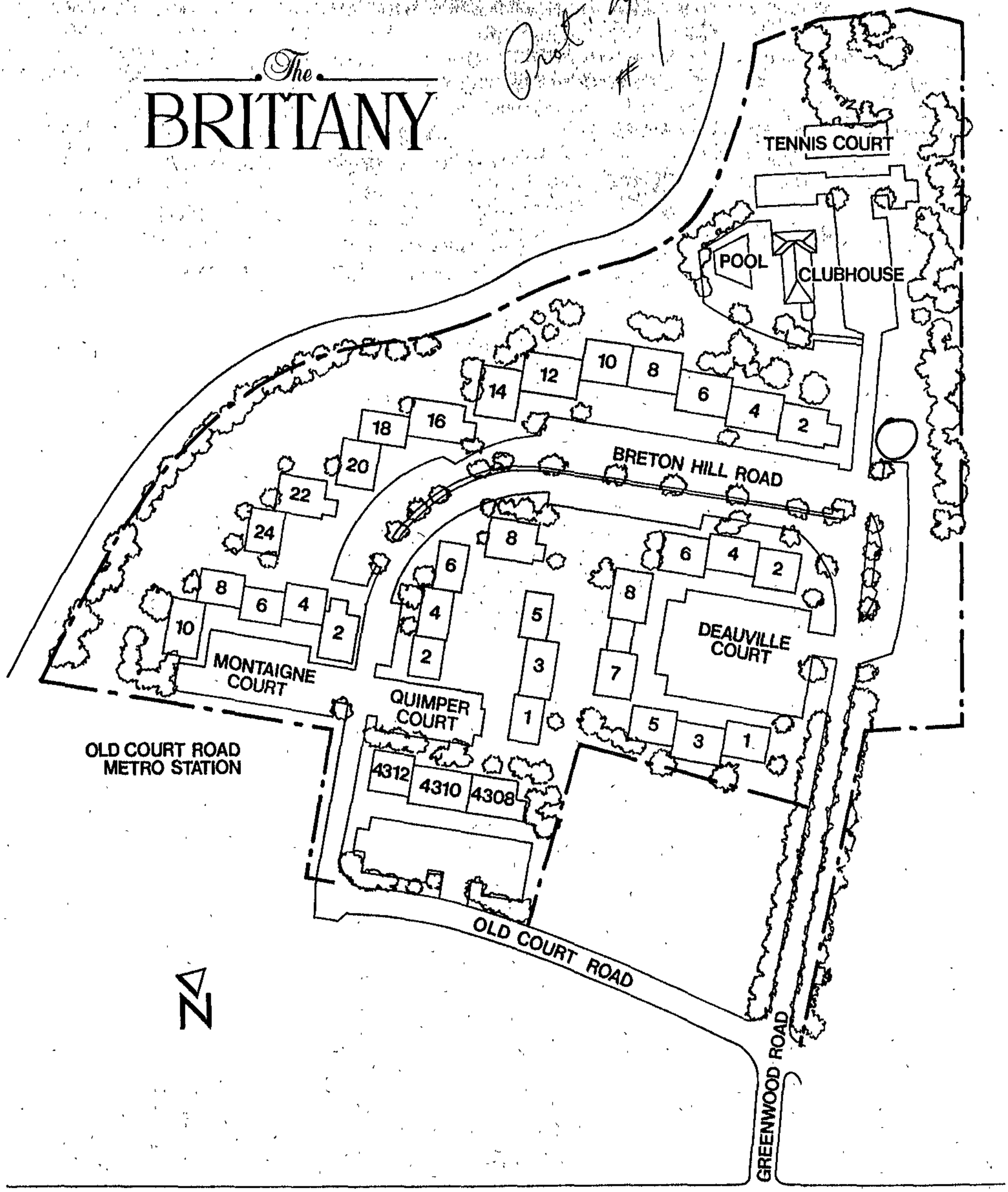
Sincerely,

Philip M. Kenney
President

Petr No 2

5 GREENWOOD PLACE, BALTIMORE, MD 21208 (410) 484-2036 FAX (410) 484-4036

The BRITTANY



playground site

William H. Hope & Associates, Inc

Exclusive Distributor Recreation Specialists
P.O. BOX 472 • DOVER, DELAWARE 19901

Toll Free 1-800-247-9399
FAX (302) 674-5937
Delaware (302) 674-4925

May 29, 1997

Apartment Services, Inc.
30 E. Padonia Road - Suite 302
Timonium, Md. 21093
Attn: Mary Alice Marron, Property Manager

Dear Mrs. Marron:

The following quotation is being sent to you at the request of Harry G. Coulter, our representative for your area. All equipment being quoted is as manufactured by RECREATION CREATIONS, INC. of Hillsdale, Michigan. The modular play structure we are quoting has been modified and the modifications are listed below:

QUOTATION

1 ea. MODIFIED #401-9600P "The Discoverer" Modular Play Structure	-------	$3,619.00
5% Maryland Sales Tax	-------	+ 180.95
Sub-Total	-------	$3,799.95
Shipping Charges	-------	+ 284.00
Sub-Total	-------	$4,083.95
Discount (total shipping charges)	-------	- 284.00
Sub-Total	-------	$3,799.95
Labor & Materials to Install Play Equipment Only	-------	1,310.00
Furnish, Deliver & Install Safety Ground Cover 6" Deep	-------	308.00
Furnish, Deliver,& Install 6" X 6" Timber Containment Borders	-------	600.00
*** TOTAL TO FURNISH, DELIVER, AND INSTALL PLAYGROUND EQUIPMENT	-------	$6,017.95

*** Quotation above is the structure with RECYCLED PLASTIC SUPPORT POSTS. For this same structure, but with powder coated galvanized steel posts, DEDUCT $208.00.

"The Discoverer" modular play structure is pictured and described on page 37 of the RECREATION CREATIONS Catalog. The play structure was modified by eliminating the #30-1083 "L" Tube Slide (Catalog pg. 53) and adding a #30-1001 Poly Curved Slide, also as pictured on Catalog page 53. This change resulted in a cost reduction of $1,045.00. We also substituted a Heritage Roof for the Contemporary Roof as requested, at no extra charge.

TERMS: NET - 30 DAYS TO APPROVED CREDIT.
SHIPMENT: WE ARE PRESENTLY SHIPPING IN APPROX. 4-6 WEEKS AFTER RECEIPT OF AN ORDER.
PRICES: ALL PRICES QUOTED ABOVE ARE FIRM FOR 60 DAYS FROM DATE OF THIS QUOTATION.

Please note that all installation work would be done by Pyramid Contractors, P.O. Box 1415, Dover, De. 19903. They can be reached through our office. Pyramid is an independent company that we use to do our installation work. Two Purchase Orders would need to be issued for this project: one to Pyramid Contractors for the installation work, and another to RECREATION CREATIONS, INC. to supply the playground equipment. The P.O. for RECREATION CREATIONS should be sent to our office, address above, for processing. Pyramid's quotation is based upon the job site being level; that there are normal soil conditions for digging, and that the area be accessible by truck.

If there are any questions, please call. Thanks for allowing us to quote this job.

Sincerely yours,
William H. Hope
William H. Hope
Exclusive Representative
RECREATION CREATIONS, INC.

cc: Harry G. Coulter

BRIAN S. PARSONS

8226 Bell Lane ✧ Vienna, Virginia 22182
(703) 207-9276

CAREER SUMMARY

Twenty (20) years as Development Engineer and Land Use Planner for corporate, public agency, real estate developer, and architecture/engineering firms. Background includes environmental and site planning, design layout, analysis of land use. Expertise in documentation and composing diverse reports, technical manuals, and plans. Excellent interpersonal skills enable me to communicate with individuals from all levels and backgrounds.

PROFESSIONAL EXPERIENCE

Techstar Communications, Inc. **June 1997 to Present**
Bethesda, Maryland
Planner/Zoning Analyst
Principal planner responsible for managing the zoning and permitting of Washington and Baltimore metropolitan area 140 PCS telephone sites for AT&T Wireless Services, Inc. Responsible for zoning for 200 Nextel sites in the southeastern region of the U.S.

NextWave Telecom, Inc. **Oct 1996 to Jun 1997**
Annandale, Virginia
Site Acquisition/ Zoning Specialist
Directed and coordinated real estate consultants and engineers in the acquisition, zoning and permitting of 200 PCS cell sites in the Baltimore and Washington, D.C. BTA. Conducted field surveys of potential communication sites using of digital camera, GPS equipment, radio frequency plots, and property, zoning and topographical maps. Prepare development schedules, special exception justification statements, 456 letters and variance applications. Reviewed construction plans for compliance with zoning regulations. Conducted zoning and legal research

Network Building & Consulting, Inc. **Aug 1994 to Oct 1996**
Beltsville, Maryland
Zoning Coordinator
Principal planner responsible for managing the zoning and permitting of Washington and Baltimore metropolitan area cellular telephone sites for NEXTEL Communications and Bell Atlantic Nynex Mobile Also expedited land use approvals for Sprint Spectrum PCS sites in Philadelphia, PA.

- Prepared special exception justification statements, variance and development applications
- Established project schedules using Microsoft Project software
- Conducted legal research of land records, proffers, and special exception approvals.
- Prepared zoning exhibits and testified at public hearings.

GTE Government Systems **May 1989 to May 1994**
Chantilly, Virginia
Engineer III
Principal planner on two multi-million dollar telecommunications programs.

Conduct three-year site selection study for the U.S. Air Force GWEN (Ground Wave Emergency Network) Program.

- Analyzed over forty national geographic locations to identify potential sites for construction of communication facilities; analysis involved evaluation of land use compatibility, construction suitability, operational performance, and environmental compliance criteria.
- Wrote eighty reports pertaining to telecommunications systems and site development involving extensive communication with scientists, engineers, and local planners.

Contributed to civil engineering proposal for oil field, pipeline, and marine traffic control communications for Saudi ARAMCO (Arabian American Oil Co.) Program.

- Establish work breakdown structures, staffing plans, and project schedules and budgets.

Public Storage, Inc. **Jun 1986 to May 1989**
Alexandria, Virginia
Land Development Coordinator
Pre-Construction manager of projects in the Washington metropolitan area for the nation's largest developer of mini-warehouses.

Managed development of construction plans for twelve office park and self-storage projects, two of which are estimated at over $26 million.

- Formulated and managed budget and project schedule.
- Responsible for managing several concurrent projects from zoning submittal to bond release.
- Extensive documentation, composed correspondence reports of public hearing testimony; communicated with government agencies.

James City County Department of Planning & Development **May 1985 to Jun 1986**
Williamsburg, Virginia
Land Use Planner
Primary planner for a county chartered to retain historic character while under going rapid expansion of its' tax base.

Protected historical areas through the design review process as chief staff to Site Plan Review Committee of the Planning Commission.

- Prepared written policy recommendations on rezoning, special use permit, PUD and cluster developments.
- Analysis of site design and architectural features; wrote numerous reports and reviews to establish aesthetic guidelines for the use of landscaping, signage, and building orientation of commercial, industrial, and residential projects.
- Increased efficiency by implementing streamlined review process to expedite approval of site plans. Presented Planning Commission cases at televised public hearings.

York County Department of Planning & Community Development **Jan 1981 to May 1985**
Yorktown, Virginia
Technical Services Supervisor
Assistant planner for an environmentally fragile county in transition to suburban economy
Prepared recommendations for rezoning appeals, special use permits and street acceptance/abandonment cases.

- Reviewed construction drawings and provided recommendations as Secretary to the Wetlands Board.
- Determined impact on wetlands relative to their role as wildlife habitats, spawning grounds, and shoreline stabilization. Designed and implemented new building address policy which was approved by the Board of Supervisors.
- Supervised staff responsible for design and production of county land use plan graphics, maps, technical illustrations, and socioeconomic data.

Greenhorn & O'Hara **Sept 1979 to Jan 1981**
Greenbelt, Maryland
Site Planner
Associate Planner for one of Washington's largest nationally recognized architectural and engineering firms.

Designed rough grading plans, site plans, street grade profiles, and prepared earthwork volume computations.

- Interpreted architectural plans, prepared "as-built" drawings, cost estimates and cut sheets.
- Provided engineering support to luxury townhouse community in Georgetown section of Washington, DC

Ben Dyer Associates, Inc. **Aug 1978 to Sept 1979**
Greenbelt, Maryland
Storm Drainage and Paving Designer

SKILLS

Macintosh and IBM-PCs; Word Perfect, MacDraw Pro, Microsoft Word, Lotus 1-2-3, Pathloss II, and Filemaker Pro.

Compiled and prepared numerous written reports; researched and prepared data for Public Hearing testimony.

Considerable public speaking experience delivering staff presentations.

EDUCATION

Pursuing Masters Degree in Planning, (obtained 46 of 52 credits necessary for degree)
University of Virginia

B.S. Degree in Geography
University of Maryland, College Park

Pet. Exh #5

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

TOWSON, MARYLAND 21204

DIRECTOR

BUILDINGS ENGINEER

BUILDING PERMIT

PERMIT #: B318042 CONTROL #: CFC- DIST: 02 PREC: 03
DATE ISSUED: 11/14/97 TAX ACCOUNT #: 0323054030 CLASS: 07

PLANS: CONST 2 PLOT 9 R PLAT 0 DATA 3 ELEC NO PLUM NO
LOCATION: 7 GREENWOOD PL
SUBDIVISION: 500 W OLD COURT RD

OWNERS INFORMATION
NAME: WITMYER, HENRY M & HELEN
ADDR: 7 GREENWOOD PL 21208

THIS PERMIT EXPIRES ONE YEAR FROM DATE OF ISSUE

TENANT: AT&T WIRELESS SVCS INC
CONTR: ERICSSON INC
ENGNR: D.M.W. INC
SELLR:
WORK: CONST FREESTANDING 170'HIGH MONOPOLE W/9 PANEL
ANTENNAS ON REAR OF PROPERTY.
DRC#06237D, DIST3C2, CASE#97-556-XA, 8-8-97

BLDG. CODE: BOCA CODE
RESIDENTIAL CATEGORY: OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: INDUSTRIAL BLDG & TOWER/ANTENNAS
EXISTING USE: INDUSTRIAL BLDG

TYPE OF IMPRV: NEW BULDING CONTRUCTION
USE: TANK, TOWER
FOUNDATION: BASEMENT:
SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 0151.06 X 0000.00
FRONT STREET:
SIDE STREET:
FRONT SETB: NC
SIDE SETB: 82'/NC
SIDE STR SETB:
REAR SETB: 9'6

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

REQUIRED CONSTRUCTION INSPECTIONS

1. FOOTING INSPECTION: shall be requested as soon as the trenches are completed, steel is in place if required, and concrete encased electrode is in place before pouring concrete.

2. FOUNDATION INSPECTION: shall be requested when the foundation has been waterproofed before backfilling the earth.

3. SLAB INSPECTION: shall be requested when all reinforcing, piping, wiring, weepholes, drain tile, etc., are in place or completed and inspected by plumbing/electrical inspection and before pouring concrete. (Residential basement slabs do not require building inspections.)

4. FRAMING INSPECTION: shall be requested when all structural members are in place, electric and plumbing roughed in, and chimney and duct work installed before covering with lathe, insulation, or drywall. All fire stopping shall be installed. A separate ceiling grid inspection shall be determined by the inspector.

5. *INSULATION INSPECTION: after framing inspection, but prior to sheetrock.*

6. OCCUPANCY OR FINAL INSPECTION: shall be requested before the structure is used or occupied.

NEW BUILDINGS AND ADDITIONS:	6 inspections required: footing - foundation - slab - framing - insulation - occupancy
ALTERATIONS:	3 inspections required: framing - insulation - occupancy or final
FACTORY BUILT FIREPLACE AND STOVES:	2 inspections required: framing with thimble in place - final
MASONRY FIREPLACE:	3 inspections required: footing - throat/framing (inspection shall be called for when the throat/framing of the unit is complete, but prior to the erection of the chimney) - final
TANKS:	3 inspections required: hydrostatic (fire department) excavation with tank, bedding, and piping in place prior to backfill (building inspection) - final
DECKS:	2 inspections required: footing - final
SWIMMING POOLS:	2 inspections required: steel in place - fence erected if needed prior to final
FENCING, RAZING, GRADING AND TEMPORARIES:	*1 inspection required:* final (when all work is completed as per the permit)

* WELL INSPECTION MUST BE MADE TWO WEEKS BEFORE OCCUPANCY OR FINAL INSPECTION IS CALLED FOR (887-2762).

* MECHANICAL WORK: depends on type or extent of work; contact inspector after or during preliminary inspection.

*** NUMBERS TO CALL FOR INSPECTIONS ***

BUILDING	PLUMBING	ELECTRICAL	FIRE DEPT.
410-887-3953	410-887-3620	410-887-3960	410-887-4880

****

**** I M P O R T A N T N O T E S ****

APPROVED PLANS, INCLUDING COMMENTS, MUST BE ON SITE FOR INSPECTION.

ANY INFORMATION SUPPLIED FOR THIS PERMIT THAT IS FOUND TO BE ERRONEOUS OR INCOMPLETE COULD RESULT IN THE *SUSPENSION OR REVOCATION OF THE PERMIT.*

YOU MUST PROVIDE THE PERMIT NUMBER, DISTRICT, PRECINCT, AND STREET ADDRESS WHEN REQUESTING AN INSPECTION.

SEPARATE PERMITS ARE REQUIRED FOR PLUMBING AND ELECTRICAL WORK.

INSPECTIONS SHALL BE REQUESTED BEFORE 3:45 P.M., WITH A ONE-DAY NOTICE ON ALL INSPECTIONS.

REV 9/96

DMW

Daft·McCune·Walker, Inc.

A Team of Land Planners, Landscape Architects, Engineers, Surveyors & Environmental Professionals

200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296–3333
Fax 296–4705

AT&T

PROPOSED UNMANNED WIRELESS COMMUNICATION SITE

B040.7

GREENWOOD PLACE

7 GREENWOOD PLACE
BALTIMORE, MARYLAND 21208

COVER SHEET

SITE DATA

Tax Map	78
Block Number	1
Lot Number	400
Latitude (NAD 83)	39° 22' 32.058315"
Longitude (NAD 83)	76° 44' 29.765627"
Ground Elevation (NAVD 88)	423.5

B318042

APPROVED — BALTIMORE COUNTY

DATE: 11/14/97 REVIEWER: ALB

THE REVIEW OF THESE PLANS DOES NOT RELIEVE THE OWNER, ARCHITECT, ENGINEER OR CONTRACTOR OF ANY RESPONSIBILITY WHATEVER FOR THE DESIGN, STRENGTH OR SAFETY OF THE CONSTRUCTION IT COVERS. ALL CONSTRUCTION MUST CONFORM TO THE BUILDING CODE INCLUDING DETAILS SHOWN OR NOT SHOWN.

THE REVIEW OF THESE PLANS COVERS BASIC BUILDING CODE ITEMS. ADDITIONAL COMMENTS MAY BE ATTACHED

~~OFFICE~~ - FIELD COPY

FIELD PLANS MUST REMAIN AT BUILDING

SITE UNTIL COMPLETION.

APPROVED — BALTIMORE COUNTY

DATE: _____ REVIEWER: _____

THE REVIEW OF THESE PLANS DOES NOT RELIEVE THE OWNER, ARCHITECT, ENGINEER OR CONTRACTOR OF ANY RESPONSIBILITY WHATEVER FOR THE DESIGN, STRENGTH OR SAFETY OF THE CONSTRUCTION IT COVERS. ALL CONSTRUCTION MUST CONFORM TO THE BUILDING CODE INCLUDING DETAILS SHOWN OR NOT SHOWN.

THE REVIEW OF THESE PLANS COVERS BASIC BUILDING CODE ITEMS. ADDITIONAL COMMENTS MAY BE ATTACHED

FIELD PLANS MUST REMAIN AT BUILDING

SITE UNTIL COMPLETION.

PENDING PEIRMIT #
B 318042

ERECTION BOOK

AT&T WIRELESS SERVICES
173 FT. MONOPOLE
JOB NO. 15407
B040 ICP, MARYLAND

10-NOV-1997

RECEIVED
NOV 12 1997
BUILDING
PLANS REVIEW

FWT

Leading The Way

BUILDING PERMIT #

QUOTE – Q26965
DESIGN #97-4189
B640 ICP, MARYLAND
AT&T WIRELESS SERVICES
173' MONOPOLE

CASE 2 [illegible]
CASE 3 [illegible]

FWT

Leading The Way

RECEIVED
OCT 21 1997
FIRE PREVENTION
PLANS REVIEW

BALTIMORE COUNTY FENCE USE PERMIT
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
111 WEST CHESAPEAKE AVENUE, TOWSON, MD 21204

Permit No. _____

Fees: $10.00 Residential; $20.00 Commercial — Receipt No. WJ41097

Make checks payable to Baltimore County, Maryland --- PERMIT FEES ARE NON-REFUNDABLE

Type or print in ink:

Work Site Address 7 Greenwood Place, Balt MD 21208 — Election District 3

Owner's Name Henry Witmyer, Jr & Helen — Phone No. (410) 484-5865

Mailing Address 7 Greenwood Place, Balt MD 21208

Owner's Agent AT&T Wireless Services, Inc, BRIAN PARSONS c/o Techstar Communications, Inc Phone No. (301) 652-1496

COMPLETE BELOW OR ATTACH A PLAN THAT CLEARLY SHOWS: Corner Lot: Yes ☐ No ☒

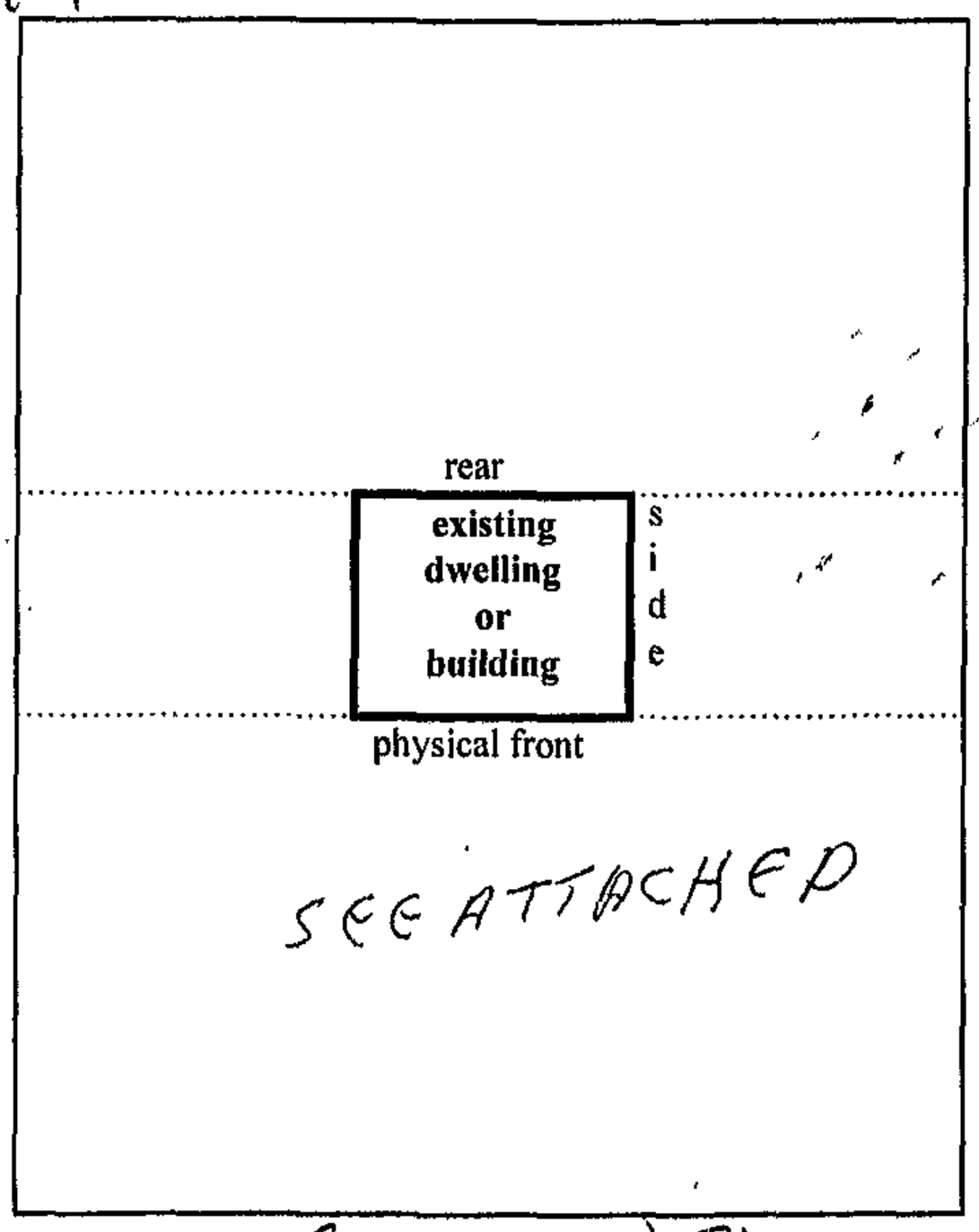
Property line dimensions, easements, existing buildings, road names, and location of alleys.

Proposed fence location ~~(XXXXX)~~, total length 320', height 8, and type chain Link w/3 strand barbed wire on top

Property line setbacks: front 87'31, sides 80'77, and [illegible]'23 and rear 3'.

Property use Monopole & Equip Area. Rear/Side yard abuts adjoining front yard: Yes ☐ No ☑

SITE PLAN



Road Name Greenwood Place

FENCE REGULATIONS

Permit is required for fences over 42 inches high (measured vertical to ground, even if fence is placed on top of wall). Fences erected within easement must be removed at owner's expense, if required.

Building Code, Section 509:

509.1 - Residential Fences -- Maximum height of 42 inches in front yard as determined by BCZR and 6 feet in side and rear yards at the property line. Maximum height of 10 feet in side and rear yards, provided set back 2 feet for every *vertical foot over 6 feet.*

509.2 - Commercial Fences -- Maximum height of 12 feet. Building's Engineer may approve higher fence for dangerous, hazardous, of athletic field. Electric and barbed wire fences are only permitted for the retention of livestock and when not a safety hazard to the public. No sharp projections less than 4 feet high. Barbed wire and other retarding material may be on top of fence that is at least 6 feet, 9 inches high.

Zoning Code (BCZR) (access easements cannot be fenced)

102.5 - Corner Lot -- No fence or other obstruction to vision is permitted higher than 3 feet within 25 feet of a corner of two streets, 15 feet of a street and alley, and 10 feet of two alleys.

427 - Residential Fences in side or rear yard which adjoins residential front yard (setback and maximum height): zero to 10 feet - 42 inches, 10 to 20 feet - 48 inches, 20 to 30 feet - 60 inches, and over 30 feet - no limit. Required pool fence and houses more than 200 feet apart are exceptions.

CERTIFICATION (OWNER/AGENT)

I have carefully read the above regulations and hereby certify that the proposed fence will be located on private property, will not violate the codes, and that the information supplied is true, complete, and correct.

Signature — Date 11/14/97 — Brian S Parsons, Techstar Communications Inc. — Print or Type Name

Copies: White - Office; Yellow - Applicant

Authority under Section 500.4, BCZR. **PDM APPROVAL** (FOR FENCE ONLY)

Signature — Print Initials COP — Date 11/14/97

Rev. 10/97

APPLICANT - KEEP THIS COPY FOR YOUR PERMANENT RECORDS

OAKLEIGH J. THORNE, MAI, CRE

EDUCATION

Bachelor of Arts, State University of New York 1964
Graduate Courses, Urban Real Estate Development
and Planning, American University, Washington, D.C. 1969 - 1972

EXPERIENCE

Mr. Thorne has more than 32 years experience in real estate counseling, providing advice and information to clients on real estate market economics, participating debt structure alternatives, financial investment characteristics, and valuation of real property. He is responsible for East Coast counseling activities for THORNE CONSULTANTS, INC. Typical clients are corporations, commercial banks, pension funds, partnership entities, and individuals, both domestic and foreign.

Prior to forming THORNE CONSULTANTS, INC., Mr. Thorne was Director-Acquisitions for Huntmar Assoc. Ltd. and actively sought the purchase of investment grade real estate in the Mid-Atlantic region for European equity funds. Mr. Thorne was First Vice President and Regional Manager of Coldwell Banker's Consultation Division in Washington for eight years. His primary responsibilities included business development and P & L performance for Coldwell's East Coast Consulting offices. In this position, he designed Coldwell's Office Lease Analysis system for tenants seeking new or expansion space in major urban Northeast markets. While at the Richard Roberts Co. (1976 - 1978) in Hartford, CT, Mr. Thorne (Vice President of Acquisitions) acquired more than $50 million in residential and office projects from R.E.O. accounts of financial institutions.

PROFESSIONAL AFFILIATIONS AND LICENSES

American Society of Real Estate Counselors (CRE)
Urban Land Institute (ULI) - Sustaining Member
Appraisal Institute (MAI) - Continuing Education Completed through December 31, 1998
State of Maryland, Certified General Appraiser # 04-1956; Valid Through January 17, 1998
District of Columbia, Certified General Appraiser # GA00010140; Valid Through February 28, 1998
Commonwealth of Virginia, Certified General Real Estate Appraiser # 001708; Valid Through July 31, 1998

PUBLICATIONS

"The Tenant Representation Process," Perspective, SIOR, March/April 1988.
"The Electronic Spreadsheet and Participating Lenders' Yields," Appraisal Journal, April 1988.
"Joint Ventures in the Eighties," Real Estate Review, Summer, 1988.
"Comparative Lease Aging and Lotus 1-2-3," Real Estate Review, Spring 1985.
"Corporate Real Estate Management and Value," Tape Cassettes, Society of Real Estate Appraisers, 1979.
"Development Strategy," Industrial Development Handbook, Urban Land Institute, 1976.
"Marketability and Market Analysis," a two-day seminar program for the Society of Real Estate Appraisers, 1976.
"Financial Analysis - The State of the Art," Appraisal Journal, January, 1974 - This article won the Institute's 1975 Charles B. Shattuck Award.

EXPERT TESTIMONY

Mr. Thorne has testified in a number of venues and in various District and Federal courts throughout the region as an expert on litigation issues relating to value, and these matters have included bankruptcy, condemnation, environmental contamination, and partnership disputes. He has also completed a number of studies on the impact of the presence of cellular telephone monopoles on adjacent residential property values and has testified at administrative hearings in Fairfax County, Virginia, and Montgomery and Wilcomico Counties, and Baltimore City, Maryland

PROFESSIONAL LECTURER

Mr. Thorne has taught Capitalization Theory and Techniques-Part B and Case Studies (now referred to as Course 550) for over seventeen years at American University, and in the last five years has taught Course 550 at various national locations for the Appraisal Institute.

Mitchell J. Kellman
3907 Esgarth Way
Owings Mills, Maryland 21117
(H) 410/ 998-9118 (W) 410/887-3391 or 8122

Objective: To establish myself in a progressive organization, using my strong organizational skills, experience and versatility to meet challenges and to grow.

Education: High School Diploma, 1978, Milford Mill Sr. High School, Baltimore, Maryland. Bachelors Degree, Geography and Environmental Planning, Concentration in Urban Planning, 1983, Towson State University, Towson, Maryland. Masters Degree, Geography and Environmental Planning, Concentration in Urban Planning, Proficiency Certificate in Urban Planning, 1987, Towson State University. Member of Gama Theta Epsilon (International Geographic Honor Society), 1985-1987.

Work Experience:

January, 1988 to Present — Baltimore County Office of Permits and Development Management - Development Control (formerly Baltimore County Zoning Office), Towson, Maryland.
Planner II (January, 1989 to present)
Planning and Zoning Associate III (January, 1988 to January, 1989)
Responsibilities: Review, approve and sign on behalf of the Director final development plans and record plats, in accordance with Baltimore County Zoning and Subdivision Regulations and County Review Group standards and comments. Approve County Review Group plans per Zoning Office compliance. Act as Zoning Office representative for Development Review Committee (DRC). Supervise Planning Associate II's and III's on special projects. Review petitions and site plans filed for zoning hearing approvals. Develop guidelines and checklists for approval procedures within Zoning Office. Operate computer terminal for final permit processing and approval. Meet with professionals and public on development projects to be approved by the County. Meet with other Baltimore County agencies on various projects. Act as Office representative at Economic Development meetings for special projects. Negotiate timelines with developers and engineers for select projects and act as "team leader" and project manager by supervising review staff to assure compliance and deadlines are met. Act as office coordinator on building permit intake for all work within tidal and nontidal floodplains. Coordinate with the State on possible floodplain violations. Advise the public and other County agencies on State floodplain regulations and building codes.

January, 1987 to January, 1988 — Baltimore County Office of Planning and Zoning.
Planning and Zoning Associate II
Responsibilities: Assisted the public with current zoning regulations and permit processing and approval. Reviewed miscellaneous commercial site plans and permits for approval. Researched previous zoning hearing cases for relating, pending permit applications. Approved new dwelling permits and minor residential permits for final approval.

January, 1984 to May, 1986 — State Highway Administration, Baltimore, Maryland.
Planning Technician
Responsibilities: Data input and cost analysis for the Consolidated Transportation Program (CTP) and Interstate Cost Estimate (ICE). Reviewed computer printouts for construction, planning and engineering costs for the aforementioned projects. Light drafting and engineering: Attended meetings with supervisor and computer programmer on ways to improve existing programs and implement new ones.

Additional Education and Training:

Community Relations seminar - 10 hours, State Highway Administration, May, 1985. Project Management seminar - 7 hours, Baltimore County Permits and Licenses, April, 1994. Floodplain Management - 14 hours, FEMA, September, 1994.

Personal: Married; Two Children; Age 36; Excellent Health.

References: Available upon request.

Exhibit 2

MD 140
WESTERN RUN
795 EXIT RAMP
ROAD
I 795
Radio Towers (WCBM)
Green Spring Junction
Garrison Forest Sch For Girls
Golf Course
Garrison
Drive-in Theater
Green Spring Valley Hunt Club
PAINTERS MILL RD
GUYNNS
MARYLAND
ROAD
MD 140 REISTERTOWN RD
Chattolanee
Old Hanover Road
Ecleston
MD 129 PARK HEIGHTS AV
Stevenson
Jones
Camp Milldale
Glenmar
Mt Donogh Sch for Boys
Water
Mt Donogh
Branch
Sewage Disposal
Falls
Canterbury Estates
Stone Chapel
Sacred Heart Monastery
Cem
Meadow
Brentwood
INTERCHANGE
BALTIMORE
695
Radio Towers (WCAO)
Long Meadows Estates
695 EXIT RAMP
Pikesville Reservoir
Woodholme Golf Course
Mount Wilson
Druid Ridge Cemetery
Mt Wilson State Hospital
PIKESVILLE
Dumbarton
Radio Towers (WBAL)
695 I 795 RAMP
Suburban Club Golf Course (18)
Oakland Park
St Charles Sch
CHURCH LANE
Pikesville
Suburban Club Golf Course
Rainton
Sudbrook Park
Sudbrook
Colonial Ch
Howardsville
Colonial Village
MD 26 LIBERTY RD
Union
Rockdale
Millford Mill
Millford Mill Sch
Villa Nova
Millford
Dolfield
Patterson Park
Seton Institute (Hospital)
Hebbville
MD 26
NORTHERN PKWY
MD 26 LIBERTY RD

Balloon in relation to
front of Brittany Apts

5F

Balloon in relation to front of Brittany apts

SE

Balloon in relation
to front of
Brittany Apts

5D

Balloon behind houses
on Anandale Court

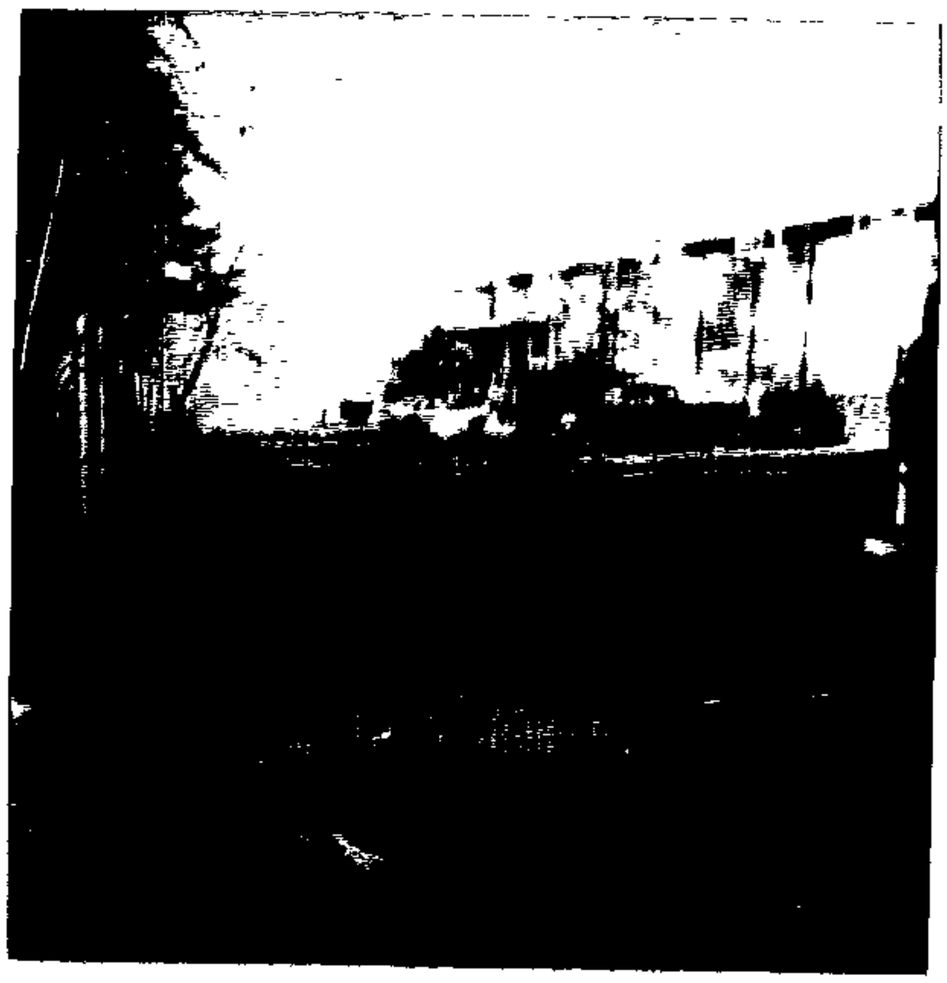
SC

Balloon behind houses
on Anardale Ct.

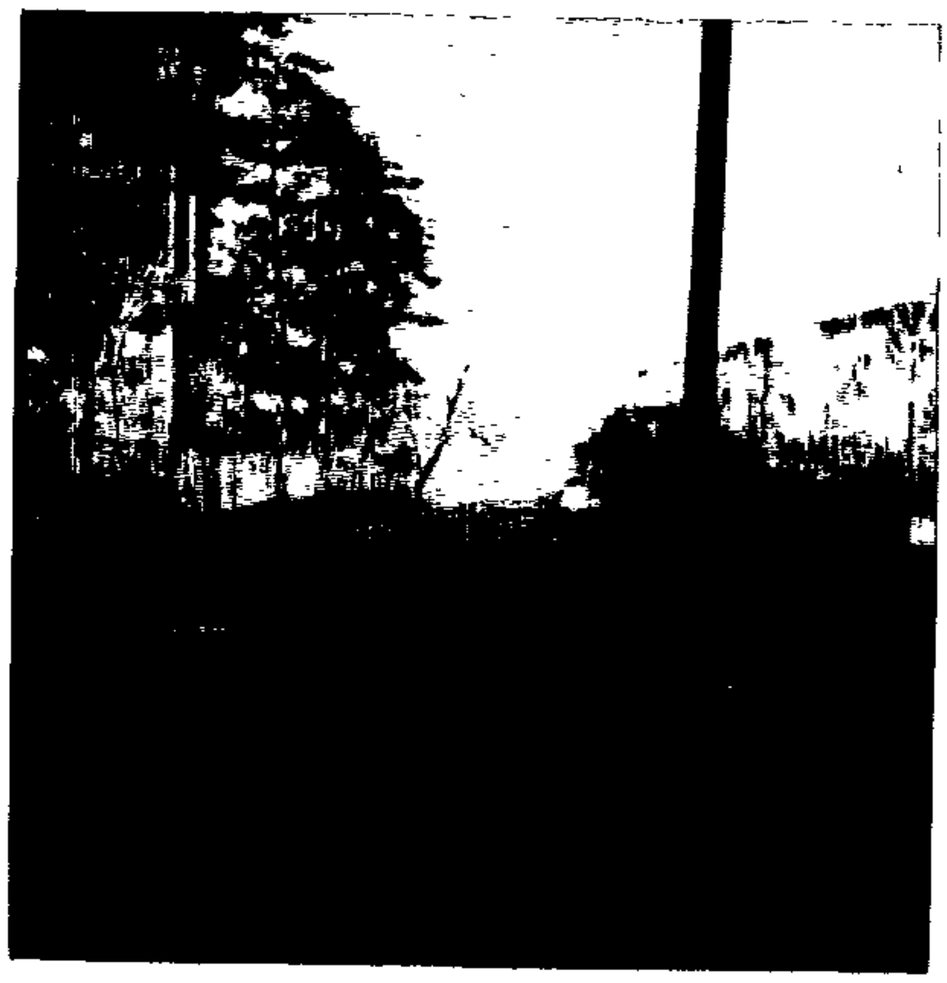
5B

Trentham & Anandale Ct.
Looking toward Woodnolme Av.
Showing balloon floated by AT&T
to demonstrate location
of tower

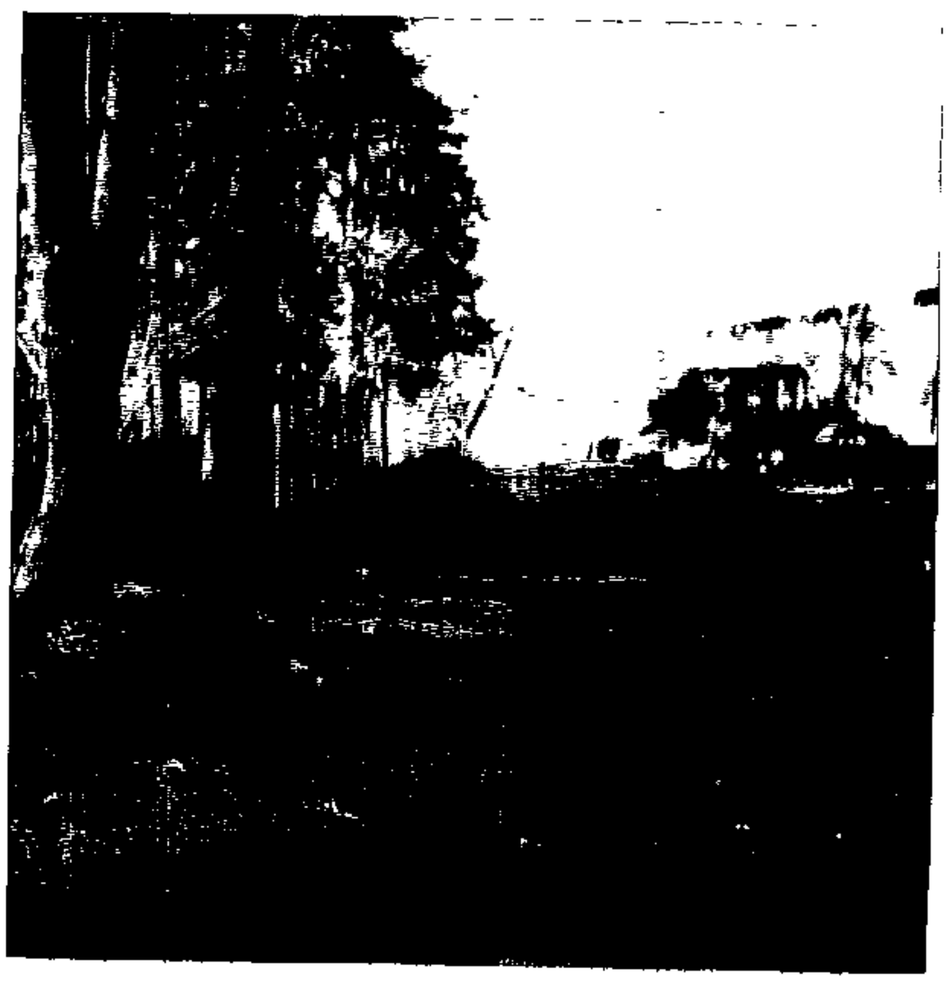
SA



3A

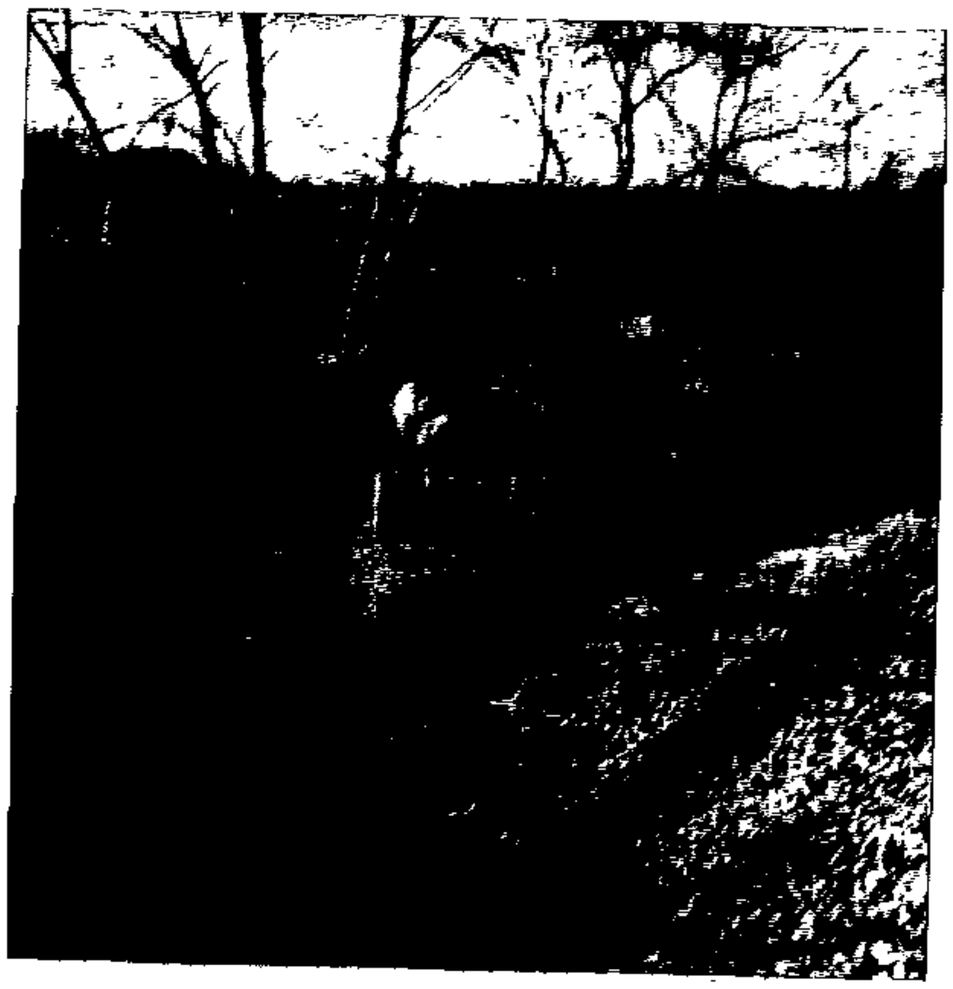


3B



3C

3D



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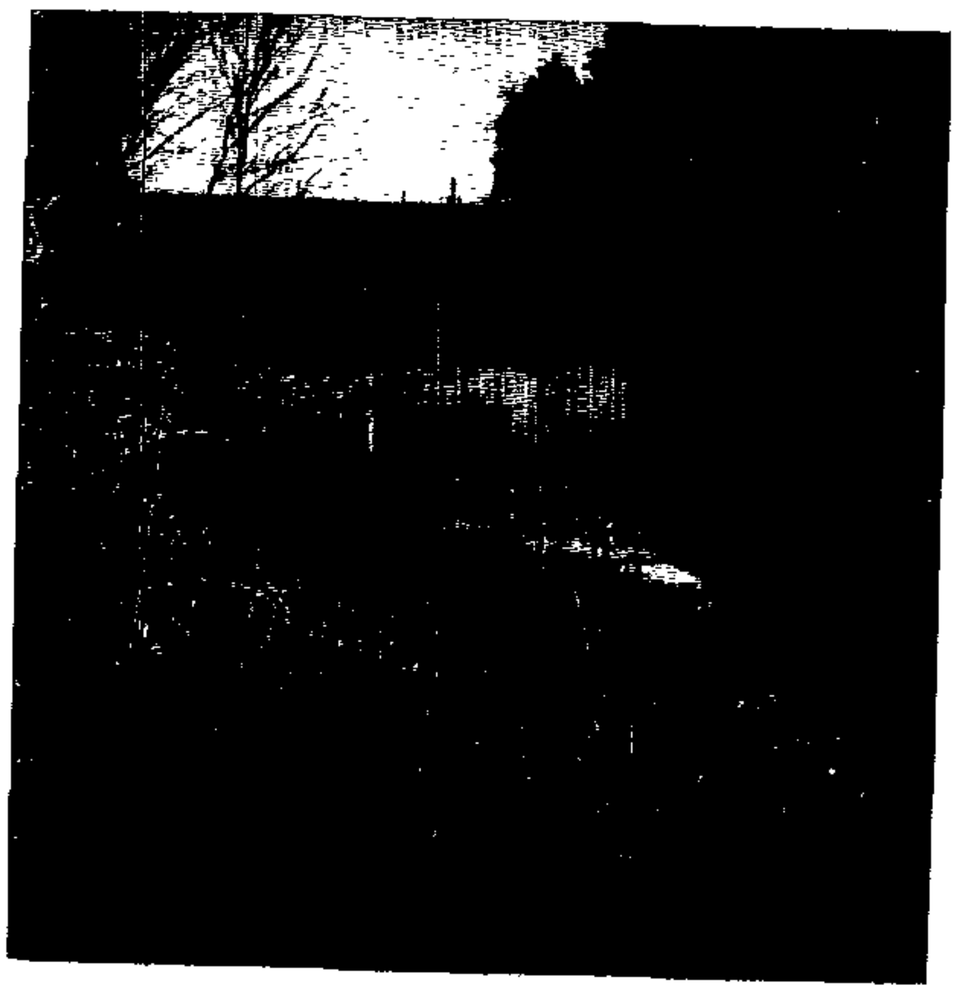
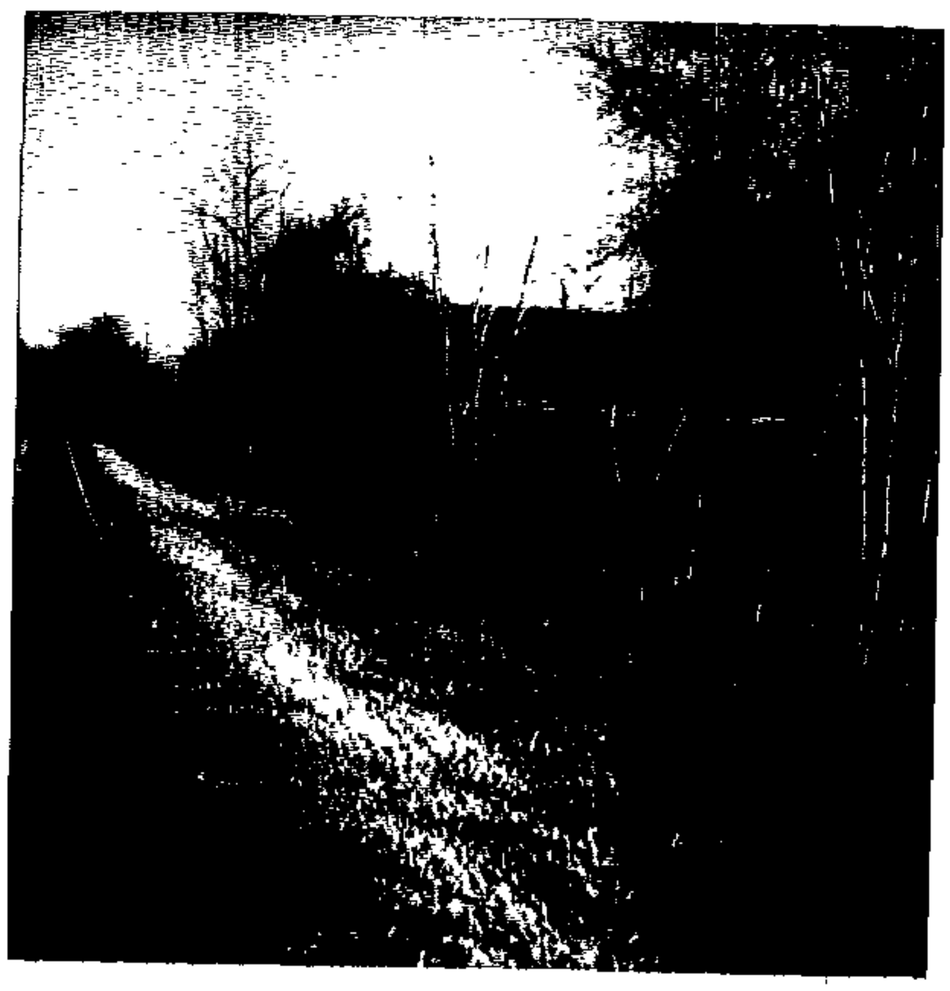


3F



3G

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

97-556-XA

ATT Wireless / Wittmyer

Protestants 3A-3G
5A-5F
} photos

Environmental Impact Statement

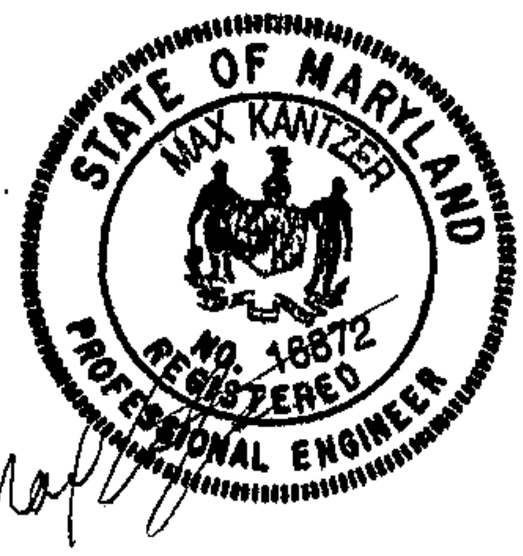
AT&T Wireless Services, Inc.
Witmeyer Property

Petitioner No 6

May 1997

DMW Project No. 96035.43

Prepared for:
AT&T Wireless Services, Inc.
8403 Colesville Road
Silver Spring, MD 20910



Prepared by:
Daft·McCune·Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
(410) 296-4705 Fax
dmw@dmw.com

I. INTRODUCTION

This Environmental Impact Statement (EIS) has been prepared to meet the requirements of § 502.7.C.10 of the Baltimore County Zoning Regulations, pursuant to a Petition for Special Exception for the development of a Wireless Transmitting and Receiving Facility at the Witmeyer Property in Baltimore County. The facility will be operated by a lessee, AT&T Wireless Services, Inc. (AT&T), 8403 Colesville Road, Silver Spring, MD 20910.

II. PROJECT SUMMARY

The proposed project will consist of the construction and operation of a Wireless Transmitting and Receiving Facility for use as a Personal Communications Service (PCS) station. The facility will consist of a 170' monopole with panel antennas attached to the top. Radio equipment cabinets will be installed on a concrete pad at the base of the monopole within a fenced compound. The station will be a component of the PCS system operated by AT&T to serve the Baltimore area.

The facility will be constructed on land owned by Henry M. Witmeyer, Jr. and located at 7 Greenwood Place in Baltimore. The site is further identified as Parcel 400 , Grid 1, of Tax Map 78. The wireless facility will be wholly contained within the boundary of the 0.92-acre property which is currently improved with a manufacturing building and its macadam parking lot. The proposed location of the new wireless facility is near the northern-most end of the property.

The subject property is zoned ML. Adjacent properties are zoned ML to the east and used for manufacturing, D.R.5.5 to the north and used for the Western Maryland Railroad, and D.R.16 to the west and south and used for residences.

The proposed wireless facility can be constructed at this location with minimal land disturbance. The proposed communications station will be served by electric and telephone utilities only. No water, sanitary sewer, or natural gas services are needed for the operation of the facility because it is designed for unmanned operation. The facility will be visited approximately once a month for periodic maintenance checks and on an as-needed basis for emergency repairs.

III. PROBABLE ENVIRONMENTAL IMPACT

Site Clearing and Grading: The wireless communications station will be installed on an existing macadam parking lot within a fenced compound. A minimal amount of disturbance will be necessary to accommodate the concrete pad for the equipment cabinets. There will be no disturbance to any of the surrounding areas.

Site Drainage and Runoff: The wireless communications station will be installed atop an existing macadam parking lot and will not create any new impervious area. There are no materials proposed to be used that could cause any chemical contamination of either runoff or ground water.

Wildlife Habitat: The site was visited by a Natural Resources Specialist on May 12, 1997. No significant plant or wildlife resources were found in the immediate vicinity of the proposed wireless facility.

The effects of radio broadcast towers on free ranging wildlife are largely unknown. However, studies on confined individuals indicate that to have any measurable effect, radiation levels must be several orders of magnitude greater than those which can be expected from this type of facility.

Numerous studies have been conducted examining the long term migration patterns and habits of migratory birds. It is generally assumed that these birds use astronomical, magnetic, and landscape cues to compliment inherited genetic abilities to migrate. Significant landscape features such as cities, rivers, and mountain ranges are widely considered to be the features utilized by birds. More localized features such as towns, creeks, and wood lots are learned as more precise locator cues. It is unlikely that birds which may migrate through the Baltimore area could be confused by the addition of this facility.

Noise: The proposed facility will not generate any audible noise on a routine operating basis except for that of air conditioners used to cool the radio equipment cabinets.

Standards and Guidelines: Standards for RF radiation exposure levels were established by the American National Standards Institute (ANSI) in 1992, and subsequently adopted by the Federal Communications Commission on September 19, 1994. The Environmental Protection Agency, the National Council on Radiation Protection and Measurements

(NCRPM), and the International Radiation Protection Association's (IRPA) have set guidelines as well.

A recent safety analysis by Bell Laboratories (October 12, 1995), indicates that "in all normally accessible areas in the neighborhood surrounding a typical PCS installation, the maximum levels of RF energy associated with operation of the antennas will be 1,200 times below the exposure limits of the 1992 ANSI/IEEE C95.1 safety guideline." The full report of this study which includes more details of the characteristics of facilities like the proposed and their relationship to the published standards and guidelines is included as Appendix A.

Additionally, the Baltimore City Health Department issued a statement regarding the effects of radiation from personal communications systems (see Appendix B).

Based on the Bell Laboratories study and the Baltimore City Health Department statement, it can be concluded that the amount of radio-frequency energy occasioned by the installation and operation of the proposed wireless facility is far below the permissible human exposure levels set by the FCC.

IV. DISCUSSION OF UNAVOIDABLE EFFECTS

The only unavoidable effect of the proposed facility is the visibility of the monopole. The wireless communications station will be installed on an existing macadam parking lot among several existing buildings in an industrial zone.

V. ALTERNATIVES TO THE PROPOSED ACTION

Should approval for the proposed project be denied, it would be necessary to seek an alternative site within 0.25 to 0.5 mile of the present location. A tower of at least 170 feet in height and the associated equipment cabinets would have to be constructed. The vast majority of the land within a 0.25 to 0.5 mile radius of the subject site is zoned residential. Approval of the proposed plan will eliminate the need to seek an alternate location which would likely be situated in a residential zone.

VI. ASSESSMENT OF LONG-TERM EFFECTS

The long-term effects are limited to the presence of the proposed structures. No natural resources will be impacted by placing the new wireless communications facility on an existing macadam parking area.

VII. COMMITMENT OF RESOURCES

The proposed project does not require any unusual materials or resources.

VIII CONCLUSIONS

The proposed project will cause little or no impact to the environment and will result in a benefit to the public by providing improved Personal Communication Systems service in Baltimore County.

Appendix A

AT&T Bell Laboratories

Safety Analysis of the Electromagnetic Environment in the Vicinity of a Personal Communication Services (PCS) Base Station

Radiation Protection and Product Safety Department
AT&T Bell Laboratories
Murray Hill, New Jersey 07974-0636

Summary

This report is a safety analysis of the radiofrequency (RF) electromagnetic environment in the vicinity of a typical AT&T Wireless Services PCS radio base station. The analysis utilizes engineering data provided by AT&T Wireless, together with well-established analytical techniques for calculating the RF electromagnetic fields associated with PCS antennas. Worst-case assumptions were used to ensure safe-side estimates, i.e., the actual values will be significantly lower than the corresponding analytical values. The analysis indicates that the maximum level of RF energy to which the public may be exposed is below all applicable health and safety limits.

Specifically, in all normally accessible areas in the neighborhood surrounding a typical PCS installation, the maximum levels of RF energy associated with operation of the antennas will be 1,200 times below the exposure limits of the 1992 ANSI/IEEE C95.1 safety guideline.

Prepared for
AT&T Wireless Services
15 E. Midland Avenue
Paramus, New Jersey 07652

October 12, 1995

MAY 09 '96 11:53 FR AT&T WIRELESS SERVICE301 608 5707 TO 914102964705 P.03/09

I. Introduction

This report was prepared in response to a request from AT&T Wireless Services for a safety analysis of the radiofrequency (RF) electromagnetic environment in the vicinity of a typical personal communication services (PCS) base station, and an opinion regarding the concern for public health associated with long-term exposure in the environment surrounding such an installation.

2. Technical Data

PCS base station antennas transmit at frequencies between 1930 and 1965 million hertz (MHz). Like antennas used for cellular radio, PCS antennas might be mounted on a lattice tower, monopole-type structure or on a building rooftop.

Based on information provided by AT&T Wireless Services, the radiated power per transmitter (channel) for a PCS base station would be less than 10 watts, and the radiated power per sector would be less than 240 watts (assuming the maximum number of transmitters are installed and operate simultaneously). This is an extremely low power system when compared with other familiar radio systems, such as AM, FM and television broadcast, which operate upwards of 50,000 watts. Figure 1. is a diagram of the electromagnetic spectrum which also lists common uses of RF energy. Table 1 below lists engineering specifications for a PCS base station.

Table 1.
Engineering Specifications for a Typical PCS Radio System

Site Specifications	
antenna centerline height above grade	98 ft
number of transmit antennas per sector	1
number of receive antennas per sector	2
number of transmitters (channels) per sector	24
antenna manufacturer	DAPA
model number	58000
gain	17.15 dBi
downtilt	0°
maximum ERP† per channel	120 watts
maximum radiated power per channel	4 watts
maximum radiated power per sector‡	96 watts

† *ERP - Effective Radiated Power:* ERP is a measure of how well an antenna concentrates RF energy; it is not the power radiated from the antenna. To illustrate the difference, compare the brightness of an ordinary 100 watt light bulb with that from a 100 watt spot-light. Even though both are 100 watts, the spot-light appears brighter because it concentrates the light in one direction. In this direction, the spot light *effectively* appears to be emitting more than 100 watts. In other directions, there is almost no light emitted by the spot-light and it *effectively* appears to be much less than 100 watts.

‡ Assumes the maximum number of transmitters per sector: 24, are operating continuously.

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3. Environmental Levels of RF Energy

The antenna pattern from a PCS antenna is such that the energy is propagated in a relatively narrow beam (in the vertical plane) which is directed toward the horizon. The reason for this is to provide uniform coverage. Hence, levels of RF energy directly under the antennas will not be remarkably different from the levels at points more distant.

For a PCS base station, the maximum potential exposure level associated with operation of the antennas can be readily calculated at any point in a plane at any height above grade. Based on the information provided by AT&T Wireless, and assuming that the maximum number of radio channels operates continuously, the power density at any point in a horizontal plane 6 ft above grade will be less than 1.0 millionth of a watt per centimeter squared (1.0 $\mu W/cm^2$), and also will be less than 1.3 $\mu W/cm^2$ at any point in a corresponding plane 16 ft above grade. The latter is representative of the maximum power density immediately outside of the second floor of nearby residences (assuming level terrain).

The above levels are theoretical maxima that could occur and are not typical values. The calculations include the effect of field reinforcement from in-phase reflections, and the assumption was made that the maximum number of transmitters operates simultaneously and at maximum output power. Although the above values are obtained analytically, experience has shown that the technique used is extremely conservative. That is, the measured power density levels have always been found to be smaller than the corresponding calculated levels[1]. Furthermore, levels inside nearby homes and buildings will be lower than those immediately outside because of the high attenuation of common building materials at these frequencies and, hence, will not be significantly different from normal ambient levels.

4. Comparison with Standards

Table 2 below shows the calculated maximal RF power density levels in the vicinity of a base station; Table 3 shows the pertinent federal, state and consensus exposure limits for human exposure to RF energy. The various exposure limits range from 1,000 $\mu W/cm^2$ (public exposure) to 10,000 $\mu W/cm^2$ (occupational exposure), while the corresponding calculated maximum power density levels in the environment surrounding a PCS installation from operation of the antennas would be less than 1.0 $\mu W/cm^2$ (at 6 ft above grade) and 1.3 $\mu W/cm^2$ (at 16 ft above grade). The power density in the main beam of the antenna will be less than 10 $\mu W/cm^2$ at any distance greater than 200 ft from the antennas.

Table 2
Calculated Maximal RF Power Density Levels
for a Typical PCS Base Station

Location	Power Density ($\mu W/cm^2$)
6 ft above grade	< 1.0
16 ft above grade	< 1.3
In the main beam, 200 ft from the antennas	< 10.0

1. Petersen, R.C., and Testagrossa, P.A., Radiofrequency Fields Associated with Cellular Radio Cell-Site Antennas, *Bioelectromagnetics*, Vol. 13, No. 6 (1992).

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Table 3
Summary of State, Federal and Consensus Guidelines for Exposure to Radiofrequency Energy at Frequencies Used for PCS

Organization/Government Agency	Exposure Population	Exposure Limit ($\mu W/cm^2$)
Occupational Safety & Health Administration ..... (OSHA - 29 CFR 1910.97)	Occupational	10,000
American National Standards Institute ..... (ANSI C95.1 - 1982)	Occupational Public	5,000 5,000
Institute of Electrical and Electronic Engineers * ..... (ANSI/IEEE C95.1 - 1992)	Occupational Public	6,000 1,200
National Council on Radiation Protection & Measurements ..... (NCRP Report 86 - 1986)	Occupational Public	5,000 1,000
U.S. Federal Communications Commission ..... (requires PCS licensees to comply with ANSI C95.1 - 1992)	Occupational Public	6,000 1,200
New Jersey Administrative Code ..... (NJAC 7:28-42)	Public	5,000
Massachusetts Department of Health ..... (105 CMR 122)	Public	1,000
New York State Department of Health ..... (follows NCRP Report 86)	Public	1,000

* Latest revision of ANSI C95.1 - 1982

5. Discussion of Health Standards

Recently, press coverage has suggested an association between health effects and exposure to magnetic fields from electric-power distribution lines, and from the use of hand-held cellular telephones. This press coverage has heightened concern among some members of the public about the possibility that health effects may be associated with *any* exposure to electromagnetic energy. Many people feel uneasy about new or unfamiliar technology and often want absolute proof that something is safe. Such absolute guarantees are not possible since it is virtually impossible to prove that something does *not* exist. However, sound judgments can be made as to the safety of a physical agent based on the weight of the pertinent scientific evidence. This is exactly how safety guidelines are developed.

The overwhelming weight of scientific evidence unequivocally indicates that biological effects associated with exposure to RF energy are threshold effects, i.e., unless the exposure level is sufficiently high the effect will not occur regardless of exposure duration. (Unlike ionizing radiation, e.g., X-rays and nuclear radiation, repeated exposures to low level RF radiation, or nonionizing radiation, are not cumulative.) Thus, it is relatively straightforward to derive safety limits. By adding safety factors to the threshold level at which the most sensitive effect occurs, conservative exposure guidelines have been developed to ensure safety.

At present, there are more than 10,000 reports in the scientific literature which address the subject of RF bioeffects. These reports, most of which describe the results of epidemiological studies and animal studies, have been critically reviewed by leading researchers in the field and all new studies are continuously being reviewed by various groups and organizations whose interest is developing health standards. These include the U.S. Environmental Protection Agency, the National Institute for Occupational Safety and Health, the National Council on Radiation Protection and Measurements, the

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standards committees sponsored by the Institute of Electrical and Electronics Engineers, the International Radiation Protection Association under the sponsorship of the World Health Organization, and the National Radiological Protection Board of the UK. All of these groups have recently either reaffirmed existing health standards, developed and adopted new health standards, or proposed health standards for exposure to RF energy.

For example, in 1986, the National Council on Radiation Protection and Measurements (NCRP) published recommended limits for occupational and public exposure[2]. These recommendations were based on the results of an extensive critical review of the scientific literature by a committee of the leading researchers in the field of bioelectromagnetics. The literature selected included many controversial studies reporting effects at low levels. The results of all studies were weighed, analyzed and a consensus obtained establishing a conservative threshold upon which safety guidelines should be based. This threshold corresponds to the level at which the most sensitive, reproducible effects were reported in the scientific literature. Safety factors were incorporated to ensure that the resulting guidelines would be at least ten to fifty times lower than the established threshold, even under worst-case exposure conditions. The NCRP recommended that continuous occupational exposure to PCS radio frequencies should not exceed approximately 5,000 $\mu W/cm^2$, and continuous exposure of the public should not exceed 1,000 $\mu W/cm^2$.

In July of 1986, the Environmental Protection Agency published a notice in the *Federal Register*, calling for public comment on recommended federal guidance for exposure of the *public*[3] to RF energy. As of 1987 the EPA abandoned its efforts and failed to adopt official federal RF exposure guidelines. However, in 1993 the EPA, in commenting on the Federal Communications Commission's (FCC) Notice of Proposed Rule Making[4], recommended adoption of the 1986 NCRP limits.

Further, the maximum permissible exposure limits proposed by the Institute of Electrical and Electronics Engineers Standards Coordinating Committee SCC-28 (formerly ANSI Committee C95), were approved by the IEEE Standards Board on September 26, 1991[5], and approved by ANSI on November 18, 1992. This 1992 ANSI/IEEE C95.1 guideline resulted from an extensive critical review of the scientific literature and recommend a limit of 6,000 $\mu W/cm^2$ for continuous occupational exposure and 1,200 $\mu W/cm^2$ for continuous exposure of the public to PCS radio frequencies. (Although there are no federal safety limits, *per se*, in order to fulfill its obligations under the National Environmental Policy Act, the FCC requires that PCS licensees comply with the limits of the 1992 ANSI/IEEE C95.1 safety guideline[6].)

More recently, the World Health Organization's International Commission on Non-Ionizing Radiation Protection[7] and the National Radiological Protection Board in the United Kingdom[8] independently developed and published guidelines similar to those of ANSI/IEEE. Finally, what was formerly the USSR, which traditionally had the lowest exposure guides, twice has revised upward its limits for public exposure. Thus, there is a converging consensus of the world's scientific community as to what constitutes safe levels of exposure.

---

2. *Biological Effects and Exposure Criteria for Radio Frequency Electromagnetic Fields*, NCRP Report No. 86, National Council on Radiation Protection and Measurements, Bethesda, MD, (1986).
3. *Federal Register*: Vol. 51, No. 146, Wednesday, July 30, 1986.
4. Notice of Proposed Rule Making *In the Matter of Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, August 13, 1993, ET Docket No. 93-62.
5. *IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz*, ANSI/IEEE C95.1-1992, Institute of Electrical and Electronics Engineers, Piscataway, NJ.
6. *Code of Federal Regulations*: 47 CFR 24.52, 1994.
7. *Electromagnetic Fields (300 Hz to 300 GHz)*, Environmental Health Criteria 137, World Health Organization: Geneva, Switzerland (1993).
8. *Board Statement on Restrictions on Human Exposure to Static and Time Varying Electromagnetic Fields and Radiation*: Documents of the NRPB: Vol. 4, No. 5, National Radiological Protection Board: Chilton, United Kingdom (1993).

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With respect to the proposed PCS radio antennas, be assured that *actual* exposure levels in the vicinity of a typical base station will be below any health standard used anywhere in the world and literally thousands of times below any level reported to be associated with any verifiable functional change in humans or laboratory animals. This holds true even when all transmitters operate simultaneously and continuously. Power density levels of this magnitude are not even a subject of speculation with regard to an association with adverse health effects.

6. For Further Information

Anyone interested can obtain additional information about the environmental impact of land mobile services, including PCS, from:

Dr. Robert Cleveland, Jr.
Federal Communications Commission
Office of Engineering and Technology
Room 7002
1919 M Street NW
Washington, DC 20554
(202) 653-8169

7. Conclusion

A safety analysis has been performed with respect to potential public exposure to RF energy in the environment surrounding a typical PCS base station. The analysis utilized engineering data provided by AT&T Wireless Services together with well-established analytical techniques for estimating the environmental levels of RF energy associated with PCS antennas. Worst-case assumptions were used to ensure safe-side estimates, i.e., the actual values will be significantly lower than the corresponding analytical values. The analysis indicates that the maximum level of RF energy to which the public may be exposed will meet all applicable health and safety limits.

Specifically, in all normally accessible areas surrounding a typical PCS installation, the maximum levels of RF energy associated with operation of the antennas will be 1,200 times below the public exposure limits of the 1992 ANSI/IEEE C95.1 safety guideline.

Enclosures:
Figure 1 - Electromagnetic Spectrum

MAY 09 '96 11:55 FR AT&T WIRELESS SERVICE301 608 5707 TO 91410296470S P.08/09

Appendix B

NAME & TITLE	Peter Beilenson, M.D., M.P.H. Commissioner
AGENCY NAME & ADDRESS	Baltimore City Health Department 303 East Fayette Street 6th Floor
SUBJECT	Fifth Three Tower Property Antenna 1130 East Cold Spring Lane

CITY OF BALTIMORE

MEMO

DATE: 1 August 1995

APPROVAL

ENV. HYG.

COMM. HYG.

FOOD CONT.

IND. HYG.

TO

Third District Councilpersons
M. E. Cunningham
M. E. Curran
M. O'Malley
City Hall, Fifth Floor

We have examined the informational packet you sent on 17 July 1995 regarding radiation from a proposed personal communications system (PCS) transmitting antenna. Personal communications systems is a new FCC approved radio service which will include a potpourri of personal uses such as cellular phones, world-wide satellite communications, faxing, etc.

The Baltimore City Code (including the Health Code) does not address radio frequency radiation; nor do the Annotated Code of Maryland and the Code of Maryland Regulations. The U. S. Federal Communications Commission (FCC) adopts standards for maximum permissible exposures to radio frequency electromagnetic fields.

The FCC is proposing to adopt a new standard which is more stringent than the existing standard.

In the frequency range used by PCS, the proposed maximum permissible exposure would be approximately 1.29 mW/cm^2 (milliwatts per square centimeter).

In the past, the U. S. Environmental Protection Agency (EPA) had made surveys, in a number of large cities, of existing radio frequency power densities. The greatest contributions come from FM and TV broadcast station transmitters. These transmitters are usually in the hundreds-of-thousands-of-watts range, as compared with, say, 20 watts for a PCS.

In any case, EPA concluded that the median residential exposure to radio frequency electromagnetic fields was 5 nanowatts/cm^2 (which equals 0.000005 mW/cm^2). Note that "median" implies that half the population is exposed to more than that amount, and half is exposed to less. In addition, EPA estimates that 99.4% of the population is exposed to Less than 1 microwatt/cm^2 (which equals 0.001 mW/cm^2).

The above-cited exposure figures are 0.0004% and 0.077%, respectively, of the proposed maximum permissible exposure of 1.29 mW/cm^2. Remember that the exposure measured and calculated by EPA was the totality of radio frequency radiation in a city - radio and TV broadcasters, police, fire, taxicabs, utilities, microwave relays, business, etc.

A physical characteristic of radiation is that its intensity drops off rapidly (as the square of the distance) with distance from its source.

Calculations indicate that the power density at 6 feet above ground directly below a typical PCS antenna, located 100 feet above ground, is in the range of 0.0007 mW/cm^2.

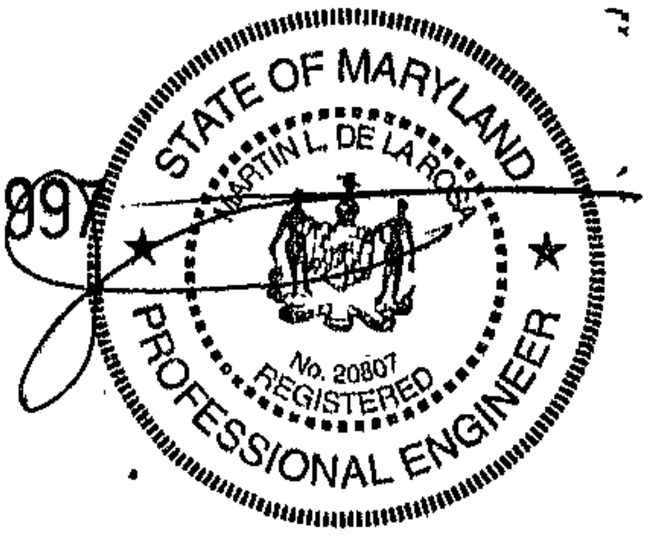
In conclusion: (1) a personal communications system antenna produces at the base of the tower a very small and safe power density, and (2) such an antenna would contribute an insignificant effect on the total radio frequency environment, which in general is very low compared with recognized allowable limits.

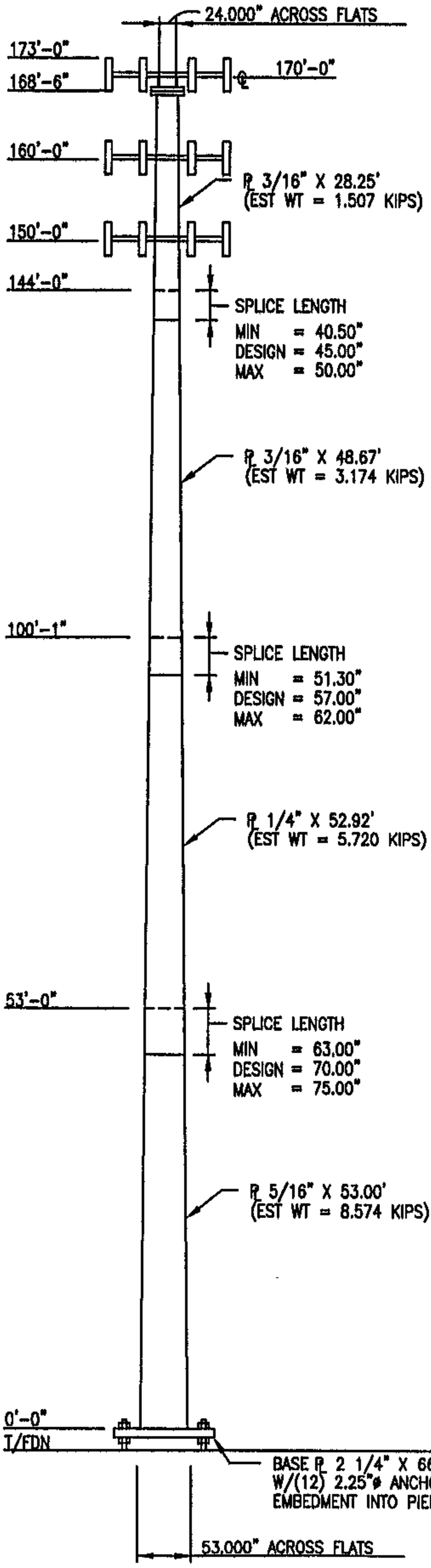
PS/RG/bjr
cc: Sharon Nelson, Tydings & Rosenberg
E. Darsey
D. Torres
R. Dagold

JUL-25-95 03:15PM 8886 DEC 014 X58-2

QUOTE – Q26965
DESIGN #97-4189
B640 ICP, MARYLAND
AT&T WIRELESS SERVICES
173' MONOPOLE

OCT 16 1997





FWT

P.O. BOX 8597 FORT WORTH, TX 76124-0597
(817) 457-3060 FAX (817) 429-6010

JOB DATA			
Page 1 of 1		Job No.	Q26965
By	PS	Design No.	97-4189
Chk'd By	TWL 10/16/97	Date	10-14-1997
		Rev. No. Rev. Date	
Pole	173 FT. MONOPOLE		
Site	B640 ICP, MARYLAND		
Owner	AT&T WIRELESS SERVICES		
Ref. No.			
Design	ACCORDING TO TIA/EIA-222-F 1996		

PRELIMINARY DESIGN - NOT FOR FABRICATION

LOAD CASES		
CASE 1	75 MPH WITH NO ICE	DESIGN WIND
CASE 2	64 MPH WITH 1/2" RADIAL ICE	REDUCED WIND WITH ICE
CASE 3	50 MPH WITH NO ICE	OPERATIONAL WIND

POLE SPECIFICATIONS	
Pole Shape Type:	18-SIDED POLYGON
Taper:	0.179525 IN/FT
Shaft Steel:	ASTM A572 GRADE 65
Base PL Steel:	ASTM A633 GR. E (60 KSI)
Anchor Bolts:	2 1/4"ø x 7'-0" LONG #18J ASTM A615 GRADE 75

ANTENNA LIST

No.	Elev.	Description
-	TOP	3/4" LIGHTNING ROD
1-9	170.00	(9) ALLGON 7184.15 SECTOR
-	170.00	10-FT LOW-PROFILE SECTORIZED MOUNT W/WALKWAY
(FUT) 10-21	160.00	(12) SWEDCOM ALP-8013-N
(FUT) -	150.00	10-FT LOW-PROFILE SECTORIZED MOUNT W/WALKWAY
(FUT) 22-30	150.00	(9) ALLGON 7184.15 SECTOR
(FUT) -	160.00	10-FT LOW-PROFILE SECTORIZED MOUNT W/WALKWAY

OCT 16 1997

STATE OF MARYLAND
MARTIN L. DE LARRIVA
No. 20807
REGISTERED
PROFESSIONAL ENGINEER

STEP BOLTS FULL HEIGHT FROM 9'-6" ABOVE BASE PLATE.
ANTENNA FEED LINES RUN INSIDE OF POLE.

Elevation	75 MPH WIND		50 MPH WIND	
	Lateral Deflection (Inches)	Rotation (sway) (degrees)	Lateral Deflection (Inches)	Rotation (sway) (degrees)
TOP	124.5	6.520	55.2	2.897

SHAFT SECTION DATA

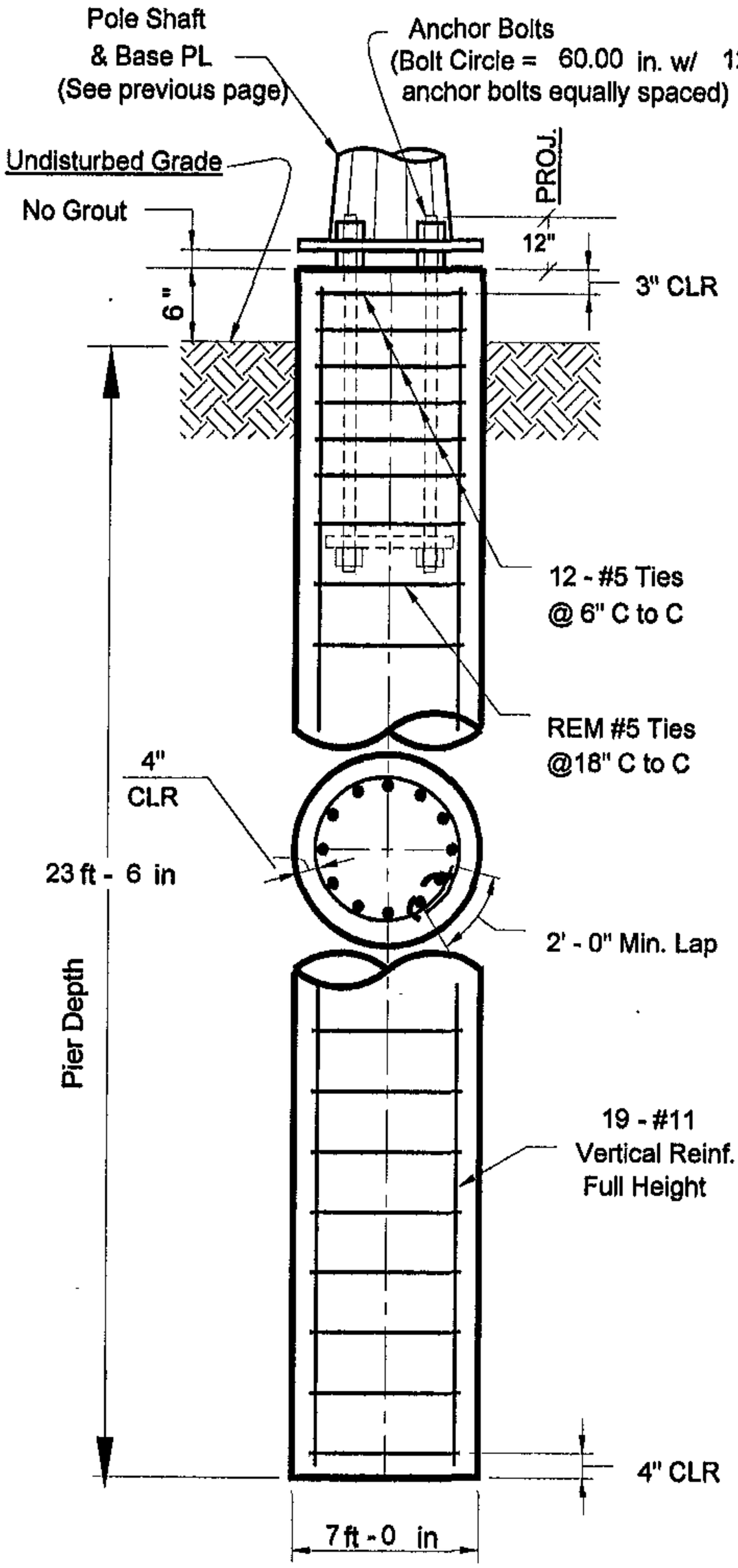
Shaft Section	Section Length (feet)	Plate Thickness (in.)	Lap Splice (in.)	Diameter Across Flats (inches) @ Top	Diameter Across Flats (inches) @ Bottom
1	28.25	0.1875	45.00	24.000	29.072
2	48.67	0.1875	57.00	28.023	36.760
3	52.92	0.2500	70.00	35.533	45.032
4	53.00	0.3125		43.485	53.000

UNFACTORED BASE REACTIONS

MOMENT =	2292 ft-kips
SHEAR =	18.7 kips
AXIAL =	29.9 kips
EST. SHAFT + BASE PL WT. =	21.2 kips

FOR PERMITS ONLY

FWT, Inc.
1901 East Loop 820 South, Fort Worth, Texas 76112
(817) 457 - 3060 Fax (817) 429 - 6010



DRILLED PIER FOUNDATION

(NOT TO SCALE)

Page: 2 of 2 By MAR
Checked By: TWL 10/16/97 Date: 10/16/97
Job No.: N/A Design No.: 97-4189
Revision No.: Date:
Pole: 170 FT Monopole
Site: B640, ICP, MARYLAND
Owner: AT&T WIRELESS SERVICES
Design: 75 MPH / 64 MPH + 1/2" ICE
According to ANSI/EIA 222-F 1996

NOTES:

1. All concrete shall have a minimum compressive strength of 4000 psi at 28 days.
2. Reinforcing steel shall conform to the requirements of ASTM A-615 (Grade 60) except that caisson ties may be ASTM A-615 (Grade 40).
3. See previous page for anchor bolt size and length.
4. Total Concrete: 34.21 Cubic Yards.
5. Foundation design based upon:
GEOTECHNICAL REPORT PREPARED

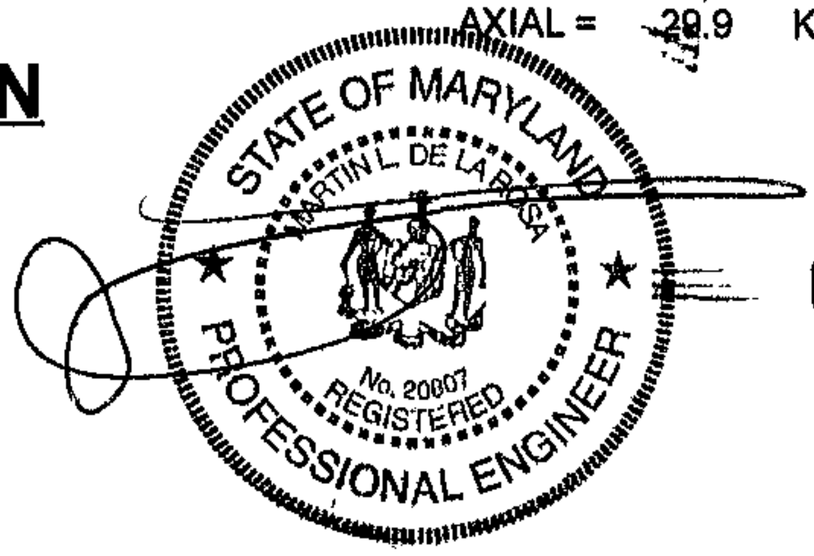
By: HILLIS-CARNES ENGINEERING

Report No.: 96277Y

Dated: 08/20/97

SERVICE LOADS

MOMENT =	2292	Ft-Kips
SHEAR =	18.7	Kips
AXIAL =	29.9	Kips



OCT 16 1997

CAISSON Version 2.3 Thu Oct 16 11:03:01 1997
FWT Inc.

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*************************************************************************
*                                                                       *
*  PIER FOUNDATIONS ANALYSIS AND DESIGN - (C) 1995, POWER LINE SYSTEMS, INC.*
*                                                                       *
*************************************************************************
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*** ANALYSIS IDENTIFICATION : 170 FT;B640, ICP, MARYLAND;ATTWS;DES: 97-4189, JOB: N/A
NOTES : HILLIS-CARNES ENGINEERING;REPORT: 96277Y;DATED: AUGUST 20, 1997

*** PIER PROPERTIES CONCRETE STRENGTH (ksi) = 3.00 STEEL STRENGTH (ksi) = 60.00
DIAMETER (ft) = 7.000 DISTANCE FROM TOP OF PIER TO GROUND LEVEL (ft) = 1.00

*** SOIL PROPERTIES

LAYER	TYPE	THICKNESS (ft)	DEPTH AT TOP OF LAYER (ft)	DENSITY (pcf)	CU (psf)	KP	PHI (degrees)
1	C	7.50	0.00	95.0	0.0		
2	S	1.50	7.50	105.0		3.000	30.00
3	S	10.00	9.00	110.0		3.124	31.00
4	S	11.00	19.00	58.0		3.690	35.00
5	S	12.50	30.00	58.0		3.690	35.00
6	S	8.50	42.50	63.0		3.852	36.00

*** DESIGN (FACTORED) LOADS AT TOP OF PIER MOMENT (ft-k) = 3438.0 VERTICAL (k) = 44.9 SHEAR (k) = 28.1
ADDITIONAL SAFETY FACTOR AGAINST SOIL FAILURE = 1.33

*** CALCULATED PIER LENGTH (ft) = 23.500

*** CHECK OF SOILS PROPERTIES AND ULTIMATE RESISTING FORCES ALONG PIER

TYPE	TOP OF LAYER BELOW TOP OF PIER (ft)	THICKNESS (ft)	DENSITY (pcf)	CU (psf)	KP	FORCE (k)	ARM (ft)
C	1.00	7.50	95.0	0.0		0.00	4.75
S	8.50	1.50	105.0		3.000	74.77	9.27
S	10.00	8.35	110.0		3.124	728.18	14.66
S	18.35	1.65	110.0		3.124	-203.40	19.19
S	20.00	3.50	58.0		3.690	-561.82	21.78

*** SHEAR AND MOMENTS ALONG PIER

DISTANCE BELOW TOP OF PIER (ft)	WITH THE ADDITIONAL SAFETY FACTOR SHEAR (k)	MOMENT (ft-k)	WITHOUT ADDITIONAL SAFETY FACTOR SHEAR (k)	MOMENT (ft-k)
0.00	37.7	4773.0	28.4	3588.7
2.35	37.7	4861.6	28.4	3655.4
4.70	37.7	4950.3	28.4	3722.0
7.05	37.7	5039.0	28.4	3788.7
9.40	-5.3	5108.6	-4.0	3841.1
11.75	-148.0	4937.4	-111.3	3712.3
14.10	-331.7	4381.5	-249.4	3294.4
16.45	-555.3	3347.1	-417.5	2516.6
18.80	-711.7	1764.4	-535.1	1326.6
21.15	-383.3	455.2	-288.2	342.3
23.50	0.0	0.0	0.0	0.0

*** TOTAL REINFORCEMENT PCT = 0.46 REINFORCEMENT AREA (in^2) = 25.49
*** USABLE AXIAL CAP. (k) = 44.9 USABLE MOMENT CAP. (ft-k) = 3927.6

*** US Standard Re-Bars
128 BARS #4 (AREA = 0.20 in^2 DIA = 0.500 in) AT SPACING (in) = 1.82
83 BARS #5 (AREA = 0.31 in^2 DIA = 0.625 in) AT SPACING (in) = 2.80
58 BARS #6 (AREA = 0.44 in^2 DIA = 0.750 in) AT SPACING (in) = 4.01
43 BARS #7 (AREA = 0.60 in^2 DIA = 0.875 in) AT SPACING (in) = 5.41
33 BARS #8 (AREA = 0.79 in^2 DIA = 1.000 in) AT SPACING (in) = 7.04
26 BARS #9 (AREA = 1.00 in^2 DIA = 1.128 in) AT SPACING (in) = 8.94
21 BARS #10 (AREA = 1.27 in^2 DIA = 1.270 in) AT SPACING (in) = 11.07
17 BARS #11 (AREA = 1.56 in^2 DIA = 1.410 in) AT SPACING (in) = 13.68
12 BARS #14 (AREA = 2.25 in^2 DIA = 1.693 in) AT SPACING (in) = 19.37

*** PRESSURE UNDER CAISSON DUE TO DESIGN AXIAL LOAD (psf) = 1165.4

PJF_Pole (tm) - Monopole Design Program
Windows Version 1.27.0050 Thu Oct 16, 1997 - 10:42:55 am
(c) 1993 to 1997 PAUL J. FORD AND COMPANY, Columbus, Ohio
Licensed to FWT, Inc., Fort Worth, Texas

Job No.....: Q26965 Design No: 97-4189 Engineer : PS
Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

M O N O P O L E B A S E P L A T E D E S I G N D E T A I L S

Shaft Shape .....:	18 Sided Polygon	Stress Increase ...:	1.333 Factor
Base Dia, DF ....:	53.000 Inches	Base Plate Shape ..:	Round
PT-to-PT, DP ....:	53.818 Inches		
Min Bolt Circle .:	60.068 Inches	Use Bolt Circle ...:	60.000 Inches

---

Base Reactions :	DESIGN	USER
Moment .....:	2292.484 Ft-Kips	2292.484 Ft-Kips
Axial Load .....:	29.863 Kips	29.863 Kips

Anchor Bolt Details :	DESIGN	USER
Number of Bolts .....:	12	12
Bolt Diameter .....:	2.250 Inches	2.250 Inches
Bolt Type .....:	ASTM A615#18J	ASTM A615#18J
Y-Distance .....:	6	6
Mom. of Inertia .....:	5412.25	5400.00
Bolt Tension, T .....:	152.66 Kips	152.83 Kips
Allowable Tension ...:	194.95 Kips	194.95 Kips
Bolt Compression, C .:	155.15 Kips	155.32 Kips

Base Plate Details :	DESIGN	USER
Plate Moment, MPL ...:	548.29 In-Kips	543.62 In-Kips
Bend Plane, W .....:	14.02 Inches	14.02 Inches
Plate Thickness, t ..:	2.108 Inches	2.250 Inches
Plate Width .....:	65.318 Inches	66.000 Inches
Plate Steel .....:	ASTM A633 GR. E (60 KSI)	ASTM A633 GR. E (60 KSI)
Gross Weight .....:	2003.10 Lbs	2182.90 Lbs
Net Weight .....:	1496.60 Lbs	1642.20 Lbs
Allowable Stress ....:	52.79 Ksi	52.79 Ksi
Actual Stress .....:	52.79 Ksi	45.96 Ksi
Act./Allow Ratio ....:	1.00	0.87

B A S E P L A T E D E S I G N S U M M A R Y

USE FOLLOWING SPECIFICATIONS:

Plate Thickness .....:	2.250 Inches	Number of Bolts ..:	12
Plate Width/Diameter :	66.00 Inches (Round)	Bolt Circle .....:	60.00 Inches
Plate Weight .....:	2.183 Kips	Bolt Diameter ....:	2.25 Inches
		Bolt Type .....:	ASTM A615#18J

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Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

S U M M A R Y O F A N A L Y S I S R E S U L T S

Pole Height.....: 168.50 ft
Top Diameter.....: 24.000 Inches
Bottom Diameter.....: 53.000 Inches
Pole Shape.....: 18-Sided Polygon
Splice Joint Type...: Taper shaft - Slip Joint Splice
Shaft Taper.....: 0.179525 (in/ft)
Shaft Steel Weight..: 18.974 kips

POLE SHAFT PROPERTIES:

Shaft Section Number	Section Length (feet)	Wall Thickness [t] (inch)	Steel Yield [Fy] (ksi)	Top Diameter [Dt] (inch)	Bottom Diameter [Db] (inch)	Slip Joint Overlap (inch)
1.	28.250	0.18750	65	24.000	29.072	45.00
2.	48.667	0.18750	65	28.023	36.760	57.00
3.	52.917	0.25000	65	35.532	45.032	70.00
4.	53.000	0.31250	65	43.485	53.000	

POLE SHAFT SECTION MAXIMUM FORCES AND MOMENTS:

				At Base of Section				
Shaft Section Number	Wind Load No.	Wind Speed (MPH)	Radial Ice (inch)	Sect. Elev. (feet)	Axial Load (kips)	Horiz. Shear (kips)	Bending Moment (ft-kips)	Max. Ratio Actual/ Allowable [Ftot/Fb]
1.	1	75.0	0.00	144.00	10.745	9.464	165.307	0.3430
2.	1	75.0	0.00	100.08	14.180	12.097	685.575	0.9698
3.	1	75.0	0.00	53.00	20.592	15.281	1372.432	0.9227
4.	1	75.0	0.00	0.00	29.863	18.680	2292.484	0.8337
>> MAXIMUM BASE REACTIONS :					29.863	18.680	2292.484 <<	

POLE DEFLECTION AND ROTATION AT TOP AND AT HIGHEST MICROWAVE DISH ELEVATION:

Wind Load No.	Wind Speed (MPH)	Radial Ice (inch)	Location	Elev (feet)	Deflection (inch)	Rotation (degrees)	Max. Allowable Rotation Limit (degrees)
1.	75.0	0.00	Top	168.50	124.458	6.520	
2.	65.0	0.50	Top	168.50	108.466	5.735	
3.	50.0	0.00	Top	168.50	55.190	2.897	

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Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

Pole Height : 168.5 ft
Pole Shape : 18-Sided Polygon
Pole Type : Taper shaft - Slip Joint Splice
Pole Taper : 0.179525 (in/ft)

INPUT TUBE PROPERTIES:

Tube Sect No.	Top / Splice Elev (ft)	Bot Tube Elev (ft)	Tube Length (ft)	Wall Thick [t] (in)	Steel [Fy] (ksi)	Top Diam [Dt] (in)	Bot Diam [Db] (in)	Slip Joint Overlap (in)
1.	168.50	140.25	28.250	0.18750	65	24.000	29.072	45.00
2.	144.00	95.33	48.667	0.18750	65	28.023	36.760	57.00
3.	100.08	47.17	52.917	0.25000	65	35.532	45.032	70.00
4.	53.00	0.00	53.000	0.31250	65	43.485	53.000	

TUBE SECTION PROPERTIES:

Tube Sect No.	Section Weight (kips)	Location	Elev (ft)	Diam. Across Flats (in)	Wall Thick [t] (in)	[W/t] Ratio	Diam/ Thick [D/t] Ratio	Area (in^2)	Ix (in^4)
1	1.507	@Top	168.5	24.000	0.1875	20.81	128.00	14.17	1014.9
		@Splice	144.0	28.398		24.94	151.46	16.79	1687.5
		@Bot	140.3	29.072		25.58	155.05	17.19	1811.2
2	3.174	@Top	144.0	28.023	0.1875	24.59	149.46	16.57	1621.1
		@Splice	100.1	35.908		32.00	191.51	21.26	3425.5
		@Bot	95.3	36.760		32.81	196.05	21.76	3676.8
3	5.720	@Top	100.1	35.533	0.2500	23.30	142.13	28.00	4401.7
		@Splice	53.0	43.985		29.26	175.94	34.70	8383.5
		@Bot	47.2	45.032		30.00	180.13	35.53	9000.3
4	8.574	@Top	53.0	43.485	0.3125	22.77	139.15	42.82	10080.4
		@Bot	0.0	53.000		28.14	169.60	52.26	18321.8

Total Shaft Steel Weight = 18.974 kips

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Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

Segment Properties: (@ Max Segment = 10 ft)

Tube Segmt No.	Segment Feature Location	Segment Elev. (ft)	Diam. Across Flats (in)	Wall Thick [t] (in)	[W/t] Ratio	Diam/ Thick [D/t] Ratio	Area (in^2)	Ix (in^4)
1.	top	168.500	24.000	0.18750	20.81	128.00	14.17	1014.9
2.	<arm [1]>	168.500	24.000	0.18750	20.81	128.00	14.17	1014.9
3.	<arm [2]>	168.500	24.000	0.18750	20.81	128.00	14.17	1014.9
4.	<arm [3]>	168.500	24.000	0.18750	20.81	128.00	14.17	1014.9
5.		160.000	25.526	0.18750	22.24	136.14	15.08	1222.8
6.	<arm [4]>	160.000	25.526	0.18750	22.24	136.14	15.08	1222.8
7.	<arm [7]>	160.000	25.526	0.18750	22.24	136.14	15.08	1222.8
8.		150.000	27.321	0.18750	23.93	145.71	16.15	1501.5
9.	<arm [5]>	150.000	27.321	0.18750	23.93	145.71	16.15	1501.5
10.	<arm [6]>	150.000	27.321	0.18750	23.93	145.71	16.15	1501.5
11.	top sec(2)	144.000	28.398	0.18750	24.94	151.46	16.79	1687.5
12.	bot sec(1)	140.250	28.697	0.18750	25.22	153.05	16.97	1741.6
13.		140.000	28.741	0.18750	25.27	153.29	16.99	1749.8
14.		130.000	30.537	0.18750	26.95	162.86	18.06	2101.1
15.		120.000	32.332	0.18750	28.64	172.44	19.13	2496.4
16.		110.000	34.127	0.18750	30.33	182.01	20.20	2938.5
17.	top sec(3)	100.083	35.908	0.18750	32.00	191.51	21.26	3425.5
18.		100.000	35.547	0.25000	23.31	142.19	28.01	4407.3
19.	bot sec(2)	95.333	36.385	0.25000	23.90	145.54	28.67	4728.6
20.		90.000	37.343	0.25000	24.57	149.37	29.43	5114.5
21.		80.000	39.138	0.25000	25.84	156.55	30.86	5893.6
22.		70.000	40.933	0.25000	27.11	163.73	32.28	6748.1
23.		60.000	42.728	0.25000	28.37	170.91	33.71	7681.4
24.	top sec(4)	53.000	43.985	0.25000	29.26	175.94	34.70	8383.5
25.		50.000	44.024	0.31250	23.08	140.88	43.35	10462.3
26.	bot sec(3)	47.167	44.532	0.31250	23.36	142.50	43.86	10831.8
27.		40.000	45.819	0.31250	24.09	146.62	45.14	11805.0
28.		30.000	47.614	0.31250	25.10	152.37	46.92	13258.0
29.		20.000	49.409	0.31250	26.12	158.11	48.70	14825.5
30.		10.000	51.205	0.31250	27.13	163.85	50.48	16512.0
31.	base	0.000	53.000	0.31250	28.14	169.60	52.26	18321.8

Total Number of Antennas / Arms = 7

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Job No.....: Q26965 Design No: 97-4189 Engineer : PS
Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

ANTENNA AND ARM PROPERTIES AND LOAD DATA:

LOAD CASE 1: BASIC WIND VELOCITY = 75.00 MPH

Ant Arm No.	Arm Mount. Elev. (ft)	Load Applic. Elev. (ft)	Arm Length (ft)	Ice Load Case	Antenna Area [CaAa] (sf)	Antenna Force [qzGhCaAa] (lbs)	Antenna Weight (lbs)
[1]	168.500	177.000	0.0000	No Ice:	0.75	29.49	15.00
Description: 3/4" Lightning Rod							
	[Gh]	[Kz]			[qz] (psf)	[qz] [Gh] (psf)	
	1.69	1.616		No Ice:	23.269	39.325	
[2]	168.500	170.000	0.0000	No Ice:	26.01	1011.11	90.00
Description: (9) ALLGON 7184.15 SECTOR							
	[Gh]	[Kz]			[qz] (psf)	[qz] [Gh] (psf)	
	1.69	1.597		No Ice:	23.002	38.874	
[3]	168.500	170.000	0.0000	No Ice:	26.70	1037.94	2831.00
Description: 10-Ft Low-Profile Sectorized Mount w/walkway							
	[Gh]	[Kz]			[qz] (psf)	[qz] [Gh] (psf)	
	1.69	1.597		No Ice:	23.002	38.874	
[4]	160.000	160.000	0.0000	No Ice:	78.84	3012.20	336.00
Description: (12) Swedcom ALP-8013-N (Future)							
	[Gh]	[Kz]			[qz] (psf)	[qz] [Gh] (psf)	
	1.69	1.570		No Ice:	22.607	38.206	
[5]	150.000	150.000	0.0000	No Ice:	26.70	1001.47	2831.00
Description: 10-Ft Low-Profile Sectorized Mount w/walkway (Future)							
	[Gh]	[Kz]			[qz] (psf)	[qz] [Gh] (psf)	
	1.69	1.541		No Ice:	22.194	37.508	
[6]	150.000	150.000	0.0000	No Ice:	26.01	975.59	90.00
Description: (9) ALLGON 7184.15 SECTOR (Future)							
	[Gh]	[Kz]			[qz] (psf)	[qz] [Gh] (psf)	
	1.69	1.541		No Ice:	22.194	37.508	
[7]	160.000	160.000	0.0000	No Ice:	26.70	1020.11	2831.00
Description: 10-Ft Low-Profile Sectorized Mount w/walkway (Future)							
	[Gh]	[Kz]			[qz] (psf)	[qz] [Gh] (psf)	
	1.69	1.570		No Ice:	22.607	38.206	

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Job No.....: Q26965 Design No: 97-4189 Engineer : PS
Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

POLE SHAFT LOADS:

LOAD CASE 1: BASIC WIND VELOCITY = 75.00 MPH

Design Loads per TIA/EIA-222-F Standard; Gust Factor ..... Gh = 1.69
Pole DL Overload Factor = 1.1
Per TIA/EIA Table 1: Note 3: For all cross sectional shapes,
Force Coefficient [Cf] need not exceed 1.2
for any value of C. (Where C=sqrt(Kz)*V*D.)

Top of Segment Elev. (ft)	Expos Coeff [Kz]	Veloc Press [qz] (psf)	Pole Veloc Coeff [C]	Force Coeff [Cf]	Projected Area Shaft [Ae] (sf)	Projected Area Segment [Cf Ae] (sf)	Segment Wind Force (lbs)	Shaft Segment Weight (lbs)
168.500	1.593	22.94	189.34	0.650	0.000	0.000	0.00	0.00
168.500	1.593	22.94	189.34	0.650	0.000	0.000	0.00	0.00
168.500	1.593	22.94	189.34	0.650	0.000	0.000	0.00	0.00
168.500	1.593	22.94	189.34	0.650	1.002	0.651	25.25	26.57
160.000	1.570	22.61	199.90	0.650	16.539	10.750	413.95	438.74
160.000	1.570	22.61	199.90	0.650	0.000	0.000	0.00	0.00
160.000	1.570	22.61	199.90	0.650	2.135	1.388	53.01	56.64
150.000	1.541	22.19	211.99	0.650	19.885	12.925	489.31	527.77
150.000	1.541	22.19	211.99	0.650	0.000	0.000	0.00	0.00
150.000	1.541	22.19	211.99	0.650	2.284	1.485	55.69	60.64
144.000	1.523	21.94	219.07	0.650	14.004	9.103	339.11	610.28
140.250	1.512	21.77	220.54	0.650	7.118	4.627	170.82	189.01
140.000	1.511	21.76	220.83	0.650	2.403	1.562	57.43	63.80
130.000	1.480	21.31	232.15	0.650	24.849	16.152	587.15	660.04
120.000	1.446	20.82	243.00	0.650	26.345	17.124	608.90	700.02
110.000	1.411	20.31	253.33	0.650	27.841	18.097	628.26	740.01
100.083	1.373	19.77	262.97	0.650	26.335	17.118	579.74	1082.62
100.000	1.373	19.77	260.30	0.650	2.970	1.930	64.48	105.10
95.333	1.354	19.50	264.62	0.650	12.029	7.819	259.25	425.73
90.000	1.332	19.18	269.36	0.650	18.492	12.020	392.65	654.60
80.000	1.288	18.55	277.60	0.650	32.017	20.811	662.37	1133.65
70.000	1.240	17.85	284.85	0.650	33.513	21.783	668.78	1186.97
60.000	1.186	17.08	290.86	0.650	35.009	22.756	670.41	1240.29
53.000	1.145	16.49	294.16	0.650	25.375	16.494	466.78	1665.97
50.000	1.126	16.22	291.98	0.650	10.983	7.139	196.74	485.83
47.167	1.107	15.95	292.90	0.650	7.397	4.808	130.56	327.22
40.000	1.057	15.21	294.35	0.650	30.187	19.621	516.51	1335.55
30.000	1.000	14.40	297.59	0.650	39.080	25.402	628.82	1729.42
20.000	1.000	14.40	308.81	0.650	40.576	26.374	641.85	1796.07
10.000	1.000	14.40	320.03	0.650	42.072	27.347	665.51	1862.72
1.000	1.000	14.40	330.13	0.650	39.144	25.444	619.20	1733.43
						Summation TOTAL =	10592.55	20838.69

---------(END LOAD CASE 1 -- POLE SHAFT LOADS)----------

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Job No.....: Q26965 Design No: 97-4189 Engineer : PS
Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

POLE SHAFT SEGMENTS -- AXIAL AND SHEAR FORCES:

LOAD CASE 1: BASIC WIND VELOCITY = 75.00 MPH

Tube Segment No.	Segment Elevation (ft)	Axial Load (kips)	Cumulative Axial Load (kips)	Horiz. Shear (kips)	Cumulative Horiz. Shear (kips)
1.	168.500	0.000	0.000	0.000	0.000
2.	168.500	0.015	0.015	0.029	0.029
3.	168.500	0.090	0.105	1.011	1.041
4.	168.500	2.858	2.963	1.063	2.104
5.	160.000	0.439	3.401	0.414	2.518
6.	160.000	0.336	3.737	3.012	5.530
7.	160.000	2.888	6.625	1.073	6.603
8.	150.000	0.528	7.153	0.489	7.092
9.	150.000	2.831	9.984	1.001	8.094
10.	150.000	0.151	10.134	1.031	9.125
11.	144.000	0.610	10.745	0.339	9.464
12.	140.250	0.189	10.934	0.171	9.635
13.	140.000	0.064	10.997	0.057	9.693
14.	130.000	0.660	11.657	0.587	10.280
15.	120.000	0.700	12.358	0.609	10.889
16.	110.000	0.740	13.098	0.628	11.517
17.	100.083	1.083	14.180	0.580	12.097
18.	100.000	0.105	14.285	0.064	12.161
19.	95.333	0.426	14.711	0.259	12.420
20.	90.000	0.655	15.366	0.393	12.813
21.	80.000	1.134	16.499	0.662	13.475
22.	70.000	1.187	17.686	0.669	14.144
23.	60.000	1.240	18.926	0.670	14.814
24.	53.000	1.666	20.592	0.467	15.281
25.	50.000	0.486	21.078	0.197	15.478
26.	47.167	0.327	21.406	0.131	15.609
27.	40.000	1.336	22.741	0.517	16.125
28.	30.000	1.729	24.470	0.629	16.754
29.	20.000	1.796	26.267	0.642	17.396
30.	10.000	1.863	28.129	0.666	18.061
31.	1.000	1.733	29.863	0.619	18.680
Base	0.000		29.863		18.680

---------(END LOAD CASE 1 -- AXIAL AND SHEAR FORCE)----------

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Job No.....: Q26965 Design No: 97-4189 Engineer : PS
Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

POLE SHAFT SEGMENTS -- MOMENTS and DEFLECTIONS:

LOAD CASE 1: BASIC WIND VELOCITY = 75.00 MPH

Segmnt Elev (ft)	[-------- MOMENTS (ft-kips) ---------] From Ant/ Arm	From Shaft Wind	From P-Delta Effects	Total Moment	[--DEFLECTIONS (inch)-------] No P-Delta Effects	Total W/ P-Delta Effects	Total Rotation (degrees)
168.50	3.324	0.000	0.000	3.324	114.260	124.458	6.520
168.50	3.324	0.000	0.000	3.324	114.260	124.458	6.520
168.50	3.324	0.000	0.006	3.330	113.636	123.773	6.520
160.00	20.992	2.065	2.884	25.942	103.660	112.816	6.489
160.00	20.992	2.065	2.884	25.942	103.660	112.816	6.489
160.00	20.992	2.065	3.309	26.367	102.418	111.451	6.489
150.00	82.100	9.418	10.277	101.796	91.310	99.255	6.357
150.00	82.100	9.418	10.277	101.796	91.310	99.255	6.357
150.00	82.100	9.418	11.390	102.908	90.092	97.918	6.357
144.00	130.628	16.486	18.193	165.307	82.860	89.982	6.214
140.25	160.958	21.935	21.700	204.592	79.311	86.090	6.097
140.00	162.980	22.322	22.866	208.167	78.144	84.810	6.089
130.00	243.859	40.991	34.536	319.385	66.819	72.404	5.701
120.00	324.738	65.631	45.998	436.367	56.305	60.907	5.234
110.00	405.617	96.450	57.041	559.108	46.726	50.457	4.713
100.08	485.823	133.290	66.463	685.575	38.972	42.020	4.161
100.00	486.496	133.624	67.493	687.613	38.169	41.148	4.157
95.33	524.240	153.179	71.603	749.022	35.027	37.735	3.948
90.00	567.375	177.264	77.633	822.272	30.573	32.904	3.705
80.00	648.255	227.488	87.264	963.006	23.843	25.616	3.244
70.00	729.134	284.368	96.213	1109.714	17.999	19.305	2.777
60.00	810.013	347.947	104.306	1262.266	13.052	13.975	2.309
53.00	866.628	396.437	109.368	1372.432	10.124	10.827	1.983
50.00	890.892	418.214	111.456	1420.562	8.999	9.620	1.863
47.17	913.808	439.317	112.808	1465.933	8.285	8.853	1.754
40.00	971.771	495.030	117.808	1584.609	5.736	6.122	1.479
30.00	1052.650	578.242	123.088	1753.980	3.212	3.423	1.100
20.00	1133.530	667.770	127.103	1928.404	1.421	1.511	0.726
10.00	1214.409	763.825	129.659	2107.893	0.353	0.375	0.360
0.00	1295.288	866.640	130.556	2292.484	0.000	0.000	0.000

---------(END LOAD CASE 1 -- MOMENTS AND DEFLECTIONS)----------

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Job No.....: Q26965 Design No: 97-4189 Engineer : PS
Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

POLE SHAFT SEGMENTS -- ACTUAL VS. ALLOWABLE STRESSES:

LOAD CASE 1: BASIC WIND VELOCITY = 75.00 MPH

Note: Per TIA/EIA Sec. 3.1.1.1: Allow a 1/3 stress increase for poles under 700 feet in height. The allowable stresses shown include the factor of 1.333

Segmnt Elev (ft)	[---------- ACTUAL STRESSES ----------] Bending [fb] (ksi)	Axial [fa] (ksi)	Torsion [ft] (ksi)	Shear [fv] (ksi)	Combined [Ftot] (ksi)	Allow. Stress [Fb] (ksi)	Actual/ Allowable [Ftot/Fb] Ratio
168.50	0.479	0.000	0.000	0.000	0.479	52.00	0.0092
168.50	0.479	0.001	0.002	0.004	0.480	52.00	0.0092
168.50	0.479	0.007	0.073	0.147	0.617	52.00	0.0119
168.50	0.480	0.209	0.146	0.296	1.030	52.00	0.0198
160.00	3.299	0.226	0.129	0.333	3.615	52.00	0.0695
160.00	3.299	0.248	0.328	0.732	3.994	52.00	0.0768
160.00	3.353	0.439	0.395	0.874	4.383	52.00	0.0843
150.00	11.285	0.443	0.344	0.876	11.917	52.00	0.2292
150.00	11.285	0.618	0.406	1.000	12.150	52.00	0.2337
150.00	11.408	0.628	0.466	1.128	12.348	52.00	0.2375
144.00	16.949	0.640	0.431	1.125	17.794	51.88	0.3430
140.25	20.538	0.644	0.422	1.133	21.354	51.65	0.4135
140.00	20.832	0.647	0.421	1.138	21.648	51.61	0.4194
130.00	28.281	0.645	0.372	1.136	29.044	50.18	0.5788
120.00	34.433	0.646	0.332	1.136	35.171	48.75	0.7214
110.00	39.562	0.648	0.298	1.138	40.287	47.32	0.8514
100.08	43.784	0.667	0.269	1.136	44.517	45.90	0.9698
100.00	33.789	0.510	0.207	0.866	34.350	52.00	0.6606
95.33	35.115	0.513	0.197	0.864	35.675	52.00	0.6861
90.00	36.578	0.522	0.187	0.869	37.145	52.00	0.7143
80.00	38.962	0.535	0.170	0.871	39.538	51.12	0.7734
70.00	41.012	0.548	0.155	0.874	41.598	50.05	0.8311
60.00	42.779	0.562	0.143	0.877	43.376	48.98	0.8856
53.00	43.871	0.593	0.135	0.879	44.499	48.23	0.9227
50.00	36.418	0.486	0.108	0.712	36.932	52.00	0.7102
47.17	36.719	0.488	0.105	0.710	37.234	52.00	0.7160
40.00	37.471	0.504	0.099	0.713	38.001	52.00	0.7308
30.00	38.378	0.522	0.092	0.713	38.925	51.75	0.7522
20.00	39.156	0.539	0.085	0.713	39.719	50.89	0.7805
10.00	39.825	0.557	0.079	0.714	40.406	50.03	0.8076
0.00	40.403	0.571	0.074	0.713	40.997	49.17	0.8337

---------(END LOAD CASE 1 -- ACTUAL VS. ALLOWABLE STRESSES)----------

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Job No.....: Q26965 Design No: 97-4189 Engineer : PS
Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

ANTENNA AND ARM PROPERTIES AND LOAD DATA:

LOAD CASE 2: WIND VELOCITY = 64.95190 MPH + 0.50 inches Radial Ice.

Ant Arm No.	Arm Mount. Elev. (ft)	Load Applic. Elev. (ft)	Arm Length (ft)	Ice Load Case	Antenna Area [CaAa] (sf)	Antenna Force [qzGhCaAa] (lbs)	Antenna Weight (lbs)
[1]	168.500	177.000	0.0000	W/ Ice:	1.75	51.61	21.00
Description: 3/4" Lightning Rod							
					[qz] (psf)	[qz] [Gh] (psf)	
	[Gh] 1.69	[Kz] 1.616		W/ Ice:	17.452	29.494	
[2]	168.500	170.000	0.0000	W/ Ice:	31.32	913.15	225.00
Description: (9) ALLGON 7184.15 SECTOR							
					[qz] (psf)	[qz] [Gh] (psf)	
	[Gh] 1.69	[Kz] 1.597		W/ Ice:	17.252	29.155	
[3]	168.500	170.000	0.0000	W/ Ice:	31.63	922.19	3796.00
Description: 10-Ft Low-Profile Sectorized Mount w/walkway							
					[qz] (psf)	[qz] [Gh] (psf)	
	[Gh] 1.69	[Kz] 1.597		W/ Ice:	17.252	29.155	
[4]	160.000	160.000	0.0000	W/ Ice:	86.52	2479.22	912.00
Description: (12) Swedcom ALP-8013-N (Future)							
					[qz] (psf)	[qz] [Gh] (psf)	
	[Gh] 1.69	[Kz] 1.570		W/ Ice:	16.956	28.655	
[5]	150.000	150.000	0.0000	W/ Ice:	31.63	889.79	3796.00
Description: 10-Ft Low-Profile Sectorized Mount w/walkway (Future)							
					[qz] (psf)	[qz] [Gh] (psf)	
	[Gh] 1.69	[Kz] 1.541		W/ Ice:	16.646	28.131	
[6]	150.000	150.000	0.0000	W/ Ice:	31.32	881.07	225.00
Description: (9) ALLGON 7184.15 SECTOR (Future)							
					[qz] (psf)	[qz] [Gh] (psf)	
	[Gh] 1.69	[Kz] 1.541		W/ Ice:	16.646	28.131	
[7]	160.000	160.000	0.0000	W/ Ice:	31.63	906.35	3796.00
Description: 10-Ft Low-Profile Sectorized Mount w/walkway (Future)							
					[qz] (psf)	[qz] [Gh] (psf)	
	[Gh] 1.69	[Kz] 1.570		W/ Ice:	16.956	28.655	

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Job No.....: Q26965 Design No: 97-4189 Engineer : PS
Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

POLE SHAFT LOADS:

LOAD CASE 2: WIND VELOCITY = 64.95 MPH with 0.50 inches Radial Ice.

Design Loads per TIA/EIA-222-F Standard; Gust Factor ..... Gh = 1.69
Pole DL Overload Factor = 1.1
Per TIA/EIA Table 1: Note 3: For all cross sectional shapes,
Force Coefficient [Cf] need not exceed 1.2
for any value of C. (Where C=sqrt(Kz)*V*D.)

Top of Segment Elev. (ft)	Veloc Expos Coeff [Kz]	Pole Press [qz] (psf)	Veloc Coeff [C]	Force Coeff [Cf]	Projected Area Shaft [Ae] (sf)	Segment [Cf Ae] (sf)	Wind Force (lbs)	Segment Weight (lbs)
168.500	1.593	17.21	163.97	0.650	0.000	0.000	0.00	0.00
168.500	1.593	17.21	163.97	0.650	0.000	0.000	0.00	0.00
168.500	1.593	17.21	163.97	0.650	0.000	0.000	0.00	0.00
168.500	1.593	17.21	163.97	0.650	1.044	0.678	19.73	34.15
160.000	1.570	16.96	173.12	0.650	17.205	11.183	322.98	563.68
160.000	1.570	16.96	173.12	0.650	0.000	0.000	0.00	0.00
160.000	1.570	16.96	173.12	0.650	2.218	1.442	41.31	72.76
150.000	1.541	16.65	183.59	0.650	20.635	13.413	380.83	677.81
150.000	1.541	16.65	183.59	0.650	0.000	0.000	0.00	0.00
150.000	1.541	16.65	183.59	0.650	2.368	1.539	43.29	77.87
144.000	1.523	16.45	189.72	0.650	14.504	9.428	263.42	783.50
140.250	1.512	16.33	190.99	0.650	7.368	4.789	132.62	242.65
140.000	1.511	16.32	191.24	0.650	2.486	1.616	44.57	81.91
130.000	1.480	15.98	201.05	0.650	25.682	16.693	455.13	847.15
120.000	1.446	15.62	210.44	0.650	27.178	17.666	471.12	898.21
110.000	1.411	15.23	219.39	0.650	28.674	18.638	485.30	949.28
100.083	1.373	14.83	227.74	0.650	27.085	17.605	447.19	1388.40
100.000	1.373	14.82	225.43	0.650	3.053	1.985	49.72	127.40
95.333	1.354	14.62	229.17	0.650	12.362	8.035	199.83	516.05
90.000	1.332	14.39	233.27	0.650	18.992	12.345	302.45	793.39
80.000	1.288	13.91	240.41	0.650	32.850	21.352	509.71	1373.84
70.000	1.240	13.39	246.68	0.650	34.346	22.325	514.06	1438.24
60.000	1.186	12.81	251.89	0.650	35.842	23.297	514.77	1502.64
53.000	1.145	12.37	254.75	0.650	25.959	16.873	358.13	2018.08
50.000	1.126	12.16	252.86	0.650	11.233	7.302	150.92	568.10
47.167	1.107	11.96	253.66	0.650	7.564	4.916	100.13	382.62
40.000	1.057	11.41	254.91	0.650	30.854	20.055	395.94	1561.57
30.000	1.000	10.80	257.72	0.650	39.913	25.944	481.67	2021.92
20.000	1.000	10.80	267.44	0.650	41.409	26.916	491.27	2099.65
10.000	1.000	10.80	277.15	0.650	42.905	27.889	509.02	2177.38
1.000	1.000	10.80	285.90	0.650	39.894	25.931	473.29	2026.10
						Summation TOTAL =	8158.40	25224.35

---------(END LOAD CASE 2 -- POLE SHAFT LOADS)----------

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Job No.....: Q26965 Design No: 97-4189 Engineer : PS
Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

POLE SHAFT SEGMENTS -- AXIAL AND SHEAR FORCES:

LOAD CASE 2: WIND VELOCITY = 64.95 MPH with 0.50 inches Radial Ice.

Tube Segment No.	Segment Elevation (ft)	Axial Load (kips)	Cumulative Axial Load (kips)	Horiz. Shear (kips)	Cumulative Horiz. Shear (kips)
1.	168.500	0.000	0.000	0.000	0.000
2.	168.500	0.021	0.021	0.052	0.052
3.	168.500	0.225	0.246	0.913	0.965
4.	168.500	3.830	4.076	0.942	1.907
5.	160.000	0.564	4.640	0.323	2.230
6.	160.000	0.912	5.552	2.479	4.709
7.	160.000	3.869	9.421	0.948	5.657
8.	150.000	0.678	10.098	0.381	6.037
9.	150.000	3.796	13.894	0.890	6.927
10.	150.000	0.303	14.197	0.924	7.852
11.	144.000	0.784	14.981	0.263	8.115
12.	140.250	0.243	15.223	0.133	8.248
13.	140.000	0.082	15.305	0.045	8.292
14.	130.000	0.847	16.152	0.455	8.747
15.	120.000	0.898	17.051	0.471	9.218
16.	110.000	0.949	18.000	0.485	9.704
17.	100.083	1.388	19.388	0.447	10.151
18.	100.000	0.127	19.516	0.050	10.201
19.	95.333	0.516	20.032	0.200	10.400
20.	90.000	0.793	20.825	0.302	10.703
21.	80.000	1.374	22.199	0.510	11.213
22.	70.000	1.438	23.637	0.514	11.727
23.	60.000	1.503	25.140	0.515	12.241
24.	53.000	2.018	27.158	0.358	12.600
25.	50.000	0.568	27.726	0.151	12.750
26.	47.167	0.383	28.109	0.100	12.851
27.	40.000	1.562	29.670	0.396	13.247
28.	30.000	2.022	31.692	0.482	13.728
29.	20.000	2.100	33.792	0.491	14.219
30.	10.000	2.177	35.969	0.509	14.728
31.	1.000	2.026	37.995	0.473	15.202
Base	0.000		37.995		15.202

---------(END LOAD CASE 2 -- AXIAL AND SHEAR FORCE)----------

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Licensed to FWT, Inc., Fort Worth, Texas

Job No.....: Q26965 Design No: 97-4189 Engineer : PS
Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

POLE SHAFT SEGMENTS -- MOMENTS and DEFLECTIONS:

LOAD CASE 2: WIND VELOCITY = 64.95 MPH with 0.50 inches Radial Ice.

Segmnt Elev (ft)	[-------- MOMENTS (ft-kips) ---------] From Ant/ Arm	From Shaft Wind	From P-Delta Effects	Total Moment	[--DEFLECTIONS (inch)-------] No P-Delta Effects	Total W/ P-Delta Effects	Total Rotation (degrees)
168.50	3.192	0.000	0.000	3.192	96.244	108.466	5.735
168.50	3.192	0.000	0.000	3.192	96.244	108.466	5.735
168.50	3.192	0.000	0.012	3.204	95.715	107.863	5.735
160.00	19.231	1.612	3.478	24.321	87.270	98.236	5.706
160.00	19.231	1.612	3.478	24.321	87.270	98.236	5.706
160.00	19.231	1.612	4.033	24.876	86.218	97.037	5.706
150.00	71.956	7.345	12.705	92.006	76.820	86.328	5.585
150.00	71.956	7.345	12.705	92.006	76.820	86.328	5.585
150.00	71.956	7.345	14.064	93.364	75.790	85.155	5.585
144.00	114.216	12.850	22.416	149.482	69.674	78.192	5.456
140.25	140.629	17.091	26.701	184.421	66.674	74.779	5.350
140.00	142.390	17.392	28.125	187.907	65.687	73.656	5.342
130.00	212.824	31.914	42.322	287.059	56.121	62.790	4.993
120.00	283.258	51.060	56.180	390.498	47.249	52.739	4.574
110.00	353.691	74.983	69.448	498.123	39.177	43.622	4.109
100.08	423.539	103.553	80.702	607.793	32.651	36.279	3.618
100.00	424.125	103.812	81.926	609.863	31.976	35.521	3.614
95.33	456.995	118.967	86.798	662.759	29.334	32.555	3.429
90.00	494.559	137.626	93.910	726.095	25.592	28.362	3.215
80.00	564.993	176.509	105.183	846.685	19.942	22.048	2.808
70.00	635.427	220.512	115.561	971.500	15.043	16.591	2.399
60.00	705.861	269.662	124.867	1100.389	10.900	11.993	1.990
53.00	755.164	307.125	130.646	1192.935	8.450	9.283	1.706
50.00	776.294	323.945	133.013	1233.252	7.510	8.244	1.602
47.17	796.251	340.241	134.540	1271.032	6.913	7.586	1.507
40.00	846.728	383.251	140.163	1370.142	4.784	5.240	1.269
30.00	917.162	447.458	146.050	1510.670	2.677	2.926	0.942
20.00	987.596	516.502	150.487	1654.585	1.183	1.290	0.621
10.00	1058.030	590.539	153.288	1801.857	0.294	0.320	0.307
0.00	1128.464	669.746	154.265	1952.474	0.000	0.000	0.000

---------(END LOAD CASE 2 -- MOMENTS AND DEFLECTIONS)----------

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Job No.....: Q26965 Design No: 97-4189 Engineer : PS
Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

POLE SHAFT SEGMENTS -- ACTUAL VS. ALLOWABLE STRESSES:

LOAD CASE 2: WIND VELOCITY = 64.95 MPH with 0.50 inches Radial Ice.

Note: Per TIA/EIA Sec. 3.1.1.1: Allow a 1/3 stress increase for poles under 700 feet in height. The allowable stresses shown include the factor of 1.333

Segmnt Elev (ft)	[----- ACTUAL STRESSES -----] Bending [fb] (ksi)	Axial [fa] (ksi)	Torsion [ft] (ksi)	Shear [fv] (ksi)	Combined [Ftot] (ksi)	Allow. Stress [Fb] (ksi)	Actual/ Allowable [Ftot/Fb] Ratio
168.50	0.460	0.000	0.000	0.000	0.460	52.00	0.0088
168.50	0.460	0.001	0.004	0.007	0.462	52.00	0.0089
168.50	0.460	0.017	0.068	0.136	0.593	52.00	0.0114
168.50	0.462	0.288	0.132	0.268	1.022	52.00	0.0196
160.00	3.093	0.308	0.117	0.295	3.475	52.00	0.0668
160.00	3.093	0.368	0.280	0.623	3.799	52.00	0.0731
160.00	3.164	0.625	0.340	0.749	4.232	52.00	0.0814
150.00	10.200	0.625	0.297	0.746	10.975	52.00	0.2111
150.00	10.200	0.860	0.351	0.856	11.256	52.00	0.2165
150.00	10.350	0.879	0.406	0.970	11.480	52.00	0.2208
144.00	15.326	0.892	0.375	0.965	16.384	51.88	0.3158
140.25	18.514	0.897	0.368	0.970	19.549	51.65	0.3785
140.00	18.804	0.901	0.366	0.974	19.841	51.61	0.3844
130.00	25.419	0.894	0.324	0.966	26.408	50.18	0.5263
120.00	30.813	0.891	0.289	0.962	31.778	48.75	0.6518
110.00	35.247	0.891	0.259	0.959	36.199	47.32	0.7650
100.08	38.816	0.912	0.234	0.953	39.782	45.90	0.8666
100.00	29.969	0.697	0.180	0.727	30.706	52.00	0.5905
95.33	31.070	0.699	0.172	0.724	31.807	52.00	0.6117
90.00	32.299	0.708	0.163	0.726	33.043	52.00	0.6354
80.00	34.256	0.719	0.148	0.725	35.008	51.12	0.6848
70.00	35.904	0.732	0.135	0.725	36.666	50.05	0.7326
60.00	37.293	0.746	0.124	0.725	38.067	48.98	0.7772
53.00	38.133	0.783	0.117	0.724	38.943	48.23	0.8075
50.00	31.616	0.640	0.094	0.587	32.277	52.00	0.6207
47.17	31.837	0.641	0.092	0.585	32.499	52.00	0.6250
40.00	32.400	0.657	0.087	0.586	33.078	52.00	0.6361
30.00	33.054	0.676	0.080	0.584	33.749	51.75	0.6522
20.00	33.596	0.694	0.074	0.583	34.309	50.89	0.6742
10.00	34.043	0.713	0.069	0.582	34.774	50.03	0.6950
0.00	34.411	0.727	0.065	0.580	35.156	49.17	0.7149

---------(END LOAD CASE 2 -- ACTUAL VS. ALLOWABLE STRESSES)----------

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Job No.....: Q26965 Design No: 97-4189 Engineer : PS
Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

ANTENNA AND ARM PROPERTIES AND LOAD DATA:

LOAD CASE 3: BASIC WIND VELOCITY = 50.00 MPH

Ant Arm No.	Arm Mount. Elev. (ft)	Load Applic. Elev. (ft)	Arm Length (ft)	Ice Load Case	Antenna Area [CaAa] (sf)	Antenna Force [qzGhCaAa] (lbs)	Antenna Weight (lbs)
[1]	168.500	177.000	0.0000	No Ice:	0.75	13.11	15.00
Description: 3/4" Lightning Rod							
	[Gh] 1.69	[Kz] 1.616		No Ice:	[qz] (psf) 10.342	[qz] [Gh] (psf) 17.478	
[2]	168.500	170.000	0.0000	No Ice:	26.01	449.38	90.00
Description: (9) ALLGON 7184.15 SECTOR							
	[Gh] 1.69	[Kz] 1.597		No Ice:	[qz] (psf) 10.223	[qz] [Gh] (psf) 17.277	
[3]	168.500	170.000	0.0000	No Ice:	26.70	461.30	2831.00
Description: 10-Ft Low-Profile Sectorized Mount w/walkway							
	[Gh] 1.69	[Kz] 1.597		No Ice:	[qz] (psf) 10.223	[qz] [Gh] (psf) 17.277	
[4]	160.000	160.000	0.0000	No Ice:	78.84	1338.75	336.00
Description: (12) Swedcom ALP-8013-N (Future)							
	[Gh] 1.69	[Kz] 1.570		No Ice:	[qz] (psf) 10.048	[qz] [Gh] (psf) 16.981	
[5]	150.000	150.000	0.0000	No Ice:	26.70	445.10	2831.00
Description: 10-Ft Low-Profile Sectorized Mount w/walkway (Future)							
	[Gh] 1.69	[Kz] 1.541		No Ice:	[qz] (psf) 9.864	[qz] [Gh] (psf) 16.670	
[6]	150.000	150.000	0.0000	No Ice:	26.01	433.60	90.00
Description: (9) ALLGON 7184.15 SECTOR (Future)							
	[Gh] 1.69	[Kz] 1.541		No Ice:	[qz] (psf) 9.864	[qz] [Gh] (psf) 16.670	
[7]	160.000	160.000	0.0000	No Ice:	26.70	453.38	2831.00
Description: 10-Ft Low-Profile Sectorized Mount w/walkway (Future)							
	[Gh] 1.69	[Kz] 1.570		No Ice:	[qz] (psf) 10.048	[qz] [Gh] (psf) 16.981	

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Job No.....: Q26965 Design No: 97-4189 Engineer : PS
Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

POLE SHAFT LOADS:

LOAD CASE 3: BASIC WIND VELOCITY = 50.00 MPH

Design Loads per TIA/EIA-222-F Standard; Gust Factor ..... Gh = 1.69
Pole DL Overload Factor = 1.1
Per TIA/EIA Table 1: Note 3: For all cross sectional shapes,
Force Coefficient [Cf] need not exceed 1.2
for any value of C. (Where C=sqrt(Kz)*V*D.)

Top of Segment Elev. (ft)	Expos Coeff [Kz]	Veloc Press [qz] (psf)	Pole Veloc Coeff [C]	Force Coeff [Cf]	Projected Area Shaft Segment [Ae] (sf)	[Cf Ae] (sf)	Segment Wind Force (lbs)	Shaft Segment Weight (lbs)
168.500	1.593	10.20	126.23	0.650	0.000	0.000	0.00	0.00
168.500	1.593	10.20	126.23	0.650	0.000	0.000	0.00	0.00
168.500	1.593	10.20	126.23	0.650	0.000	0.000	0.00	0.00
168.500	1.593	10.20	126.23	0.650	1.002	0.651	11.22	26.57
160.000	1.570	10.05	133.26	0.650	16.539	10.750	183.98	438.74
160.000	1.570	10.05	133.26	0.650	0.000	0.000	0.00	0.00
160.000	1.570	10.05	133.26	0.650	2.135	1.388	23.56	56.64
150.000	1.541	9.86	141.33	0.650	19.885	12.925	217.47	527.77
150.000	1.541	9.86	141.33	0.650	0.000	0.000	0.00	0.00
150.000	1.541	9.86	141.33	0.650	2.284	1.485	24.75	60.64
144.000	1.523	9.75	146.05	0.650	14.004	9.103	150.72	610.28
140.250	1.512	9.68	147.02	0.650	7.118	4.627	75.92	189.01
140.000	1.511	9.67	147.22	0.650	2.403	1.562	25.53	63.80
130.000	1.480	9.47	154.77	0.650	24.849	16.152	260.96	660.04
120.000	1.446	9.25	162.00	0.650	26.345	17.124	270.62	700.02
110.000	1.411	9.03	168.88	0.650	27.841	18.097	279.23	740.01
100.083	1.373	8.79	175.31	0.650	26.335	17.118	257.66	1082.62
100.000	1.373	8.79	173.53	0.650	2.970	1.930	28.66	105.10
95.333	1.354	8.67	176.41	0.650	12.029	7.819	115.22	425.73
90.000	1.332	8.52	179.57	0.650	18.492	12.020	174.51	654.60
80.000	1.288	8.24	185.07	0.650	32.017	20.811	294.39	1133.65
70.000	1.240	7.93	189.90	0.650	33.513	21.783	297.24	1186.97
60.000	1.186	7.59	193.91	0.650	35.009	22.756	297.96	1240.29
53.000	1.145	7.33	196.11	0.650	25.375	16.494	207.46	1665.97
50.000	1.126	7.21	194.65	0.650	10.983	7.139	87.44	485.83
47.167	1.107	7.09	195.26	0.650	7.397	4.808	58.03	327.22
40.000	1.057	6.76	196.23	0.650	30.187	19.621	229.56	1335.55
30.000	1.000	6.40	198.39	0.650	39.080	25.402	279.48	1729.42
20.000	1.000	6.40	205.87	0.650	40.576	26.374	285.27	1796.07
10.000	1.000	6.40	213.35	0.650	42.072	27.347	295.78	1862.72
1.000	1.000	6.40	220.09	0.650	39.144	25.444	275.20	1733.43
						Summation TOTAL =	4707.80	20838.69

---------(END LOAD CASE 3 -- POLE SHAFT LOADS)----------

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Job No.....: Q26965 Design No: 97-4189 Engineer : PS
Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

POLE SHAFT SEGMENTS -- AXIAL AND SHEAR FORCES:

LOAD CASE 3: BASIC WIND VELOCITY = 50.00 MPH

Tube Segment No.	Segment Elevation (ft)	Axial Load (kips)	Cumulative Axial Load (kips)	Horiz. Shear (kips)	Cumulative Horiz. Shear (kips)
1.	168.500	0.000	0.000	0.000	0.000
2.	168.500	0.015	0.015	0.013	0.013
3.	168.500	0.090	0.105	0.449	0.462
4.	168.500	2.858	2.963	0.473	0.935
5.	160.000	0.439	3.401	0.184	1.119
6.	160.000	0.336	3.737	1.339	2.458
7.	160.000	2.888	6.625	0.477	2.935
8.	150.000	0.528	7.153	0.217	3.152
9.	150.000	2.831	9.984	0.445	3.597
10.	150.000	0.151	10.134	0.458	4.056
11.	144.000	0.610	10.745	0.151	4.206
12.	140.250	0.189	10.934	0.076	4.282
13.	140.000	0.064	10.997	0.026	4.308
14.	130.000	0.660	11.657	0.261	4.569
15.	120.000	0.700	12.358	0.271	4.839
16.	110.000	0.740	13.098	0.279	5.119
17.	100.083	1.083	14.180	0.258	5.376
18.	100.000	0.105	14.285	0.029	5.405
19.	95.333	0.426	14.711	0.115	5.520
20.	90.000	0.655	15.366	0.175	5.695
21.	80.000	1.134	16.499	0.294	5.989
22.	70.000	1.187	17.686	0.297	6.286
23.	60.000	1.240	18.926	0.298	6.584
24.	53.000	1.666	20.592	0.207	6.792
25.	50.000	0.486	21.078	0.087	6.879
26.	47.167	0.327	21.406	0.058	6.937
27.	40.000	1.336	22.741	0.230	7.167
28.	30.000	1.729	24.470	0.279	7.446
29.	20.000	1.796	26.267	0.285	7.731
30.	10.000	1.863	28.129	0.296	8.027
31.	1.000	1.733	29.863	0.275	8.302
Base	0.000		29.863		8.302

---------(END LOAD CASE 3 -- AXIAL AND SHEAR FORCE)----------

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Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

POLE SHAFT SEGMENTS -- MOMENTS and DEFLECTIONS:

LOAD CASE 3: BASIC WIND VELOCITY = 50.00 MPH

	[-------- MOMENTS (ft-kips) ---------]				[--DEFLECTIONS (inch)-------]		
Segmnt Elev (ft)	From Ant/ Arm	From Shaft Wind	From P-Delta Effects	Total Moment	No P-Delta Effects	Total W/ P-Delta Effects	Total Rotation (degrees)
168.50	1.477	0.000	0.000	1.477	50.695	55.190	2.897
168.50	1.477	0.000	0.000	1.477	50.695	55.190	2.897
168.50	1.477	0.000	0.003	1.480	50.418	54.886	2.897
160.00	9.330	0.918	1.277	11.525	45.997	50.034	2.883
160.00	9.330	0.918	1.277	11.525	45.997	50.034	2.883
160.00	9.330	0.918	1.465	11.713	45.446	49.430	2.883
150.00	36.489	4.186	4.551	45.226	40.524	44.029	2.825
150.00	36.489	4.186	4.551	45.226	40.524	44.029	2.825
150.00	36.489	4.186	5.044	45.719	39.984	43.437	2.825
144.00	58.057	7.327	8.057	73.441	36.778	39.922	2.761
140.25	71.537	9.749	9.610	90.896	35.205	38.198	2.709
140.00	72.435	9.921	10.127	92.483	34.687	37.631	2.706
130.00	108.382	18.218	15.298	141.898	29.666	32.134	2.533
120.00	144.328	29.169	20.379	193.876	25.002	27.038	2.326
110.00	180.274	42.867	25.276	248.417	20.752	22.403	2.094
100.08	215.921	59.240	29.456	304.617	17.311	18.660	1.849
100.00	216.221	59.388	29.913	305.522	16.955	18.273	1.847
95.33	232.996	68.079	31.737	332.812	15.559	16.758	1.754
90.00	252.167	78.784	34.414	365.364	13.582	14.614	1.647
80.00	288.113	101.106	38.689	427.908	10.593	11.379	1.441
70.00	324.059	126.386	42.663	493.108	7.998	8.576	1.234
60.00	360.006	154.643	46.257	560.907	5.800	6.209	1.026
53.00	385.168	176.194	48.506	609.868	4.499	4.811	0.881
50.00	395.952	185.873	49.434	631.259	3.999	4.274	0.828
47.17	406.137	195.252	50.034	651.423	3.682	3.934	0.779
40.00	431.898	220.014	52.256	704.168	2.549	2.720	0.657
30.00	467.845	256.996	54.602	779.443	1.427	1.521	0.489
20.00	503.791	296.787	56.386	856.964	0.631	0.672	0.323
10.00	539.737	339.478	57.522	936.737	0.157	0.167	0.160
0.00	575.684	385.173	57.921	1018.777	0.000	0.000	0.000

---------(END LOAD CASE 3 -- MOMENTS AND DEFLECTIONS)----------

PJF_Pole (tm) - Monopole Design Program
Windows Version 1.27.0050 Thu Oct 16, 1997 - 10:42:55 am
(c) 1993 to 1997 PAUL J. FORD AND COMPANY, Columbus, Ohio
Licensed to FWT, Inc., Fort Worth, Texas

Job No.....: Q26965 Design No: 97-4189 Engineer : PS
Description : 173 FT. MONOPOLE - B640 ICP, MARYLAND
Design..... :
Owner..... : AT&T Wireless Services Client: AT&T Wireless Services
Status..... : Preliminary Design Revision: Rev. Date :

POLE SHAFT SEGMENTS -- ACTUAL VS. ALLOWABLE STRESSES:

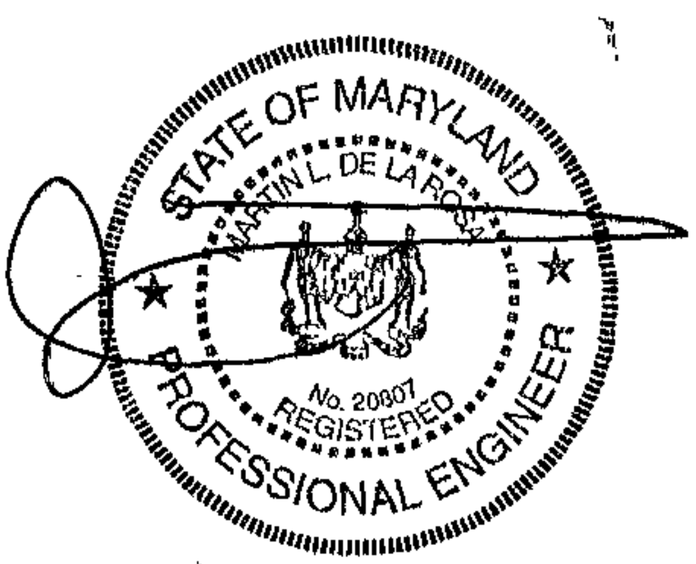
LOAD CASE 3: BASIC WIND VELOCITY = 50.00 MPH

Note: Per TIA/EIA Sec. 3.1.1.1: Allow a 1/3 stress increase for poles under 700 feet in height. The allowable stresses shown include the factor of 1.333

Segmnt Elev (ft)	[fb] Bending (ksi)	[fa] Axial (ksi)	[ft] Torsion (ksi)	[fv] Shear (ksi)	[Ftot] Combined (ksi)	[Fb] Allow. Stress (ksi)	[Ftot/Fb] Actual/ Allowable Ratio
168.50	0.213	0.000	0.000	0.000	0.213	52.00	0.0041
168.50	0.213	0.001	0.001	0.002	0.214	52.00	0.0041
168.50	0.213	0.007	0.032	0.065	0.278	52.00	0.0053
168.50	0.213	0.209	0.065	0.132	0.542	52.00	0.0104
160.00	1.466	0.226	0.057	0.148	1.728	52.00	0.0332
160.00	1.466	0.248	0.146	0.325	1.898	52.00	0.0365
160.00	1.490	0.439	0.175	0.388	2.162	52.00	0.0416
150.00	5.014	0.443	0.153	0.390	5.537	52.00	0.1065
150.00	5.014	0.618	0.180	0.445	5.735	52.00	0.1103
150.00	5.068	0.628	0.207	0.501	5.827	52.00	0.1120
144.00	7.530	0.640	0.192	0.500	8.257	51.88	0.1591
140.25	9.125	0.644	0.188	0.504	9.842	51.65	0.1906
140.00	9.255	0.647	0.187	0.506	9.975	51.61	0.1933
130.00	12.565	0.645	0.166	0.505	13.261	50.18	0.2643
120.00	15.298	0.646	0.148	0.505	15.984	48.75	0.3279
110.00	17.578	0.648	0.132	0.506	18.260	47.32	0.3859
100.08	19.454	0.667	0.120	0.505	20.150	45.90	0.4390
100.00	15.013	0.510	0.092	0.385	15.545	52.00	0.2990
95.33	15.602	0.513	0.088	0.384	16.136	52.00	0.3103
90.00	16.253	0.522	0.083	0.386	16.795	52.00	0.3230
80.00	17.313	0.535	0.076	0.387	17.865	51.12	0.3495
70.00	18.224	0.548	0.069	0.389	18.788	50.05	0.3754
60.00	19.009	0.562	0.063	0.390	19.587	48.98	0.3999
53.00	19.495	0.593	0.060	0.391	20.103	48.23	0.4168
50.00	16.183	0.486	0.048	0.317	16.681	52.00	0.3208
47.17	16.317	0.488	0.047	0.316	16.817	52.00	0.3234
40.00	16.651	0.504	0.044	0.317	17.167	52.00	0.3301
30.00	17.055	0.522	0.041	0.317	17.587	51.75	0.3399
20.00	17.401	0.539	0.038	0.317	17.950	50.89	0.3527
10.00	17.698	0.557	0.035	0.317	18.266	50.03	0.3651
0.00	17.955	0.571	0.033	0.317	18.536	49.17	0.3769

---------(END LOAD CASE 3 -- ACTUAL VS. ALLOWABLE STRESSES)----------

OCT 16 1997



IN THE MATTER OF HENRY M. WITMYER, * BEFORE THE BOARD
ET UX, Legal Owners; AT&T WIRELESS * OF APPEALS OF
SERVICES, Lessee, * BALTIMORE COUNTY
Petitioners * Case No.97-556-XA

* * * * * * *

The above matter came on for hearing before the Board of Appeals of Baltimore County at 10:40 A.M., December 2, 1997, at 400 Washington Avenue, Towson, Maryland, before Barbara Rupply, Notary Public.

* * * * * * *

BEFORE:

KRISTINE K. HOWANSKI, Madam Chairperson
DONNA FELLING
HARRY E. BUCHHEISTER

Reported by: Barbara A. Rupply, R.P.R.

MADAM CHAIRPERSON: This is case number 96-556-XA, In the Matter of Henry M. Witmyer and AT&T Wireless Services. This is on a petition for special exception variance which was granted below.

If counsel will identify themselves for the record.

MR. DORF: Paul A. Dorf, D O R F, law firm Adelberg, Rudow, Dorf, Hendler & Sameth, representing AT&T Wireless Services.

MR. MARINO: Michael Marino, representing the Protestants in this matter, Madam Chairman.

MS. PAIGE: Nancy Paige, representing the Pine Ridge Association.

MS. DEMILIO: Carole Demilio, Deputy People's Counsel.

MADAM CHAIRPERSON: Okay. Good morning, counsel. We'll take opening statements, if anybody wishes to make an opening statement.

MR. DORF: Do you want to make an opening statement?

MR. MARINO: You're first.

MR. DORF: Your Honor, this is a case in which AT&T Wireless Services has filed a petition for a special exception and a variance. It's the property known as 7 Greenwood Place, located at Old Court Road and the junction of Baltimore Beltway, 695, and the expressway. It's in the Woodholme section of Baltimore County.

The petitions were filed by Mr. Henry Witmyer, Jr. I don't know the procedure here. Mr. Witmyer is here. He'd like to go again. I can proffer that he's here and that he's, based on the plat, he's the current owner. It's Henry M. Witmyer, W I T M Y E R, Jr., 7 Greenwood Place, and I would proffer that he has signed a lease and we have permission to go on his property.

Does anybody want him to testify?

Right.

Would you stand up, just identify yourself for the record.

MR. WITMYER: Henry Witmyer, Jr.

MR. DORF: Okay, thank you.

May he be excused?

MADAM CHAIRPERSON: We're going to take that sort of out of turn in the opening statements and will accept that as a proffer now on the record and then you can go on with your opening statement.

MR. DORF: All right.

AT&T Wireless Services is contract lessee. We are asking for special exception to permit a wireless transmitting and receiving facility. It's under the section 426.1 of the Baltimore County zoning regulations.

This is, I would like to point out to The Board, an ML zone, and I would like to point out to The Board that if it was not because of the variance here, this would be as a matter of right if we had the two hundred feet on all sides of this antenna. Because of the fact it is an ML zone, as a matter of right we could put the antenna there, which is 170 feet, and it would not require any type of a hearing, but because of the fact that the structure will be within a short area of the rear lot line, less than

the 30 feet, we have to come in to obtain the permission of the zoning officials, as it is.

I might add that there was already a zoning hearing in zoning case 64126-A, in which there was zoning relief given to the subject property when the original buildings were built, so that we will present at this time various individuals to prove that the zoning rules and regulations will be adhered to and that this would be a proper zoning type of approval by this board.

I would like -- I'll argue the law at a later time, but I would like to just bring out one thing to The Board. There are two basic laws that I will argue at the conclusion of the case and two basic cases.

The first case would be Schultz versus Pritts, P R I T T S, I'll argue at the end, 291 Maryland 1881. The reason I'm bringing it up at the present time is that we're asking for special exception and a special exception is part of the comprehensive zoning plan and I would like to point

out it -- there is a presumption that as such it is in the interest of the general welfare and that is by the case of Schultz. Therefore it is presumed here that this special exception, since it is permitted under the zoning ordinance, is in the interest of the general welfare, so that the Protestants have the burden of overcoming this presumption. Every presumption is a rebuttal presumption, but presumptions in law, they're very few and far between, and presumptions are very important and we have the presumption that it is in the interest of the general welfare.

I would also like to state that the Protestants under the case of Mossberg, which I will cite at the end, versus Montgomery County, 107 Maryland F, the law says, "In considering a proposed special exception, you are to consider whether the adverse effects at the particular location would be greater than the adverse effects ordinarily associated with that particular use."

Now, my argument is that there's going to

be no question about the fact that this tower will be seen. I've already agreed to stipulate to certain pictures coming in because AT&T did in fact float certain balloons in certain places to show what the height of the tower will be and you can see the balloon. So, we're not contending in this case at all that there would be no visibility as far as the tower is concerned, but what we're saying is, that this particular location, the adverse effects would not be greater than any other effects associated with particular views, because no matter where you put a tower of 170 feet, you're going to see it.

I would like to say that we will produce various witnesses. I'm not going to proffer at this time every witness we will produce. We will produce witnesses to show that this is a proper structure, that it will not in any way be against the benefit of the people in that area, it will not decrease any of the values of the area and it will be a safety structure and that we will show you under all of the mandates of the rules of the code that we meet all

these and we will ask you at the conclusion to do what the Commissioner did below and to grant us the right to erect the tower.

Thank you.

MADAM CHAIRPERSON: Thank you.

MR. MARINO: Members of The Board, very briefly, I believe at the end of this case you will find that the petitioners didn't and they cannot meet their burden under Maryland law. Impossible. Can't meet it. They've asked for a special exception and a variance in the same case, will not be able to meet the burden; and if they do, they've made new law in Maryland, because it is, under the prevailing case law, it is going to be impossible for them to sustain a legal burden in this particular petition.

Thank you.

MS. PAIGE: Just briefly that Mr. Dorf has suggested that this use is as of right were it not for the 30 foot setback, but in point of fact it is not a right as he acknowledges, it is a special exception because of the reduction from the two hundred foot

setback to the nearest residential property line to a 44 foot setback to a residential property line. So, this is a substantial reduction in the only protection that is afforded to residential properties within close proximity to these rather enormous and intrusive structures.

Thank you.

MS. DEMILIO: I always hate to go last, so I'll just say a few words in commenting on Mr. Dorf's comments.

First let me just say that our office is interested in this case because the variance requested for this special exception only goes to the very heart of the legislation under section 426.1 of the Baltimore County zoning regulation and Mr. Dorf has a unique way of stating the case for his petitioners on two fronts.

First of all, I think as Ms. Paige has pointed out, he says, "We would have a right to this tower under an ML zone were we two hundred feet away and satisfy the distance requirement." Because he

doesn't, he has no rights. He has nothing whatsoever. There's no preference given him, there's no rights, he's totally disqualified under section 426.1 because he does not meet the distance requirements, and that was one of the main reasons why our office was interested in this case, and the implication from his opening statement is that but for that request he would be permitted here. The fact that he's making that request, to reduce the distance requirement, totally prohibits him from erecting this tower under section 426.1.

Secondly, Mr. Dorf points out that he, as a special exception, has a presumption of a right and the burden is on the Protestants. He is totally wrong if the implication is that it's our burden of proof. He clearly has to read section 502.1 of the zoning regulations which requires him, the petitioner, through their attorney, to satisfy those requirements. So, the burden is on the petitioner under a special exception; it is not on the Protestants as Mr. Dorf seemed to imply.

If I misunderstood him, I apologize, but I believed those were his words, that he has the presumption and the burden is on the Protestants. Nothing could be further from the truth and I know that this board knows that.

One other thing to point out is that this is a de novo hearing, so any evidence that was presented before the zoning commissioner in the prior case on this matter does not have any weight with regard to The Board unless that evidence is again introduced and substantiated in this case.

And furthermore let me just say the zoning regulations with regard to wireless transmitters has undergone a number of revisions and reviews by the county counsel. So, in addition to the normal special exception requirement in certain zones, in fact the county counsel has enacted additional requirements. I'm not suggesting that applies here, but what I'm saying is, the history of the bill which permitted wireless transmitting towers may be of some significance in this case. I don't think it's

appropriate to present all that to The Board at this time, but our office may very well wish to, at the conclusion of this case, present information regarding the history, because the intent of the county counsel can clearly be seen from the history of the regulations and I think that's significant and I think it's significant to this case.

Thank you.

MADAM CHAIRPERSON: Thank you.

Mr. Dorf, who will be the first witness?

MR. DORF: Before I call my first witness, is there any question of counsel as to the posting? If so, I can call a witness for the posting. I already had somebody out there to take a look.

MR. MARINO: No.

MR. DORF: I just wanted to make sure; sometimes there's a problem with the posting. There's no problem with the posting, the Commissioner found that it was posted, we have witnesses here to prove it was.

MADAM CHAIRPERSON: We'll accept that as a

proffer right now as well then that there is no issue of posting.

MR. DORF: So stipulated. Thank you.

All right, I'll call my first witness, Mr. Michael Yglesias.

MICHAEL YGLESIAS,

a witness for the petitioners, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION BY MR. DORF:

Q Mr. Yglesias, will you state your full name and your position, please.

A My name is Michael Yglesias. I'm an engineer with AT&T Wireless.

MADAM CHAIRPERSON: Can I get that last name.

THE WITNESS: Yglesias. It's Y G L E S I A S.

Q All right. Now, you were assigned to conduct a search for a suitable wireless transmitting/receiving facility in Baltimore County,

correct?

A Yeah.

Q Go back a little bit and -- I don't know how much history you've all had -- give The Board a short history of what AT&T Wireless is doing here in the field.

A Okay. AT&T Wireless participated in the options and won the B-band license for a PCS carrier, 1900 megahertz.

Q What's PCS?

A Personal communication services.

And by winning the license, we're required by the FCC to provide coverage to people in this area. We have a certain time frame that brought it out. I don't know the exact number, but I know it's like five or seven years to cover almost all the market. It's called an MTA, which is a metropolitan trading area, which includes Baltimore, Washington and a lot of the states, part of West Virginia, the whole area, part of Virginia.

I'm a design engineer, is a lot of what

I've done in this market, and let me show you from the board up here. I'm going to stand up again.

What I have here is an actual display, it's called a drive test plot, which shows some of the existing sites that we currently have. To give you a little background on how our network works --

MADAM CHAIRPERSON: For the record, if you could just indicate as you point to those, the color or how it's demarcated on the record, so that we have it.

THE WITNESS: Okay. I'll cover exactly what the colors mean and what it means.

MADAM CHAIRPERSON: Okay.

A Basically, how our --

Q What would you call this map?

A This is a drive test blot.

Q A drive test plot?

MR. DORF: We would introduce it for identification at this time as exhibit 1 for identification, drive test plot.

Q Go ahead.

A Basically, how our network works is, when you make a phone call from a mobile phone, it talks from that mobile phone to a base station which has an antenna on the top with, typically, a monopole and transmitter/receiver on the bottom, and as you drive, let's say, around the Baltimore Beltway, for example, you do what we call your pass from one site to the next and it's, basically, set up like a sprinkler system for water, where they all come out of the ground and they serve like just a little, local area. Okay?

This is the Beltway right here. Our sites are typically about, roughly, three miles apart, is what we're doing to cover the area in this area. And as you call --

Q Give The Board some idea of what some of these things are.

A I will.

But as you're going from one site to the next, your phone calls as you're driving along the highway, the signal decreases as you get away from the

tower and you're what's called handed to the next one, and it should be fairly seamless to the person using the phone call. It should be transparent to the user. Okay?

And basically what we're doing is, we're building a network of sites along the Beltway and, you know, as we're covering this area along the Beltway -- this is the Pikesville area here and it's a drive test plot, and this I-695 coming around, Reisterstown Road along the top, this is Liberty Road, and as you look on here, red is a very strong signal, typical in-building, you would be able to use your phone inside a building; green is what we designed along the highways for very good coverages; as you get to blue, it's marginal, you may miss some words in your call; the black is what we call the drop out area or a dead zone, where you won't be able to make a call or you can't initiate a call. Okay?

As you're looking at this plot, along Liberty Road here, we have two sites here. One is Bell Atlantic, Randallstown. That's an existing

monopole that we located on. This over here is Baltimore Towers, which is an existing building. As you come up into the Pikesville area, near Reisterstown Road, we're over here in Pikesville, it's called Saperstein, it's a monopole that we have located. As you come around the outside of the Beltway, outside of Reisterstown Road, it's what's called the Brody Organization, it's about a five story building, which is a low one right along the highway that was developed in the area. And as you come up Reisterstown Road, it's called McDonough Crossroads. It's another building out here.

As you're coming along this area, based on the colors, there's a blue and a lot of black in through here where we won't have coverage. So, as a design engineer, what I did was, I issued what we call a search ring showing where we need a site in this area and it's basically a center location with about a half mile radius circle around it and at that point is when I would issue it to our real estate people to provide me a site in there and what I do is model it

to show -- as we get a site in there, I'm the one who determines the height and location, rough location.

This is from a computer model that we have in our office and it predicts, using the same color pattern again, what the site would generate for us. The red, again, coverage; and green is what we designed to, along the highways, which would provide in car portable coverage, fairly seamless; blue is very marginal, you'll lose some of your calls; and black totally. So, this would fill in along the highways, along this area, serving some of the business areas in here also along Reisterstown Road. I-695 and mainly 795 is a lot of road to cover. And that's typically it.

Q When you say that when you get into the black area, it's a dead area, does that mean the phone drops off, then comes back later? What happens to the call?

A No. If you're on a phone call talking, all of a sudden you'll totally lose your call. It'll drop out and you actually have to -- after you get

through that area, your phone will scan and go and lock onto another site, after you get through the area, lock onto another site. Then you have to dial the number back in your phone again, send it and hopefully connect back with --

Q But if you're on the phone, that call is dead?

A Correct. If you were like trying to make a 911 call in the black area, you wouldn't be able to get through. You wouldn't be able to make a call out or anything like that if you were a stranded motorist or whatever you were doing at the time.

Q When you were going through your testimony, you said that some of the installations are on existing buildings and structures and so forth. What is the philosophy that AT&T Wireless has to the construction of the antennas and monopoles?

A Typically during -- as a design engineer, what I do, I typically look for monopoles, towers or existing buildings that will fit the profile that I need to cover a certain area and in this case we've

exhausted all those. There was nothing in the area that would be --

Q The first thing you did was see if you could co-locate on another pole?

A Correct.

Q And there was no other pole to co-locate on in this area, is that correct?

A Nothing in that area, that's correct.

Q Then you searched for a building, is that correct?

A Yeah, we typically would locate on a building.

Q And were there any buildings in this immediate area?

A We'll go into that later, the detailed search we went there. From everything that was submitted to me, no, there was nothing high enough and nothing close enough to the middle of the search ring that would serve this immediate area.

Q What type of zoning do you look for when you're building these poles?

A Typically, then we, based on zoning code, we look for anything that's industrial type of properties, is what we look for.

Q And this is ML zoning here?

A Correct.

Q Then your testimony is that there was a need for an additional facility in this area, is that correct?

A Definitely, yes.

Q This was as to capacity and as to coverage, is that correct?

A Correct, yes. The biggest driving factor here in this area is coverage. There's no coverage.

Q Now, if in fact AT&T Wireless does not have this pole in this location, do you have a blackout area here?

A Yes, we do, we have a blackout area.

Q All right. And is that permitted under your mandate as far as your PCS license?

A No. With the FCC we're mandated to provide coverage in the areas, to serve the

population.

MR. DORF: All right. Thank you.

Witness with you.

MR. MARINO: Thank you, Mr. Dorf.

CROSS-EXAMINATION BY MR. MARINO:

Q Is it Yglesias?

A Yglesias, yes.

Q I believe your testimony was that from everything which was submitted to you, you made some determination that this was the site that was best -- would best suit your company's needs, is that correct?

A Yeah. We haven't gone through in detail every site, but, yes, based on what I needed from a profile for a location height, proximity to the Beltway, 795, yes.

Q And who submitted the material -- how was the submission made to you?

A I issued the search ring that I have here, which we can make exhibit 2, but, basically, we released the search ring to a consulting firm, in this case called Techstar, who actually goes out and does a

search for us. Then they submit candidates to us.

Q So, as far as you know -- you only know what Techstar tells you, is that correct?

A No, I've been out with them in the field and we actually drove through this area because it was a tough area. I actually visited a lot of the area with them, looked through zoning maps with them also, trying to determine more appropriate locations, yes.

Q But do you know whether there is or there isn't any other location? I'm trying to get what your testimony is, if you're saying this is the absolute only location that's possible under the zoning code for this particular tower.

A From everything that was submitted to me and inside the search ring, that's correct.

Q I'm not asking you what's submitted to you because you've got conflicting testimony. First I said, "You only know what's submitted to you?" and you said, "No, I did an actual search myself." Now, which is it?

A I did drive the area with them to help

them try to identify locations in the zoning code and in the area that would be favorable to me that they would submit. Out of that, based on people they talked to who agreed to initial talk, that's the best candidates submitted to me I selected, yes.

Q Okay. Let's try this one more time. Are you or are you not certain that this is the only site which will meet your company's criteria with regard to the 170 foot tower that you are proposing? Do you have any personal knowledge of that? It's a yes or no answer.

A Currently, yes, this is the only location that was appropriate.

Q From your personal knowledge?

A From my personal knowledge.

Q Now, did you look in the O2 office park zones? Let me be fair to you. Let me state this. Did you limit your search to the ML zone?

A No, we did not.

Q What other zones did you look at?

A Based on some of the candidates that were

submitted, and we didn't introduce all those candidates right now, but, yes, we did look at some of the O2 also.

Q How about the office and technology zones?

A I'm not familiar with that one. I don't know if they talked to them. You can ask the consultants.

Q How about the business zones?

A Again, ask the consultants as to that part. We did the ML zone and O2 zone; I don't know what else they looked at.

MADAM CHAIRPERSON: Is there someone else that will be testifying today --

THE WITNESS: Yes.

MR. DORF: I would proffer that it's going to do with the next witness to testify. His testimony is he finds where the dead spots are, then he tells somebody else to go find a location.

MR. MARINO: I believe his testimony was this is the only spot in the entire area which suits this and what I'm asking him for is, "Did you look at

the spots?" He said, "Yes."

MADAM CHAIRPERSON: I believe his testimony right now has been to the degree of his awareness, that's the only spot. There may be somebody else, I guess, who can speak more specifically to whether or not this is the only spot in the world that's going to satisfy this. I was going to clarify myself.

MR. MARINO: I was trying to clarify the testimony to that effect. That's fine.

One second. Bear with me for a second.

Q Did you look in any school zones?

A Again --

Q You don't know?

A I didn't conduct the search.

Q That's fine. If you don't know, you don't know. Okay.

MR. MARINO: That's all I have.

MS. PAIGE: Wait, I have some, please.

BY MS. PAIGE:

Q Mr. Yglesias, did you look at the MTA

site, the Metro site?

A Yes, we did.

Q And that was rejected?

A No, it was not rejected.

Q So, it's still available?

A Yeah, but as of today we still haven't been able to lease one MTA site with anybody.

Q But it is a possibility?

A It's still on the books, but we haven't been able to, you know, move forward with any of them.

MADAM CHAIRPERSON: What does that mean?

MR. DORF: We'll have somebody here who can address that one.

THE WITNESS: I'm not on the leasing side of it.

Q I see.

Did you look at the Weges property on Woodholme Avenue?

A I'm not familiar with that piece of property.

Q Is there someone else we should ask

whether you looked at it?

A Yes.

MS. PAIGE: Okay, thank you.

MS. DEMILIO: I have no questions.

MADAM CHAIRPERSON: Okay.

MR. DORF: I would just like to introduce the drive test plot as exhibit number 1.

MADAM CHAIRPERSON: And that is, I'm gathering, that is the current state?

THE WITNESS: That's correct. Those are sites that are commercial, on the air.

MR. DORF: And I would like to introduce as exhibit number 2 the search ring. That would be this one here.

MADAM CHAIRPERSON: Okay. Exhibits 1 and 2 will be entered into evidence.

MR. DORF: And exhibit number 2A would be the overlay of exhibit number 1, unless you want that to be 3. This is 1.

MADAM CHAIRPERSON: Right.

MR. DORF: This is 2.

MR. MARINO: The drive test.

MADAM CHAIRPERSON: Oh, I'm sorry, I didn't see that one up there before.

THE WITNESS: This is the search ring that I actually issued to --

MR. DORF: This is the search ring.

MADAM CHAIRPERSON: Then what's the third --

MR. DORF: The third would be the overlay.

MADAM CHAIRPERSON: What does that represent, though?

THE WITNESS: This is, based on me generating the search ring, shows the predicted coverage from the site as it's constructed.

MADAM CHAIRPERSON: From the --

THE WITNESS: From the new monopole that would be built on the site.

MADAM CHAIRPERSON: Right. Okay, I just wanted to make sure.

THE WITNESS: This is the predicted coverage that would be provided from it.

MADAM CHAIRPERSON: Okay. Good enough.

MR. DORF: That would be 3 then?

MADAM CHAIRPERSON: Yes.

MS. PAIGE: Could I just clarify with this witness what the other witness will say so I know?

MR. DORF: I'll call him right now.

MS. PAIGE: Well, before he leaves the stand.

MADAM CHAIRPERSON: I don't know what you mean when you say what this other witness will say.

MS. PAIGE: I mean the subject area. I'm not sure if this is the witness who knows whether the particular locations will provide the same coverage or whether the other witness can also testify as to whether certain --

MR. DORF: We will have other witnesses who will testify to that or else you can recall him. No objection.

MS. PAIGE: Okay.

MADAM CHAIRPERSON: He'll be here?

THE WITNESS: Yes.

MR. DORF: He'll be here.

MADAM CHAIRPERSON: Okay. Why don't we just leave him here because he may be the one who you may need to talk about that.

MS. PAIGE: Thank you.

MR. DORF: My second witness will be Mr. Brian Parsons.

I would offer his curriculum vitae. I'm going to qualify him as an expert and rather than go through all this, I'll give you a copy of it.

Would you swear him in, please.

BRIAN S. PARSONS,

a witness for the petitioners, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION BY MR. DORF:

Q Do you want to take the witness stand.

A Yes, sir.

Q Would you state your full name, please.

A Brian S. Parsons.

Q And what company are you involved with,

Mr. Parsons?

A I work for Techstar Communications, Inc.

Q And just to lead you for one minute; you were the one that Mr. Yglesias told to find the locations, is that correct?

A That's correct.

MR. DORF: Now, I'm going to qualify him as a development engineer and land use planner and I have here his professional expertise going back to everything he's done and also his skills, his education and so forth. I can run him through this, unless -- I'll turn it over to you for voir dire as to --

MR. MARINO: I'm just circulating his thing over there.

MR. DORF: Okay.

MADAM CHAIRPERSON: So, you would be offering him as an expert in the areas of development engineering and land use?

MR. DORF: Yeah, site planning, design layout and land use. In other words, he's had 20

years experience as a development engineer.

MADAM CHAIRPERSON: I understand. I'm trying to define what that is, that's all.

MR. DORF: As a site planner here.

MADAM CHAIRPERSON: Well, is there a difference between that and land use planner and a development engineer?

THE WITNESS: I think what the judge is getting at is how my experience applies to site acquisition.

MADAM CHAIRPERSON: I understand, but I'm saying, is this designation you have yourself identified as development engineer and land use planner and that includes site plan? I don't need to identify that separate area in terms of your expertise.

MR. MARINO: Is he licensed?

Do you hold a license now as an engineer? Are you a licensed engineer?

THE WITNESS: No, I've spent about four years working for an engineering company as a

designer. So, my background is in development engineering. From that point on I've served in local governments for five years as a land use planner and then in the private sector as a development type planner/coordinator.

MR. MARINO: I guess what I'm asking is, if we can know what he's going to testify to, I mean I would feel more comfortable because --

MR. DORF: He's going to testify he was given instructions by AT&T Wireless to go out in this search ring and find the place to put an antenna tower. That's all.

MS. DEMILIO: Is he going to be offered as an expert, that's what I want to know.

MADAM CHAIRPERSON: Yes. He's saying he's offering him as an expert in development engineering and land use planning.

MR. DORF: I'll bring him in as a fact witness with these credentials.

MS. DEMILIO: Are you going to let him render an opinion?

MR. DORF: No.

MS. DEMILIO: He can't render an opinion.

MR. MARINO: That's fine.

Q What were you requested to do by AT&T Wireless?

A We received a search ring like Mike showed you earlier and our company is under contract to AT&T Wireless to locate, lease and assist in the development of the sites for telecommunications use.

Q All right. What did you do?

A First -- well, we followed AT&T's policy of looking at existing towers first, existing monopoles, which there are none in the search ring. Then we looked for tall buildings which would be suitable, enough to serve the coverage objective that Mike laid out before, which is 695 and 795; and if that failed, we would look for undeveloped property or what we call raw land which had either commercial or industrial zoning, industrial zoning being, I guess, even more preferable because it allows more intensive type land uses.

The other thing we were also looking for is to get a certain ground elevation, when combined either with the height of a building or the height of a monopole, that met Mike's design objectives and coverage. So, the map up here is a zoning map with the search ring on it.

Q Does this map depict the same search ring that I have here, which is exhibit number 2?

A Yes, sir, it does.

Q So, this search ring here is the same as this search ring here?

A That's correct, sir.

Q What did you do?

A Okay. In the search ring we first got our zoning maps together, identified which properties were industrial and commercial and -- well, let me back up a little bit.

Okay. The search ring overlaid on the zoning map, the most important part of this map is that in the whole search ring there are only two areas that telecommunications facilities would be allowed by

right, and that is this long sliver of ML and this portion of OR-2, right in here. Everything else is zoned residential, DR-1, DR-2.

Q You say in those two areas the zoning code allows as a right?

A Yes, sir.

MR. MARINO: Objection.

MS. PAIGE: Objection.

MADAM CHAIRPERSON: Yes.

MR. DORF: Subject to other --

MADAM CHAIRPERSON: Well, I was going to say, he hasn't predicated that and I think that's absolutely correct right now is that assuming that the setbacks and so forth are overcome, assuming the setbacks are met, that those areas are potentially -- they're eligible for --

THE WITNESS: Yes.

MADAM CHAIRPERSON: But you're not making a statement right now that you surveyed these and the dimensions as such are sufficient that you can develop that as of right? You couldn't even make --

MR. DORF: That's not a proffer.

MADAM CHAIRPERSON: I'm going to, right now, I'm not going to strike it. I'm going to sort of accept it as a colloquial expression of just what I described, that is, it's the type of zoning where the setback's appropriate and so forth.

MR. MARINO: Eligibility.

MADAM CHAIRPERSON: It would be eligible for that.

MR. MARINO: Right.

Q So, what sites did you look at there to determine what you would use as far as the location, topography, land use and so forth?

A Okay. Listed here are the alternate sites that we considered. Included in that is number 7, which is Mr. Witmyer's property.

Q So, you considered nine sites in that search ring, is that correct?

A That's correct, sir.

Q Okay, go ahead.

A Okay. This search ring also is the same

as this search ring as well. The scale of the maps is different, that's why this ring is smaller. Okay. I'll go in order that we looked at the sites.

Basically, we looked at existing buildings first and we looked for existing towers which were in it, but the first site we looked at was McDonough Crossroads, which is up here, which was way too far out of the search ring. Okay. Let's see. It was a six or seven story building.

MADAM CHAIRPERSON: We're going to need to pull that out a hair if you're going to move it up because now it's not in the light anymore.

A First was McDonough Crossroads.

The second site that our company looked at was a building called The Pavilion in the Park, it's located at 4001 Old Court Road, it's identified as number two and it's shaded in yellow here. This was disapproved by the radio frequency engineer, Mr. Yglesias, because the building was too low, it is a five story building, and it's too far from I-795 and the Beltway, and particularly 795.

The third building we looked at was Talmudical Academy. That's located on this piece of property right here. This building was not leasable. In fact, Bell Atlantic Ninex Mobile entered into a lease two years ago and they broke the lease due to parental uproar. This building is only a four story building and this was also disapproved by RM, besides not being leasable.

The fourth site we looked was called North Oaks. It's an apartment or a multifamily building. It's eight floors. It's located over here. It's outside the Baltimore Beltway.

MADAM CHAIRPERSON: I'm sorry, what is it called?

THE WITNESS: It's called North Oaks.

A The building was too far from the search area to be RF approved. It wouldn't provide the coverage that was needed.

The fifth site we looked at was Port City Press. Actually, Port City Press is right here and -- okay. Now we're starting to talk about developing

monopoles on raw land. The problem with this property is the same as with the subject property, it's very shallow and it can't make the setbacks. That would also require exception for the two hundred foot setback.

MADAM CHAIRPERSON: Port City Press, now, you're saying?

THE WITNESS: Port City Press.

MADAM CHAIRPERSON: And there you're not actually assessing a building, you're assessing putting up a pole at this point?

THE WITNESS: A monopole, yes, ma'am.

MADAM CHAIRPERSON: Okay.

A Okay. However we could not conclude a lease with the owners of the property.

The sixth site we looked at was the MARC lot.

MR. DORF: You passed Hopkins.

A Oh, I'm sorry. Yeah, this is Port City Press; Hopkins is right here. Let's see what Hopkins -- we contacted the landlord, we sent a lease, we

didn't get a response. Again, this is a one-story manufacturing building. We would propose to build a monopole at that particular property.

Number six was the MARC lot, that's shaded in yellow, and I would like to defer to Frances Kingsbury about the history of that, if we want to get into the history of the negotiations with that.

Number 7 is the -- is Mr. Witmyer's property. It's shaded in orange, it's very small. The map is a hundred scale. It's sort of hard to see, but it's within this strip of the ML zones. These two parcels are the OR zoning. So, you see there aren't a whole lot of parcels that are zoned manufacturing or business.

Okay, let's see. Okay. And the last property I looked at was right here and this is zoned OR. It's Mr. Gould's property. Mr. Gould would not entertain a lease. Even if he had entertained a lease, we would still have the problem that we couldn't maintain two hundred feet from this residential zoning line which runs along this road or

the two hundred foot residential zoning line that runs along Old Court Road because the property is about four hundred feet deep. So, it doesn't give you much room for a monopole.

Q All right. So, these were all the alternative sites that you considered in trying to find a site in this area that you had to find a site which was set out for you, is that correct?

A Yes, sir.

Q And you finally came up with which site as the most feasible one to work with?

A We thought the most feasible site was the Witmyer property.

Q That's number seven here, is that correct?

A Yes, sir.

Q That's the site we're here for today, is that correct?

A That's right.

MR. DORF: All right, witness with you.

CROSS-EXAMINATION BY MR. MARINO:

Q Mr. Parsons, with regard to the Talmudical

Academy, you say that Bell Atlantic lost its lease or there was some kind of severance of that relationship due to parental uproar. Do you know anything about that?

A What I know is hearsay. Would you like me to tell you what I know?

Q I just want to know what you know.

A Well, what I understand is that the --

MR. DORF: Well, I'll object to what he understands.

MS. DEMILIO: He can't object to hearsay. He testified to it, how can you object to it on cross-examination? How can you object to it? He testified.

MR. DORF: He said he doesn't know.

MS. DEMILIO: That's what we're trying to find out on cross, what was the basis of that statement.

MADAM CHAIRPERSON: I take it that was why you found them untenable as prospective lessors, is that right?

THE WITNESS: No, it was RF disapproved, but even if it was RF approved, we couldn't get a lease because they kicked BAMS off the roof.

MADAM CHAIRPERSON: As I'm looking at my notes, it says, "Building not leasable. Bell had already leased and broke lease due to parental uproar."

THE WITNESS: That's correct.

MADAM CHAIRPERSON: Okay. That is what he's asking you about. What did you know, what did you hear about the parental uproar? What was the word you got that led you to conclude that the building was not leasable on that basis?

A Well, I don't know how we found out about this. It's possible that we approached, one of our site acquisition people approached the academy to lease the roof of the building because it sits right on the Beltway and that the academy explained that they had entered into a lease with Bell Atlantic without the knowledge of the parents of the students, and once the parents of the students found out that

they had a lease with Bell Atlantic for telecommunications on the roof, the school broke the lease. Either the school or Bell Atlantic, I'm not sure who broke the lease, but somehow Bell Atlantic was pushed off the roof.

Q What I'm really trying to get from you is, how did the parental uproar occur? What was the basis of the parental uproar, do you know?

A I believe the parental uproar was because once the parents found out there were telecommunication facilities on the roof, they were upset.

Q Why?

A Because they have the -- because, basically, I think most of them were misinformed about the emissions.

Q Their perception?

A I guess it would be their perception, yeah.

Q How about the Port City Press. You talked about that. It was raw land and it needed a special

exception and a variance, but you couldn't conclude a lease.

A Yes.

Q Why couldn't you conclude a lease with the owner?

A The owner didn't want a monopole on his property. It takes up parking space. Also, some people don't like the way these things look.

Q Okay. That's fair.

You evaluated the Witmyer property as the most feasible of your selection. What was the second most feasible?

A I don't think we have a second most feasible. I would really have to defer to the RF engineer. I don't know; he would have to model it through his computer to find out which would be the best for coverage.

Q I don't know. Your testimony was it was the most feasible. That suggests there was an inclining scale, so to speak, or declining, however way you look at it, and there was something behind it.

A Well, the site was industrial and there's a chemical products company there, there's a medical products company next door, there's a printing plant, there's industrial uses along the railroad. Our use is very innocuous. It doesn't generate any noise, smoke, sewage.

Q I understand that, but the question is, do you know -- your testimony was this was the most feasible site. What was the second most feasible? If you don't know, tell me, but that's the simple question.

A Well, it would have to be the properties that would be zoned to allow telecommunications, provided you meet the setbacks and all the other regulations of the zoning ordinances, but there are several factors here. There's RF, there's zoning, there's also concluding a lease in a reasonable amount of time for an agreeable market rate. So, there are several factors.

Q I understand.

A Okay.

Q So, rent has something to do with it as well?

A Oh, rent has a lot to do with it, yeah.

Q And if you expand your rent, you probably expand your amount of candidates. That's usually the way it works in the private marketplace, doesn't it?

A In this particular ring, there are -- if we expanded the amount of money, there's only so many places that are zoned to allow telecommunications subject to setbacks in this ring. So, even if you add more money, you're not going to add any more properties suitable for telecommunications sites.

Q Well, okay. That's fine.

MR. MARINO: I have no more questions for this witness.

CROSS-EXAMINATION BY MS. PAIGE:

Q Mr. Parsons, the lot you called the MARC lot, is that not the MTA subway station on Old Court Road?

A Yes, ma'am, it is.

Q Okay. And that is the same station that

was referred to by Mr. Yglesias, the same property referred to by Mr. Yglesias?

A Yes, ma'am, it was.

Q And that's shown in yellow --

A Right there.

Q Right where? Number three, right above number three?

A Well, a little bit to the northeast of six. Right there, yes, ma'am.

Q The one that's marked P656?

A That's correct.

Q So, that would be an ideal site in terms of its location in relation to the Beltway and otherwise?

A I can't answer that; I'm not an RF engineer. I'm sorry.

Q But it was one of the sites that you considered?

A Yes. Yes, we did consider that lot or that site.

Q It was acceptable for all engineering

purposes?

MADAM CHAIRPERSON: Actually, isn't this the lot you were referring to somebody else to speak on?

THE WITNESS: Yes, about the history negotiations.

A As far as engineering is concerned, it does have a lot of land area, but I might need to defer to one of AT&T's engineers because the property, there's a stream running by the property very close and it appears that a substantial portion of that property may be under the flood plain.

Q That wasn't the question. The question was, from the standpoint with your instructions with respect to the engineer's criteria, that was an available, usable site, correct?

A Well, RF engineering, yes. Civil engineering and how the site was going to have to be built, no.

Q You were told that it was not an acceptable site by civil engineering or you don't

know?

A No. What I'm saying is that there may be a hundred year flood plain close or on the property, which means the civil and structural engineering of the monopole would be a lot -- would cost considerably more than it would be if it was located on higher ground.

Q My question, I don't think you answered my question. My question to you was, were you told that this was an acceptable site from the standpoint of engineering? From the standpoint of your employer, were you told that this site was an acceptable site?

A From the standpoint of RF engineering, yes.

Q And those are the only people that gave you your instructions?

A Well, like I explained to the other gentleman, there's a lot more to it than RF engineering. It has to do with how long does it takes you to conclude a lease with the State of Maryland --

Q I'm not asking you that.

A Okay.

MADAM CHAIRPERSON: I think you've gotten what you've asked for on that. Okay?

MS. PAIGE: Well, he told me about RF engineering, but he hasn't told me who else gave him his instructions, whether anybody else gave him instructions about this site. He's trying to answer what other people would have thought about the site.

MADAM CHAIRPERSON: Right. What I'm saying is, he's not your witness. I think you've gotten out of him what you've gotten out of him. I mean, you know, that's what I'm saying. Okay?

MS. PAIGE: Well, I would just like it to be clear that he doesn't have any instructions in regard to those other issues, that he was told to look at this site as an acceptable site. I want to be clear on that.

MADAM CHAIRPERSON: And he's already said -- he said it was okay as far as RF is concerned. That's fine.

Q Now, there's another site over here that

is marked P-146. Did you look at that site?

A No, we did not go looking for residential property. Residential property generally involves a lengthy zoning battle, whereas industrial and commercial properties, providing telecommunications with setbacks generally don't provide a zoning battle.

Q Well, this property didn't meet the setbacks, so you were given instructions not to look at that property, the P-146 property?

A Our relationship with AT&T isn't such that they instruct us to look at specific pieces of property. We canvass the area. We, our company, looks at the various pieces of property. We turn in candidates, they're reviewed from an RF perspective, also on a leasability and a constructability aspect and then either the site is approved or disapproved and given back to Techstar to either secure a lease or to go find another piece of property.

Q Was the P-146 property ever brought to the attention of AT&T?

A Techstar Communications never searched out

residential properties to lease.

Q Okay. Do you know that that property is for sale?

A AT&T doesn't buy properties, it leases properties.

MS. PAIGE: Okay, thank you.

I have nothing else.

CROSS-EXAMINATION BY MS. DEMILIO:

Q I just have a couple questions, Mr. Parsons.

From your resume, it appears that most of your work was down in the Virginia area or the Washington, D.C., suburban area, is that correct?

A Yes, ma'am.

Q So, you've never worked in Baltimore County before, you personally?

A No. When I was with Network Building and Consulting, based in Linthicum, Maryland, I did some work in Baltimore County and also in Baltimore City for Bell Atlantic Ninex Mobile.

Q Did you do anything in northwest Baltimore

County?

A In northwest Baltimore County? Actually, I'm sorry, I can't recall.

Q Do you know where northwest Baltimore County is?

A Up near Westminster. But that's Carroll County. Are you talking about this being northwest --

Q I just asked you a simple question, do you know where northwest Baltimore --

A No, I've never done any work in northwest Baltimore County.

Q How many projects did you work on in Linthicum? Was it one?

A How many projects?

Q Did you just do one? Was it one project you worked on?

A Well, Bell Atlantic Ninex Mobile is much like AT&T Wireless, they do the same thing. They issue a search ring --

Q How many searches did you conduct in Baltimore County, you personally? Not your company,

you personally.

A I would have to say 15 to 20.

Q In the Linthicum area?

A In the Linthicum area?

Q What areas of Baltimore County?

A I don't know. This is what? This is two years ago.

Q So, you can't recall?

A No, I can't.

Q Okay. Did you ever testify before The Board of Appeals?

A I have testified before The Board of Appeals --

Q In Baltimore County, this board.

A No, but I have in Anne Arundel and Talbot County, Maryland.

Q I'm not interested in Anne Arundel County. I'm interested in Baltimore County because Baltimore County has its own zoning regulations, Mr. Parsons.

A Well --

Q You answered the question no. There's no

question before you right now.

All right. Now, would you disagree with the statement that there were other properties, alternative sites, that from your perspective were in the same boat as the Witmyer property in terms of eligibility?

A Would I agree to that?

Q Yes.

A No, I can't agree to that specifically. What I can say is that there are other properties zoned industrial that are very shallow.

Q What's the industrial zoning in Baltimore County? Do you know the names of it?

A ML.

Q What else?

A Let's see. ML.

Q Well, if you don't know, you can tell me you don't know. Do you know anything besides ML?

A Let's see. Manufacturing, limited; manufacturing -- MG, manufacturing, general; M-1, M-2. I don't know.

Q That's all you had to say, Mr. Parsons.

A Okay.

Can I ask you why are you asking me these questions?

Q No, you can't ask me that. You can't ask me that, I'm sorry.

MS. PAIGE: I have no further questions.

MR. DORF: My next witness will be Mr. Mitchell Kellman.

MITCHELL KELLMAN,

a witness for the petitioners, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

MR. DORF: I would like to just give you background on Mr. Kellman. I don't know if I need to go into this. I think he's worked with most of the people in this room. He's been with the Baltimore County Office of Planning and Zoning, State Highway Administration and he, as of January of this past year, he was with the Baltimore County Office of Permits and Development Control.

MS. DEMILIO: Wait a minute. Is he offered as an expert witness?

MR. DORF: He's offered as an expert in zoning.

MS. DEMILIO: Land planning and zoning?

MR. DORF: I would offer him in the category that he's been in. He's been a planner and expert in zoning.

MADAM CHAIRPERSON: We're agreeing with you.

MR. DORF: Fine.

DIRECT EXAMINATION BY MR. DORF:

Q You're aware of the area we're talking about today, is that correct?

A Yes.

Q You're aware that there's certain needs for variances and so forth?

A That's correct.

Q Will you explain to The Board exactly what the problems are in this area and why The Board should approve this location.

MS. PAIGE: Objection.

MADAM CHAIRPERSON: Yes. I'm going to sustain it at this point because you're trying to jump ahead and you've been leading a lot of folks and that's okay, but we're now with the big gun here and we want to make sure you go through the right steps. Why don't you let him go ahead and set up some foundation before we get into opinions.

Q Go ahead.

A The property is mostly zoned manufacturing, light.

MS. PAIGE: Excuse me. Was there a question? What's the question?

Q What is the zoning of this property?

A ML.

Q And what uses are --

A Excuse me, it's ML, with a small sliver of DR-16.

Q What are the uses encompassed in ML?

A For the majority, office, warehouse, light manufacturing would be permitted in the manufacturing

zone.

Q Is a monopole permitted in an ML zone?

A Yes, it is.

Q Under what section and so forth?

A It's section -- I don't have the section, but it's permitted -- the actual section number, it is permitted as a matter of right within the ML zone.

Q What does that mean, matter of right in an ML zone?

A Matter of right, you can simply file for a building permit, issue a permit to permit the structure within that zone.

Q And what are the problems in putting the pole on this piece of property?

A The problem with this piece of property was that the pole's location is closer than two hundred feet from the residential zone band.

Q Therefore what's required?

A Special exception.

Q And what is the special exception?

A Special exception is the uses that are

permitted as a matter of right and uses that are permitted by special exception. Special exception uses have to be approved via a public hearing.

Q You've reviewed this piece of property, is that correct?

A That's correct.

Q And you're aware that under 502.1, before any special exception may be granted, it must comply with certain things, is that correct?

A That's correct.

Q And number A, it cannot be detrimental to the health, safety and general welfare of the locality. Is this detrimental to the health --

MR. MARINO: Objection.

MS. PAIGE: Objection.

MADAM CHAIRPERSON: Again, I'm going to sustain it again at this juncture. I don't know whether we're better off just simply letting this gentleman give kind of a narrative, but you're jumping the gun again procedurally in terms of setting up the foundation. We had him testify generally and now

you've kind of jumped ahead and I think that's why they're objecting right now at this stage.

MR. DORF: He's talking about a special exception and there are certain things that are criteria in a special exception.

MADAM CHAIRPERSON: I think what they're looking for is more of a narrative that gets you to that point. There's some hoops you have to jump through before you can ask those questions.

Q Let's go back. What are the problems with this site as far as getting approval necessary?

A The problem is that the proposed tower is closer than two hundred feet to the residential zone band.

Q And under the zoning code, there must be, if it's a tower, it must be two hundred feet from the nearest residential?

A If the tower is located in the industrial business zone, it has to be located at least two hundred feet from a residential zone.

Q Where is this tower?

A This tower is approximately 40 feet from the residential zone boundary.

Q It's a monopole, right?

A Right, monopole.

Q Where is it as far as the northern side, the railroad tracks? You can go to the map.

A The tower, the monopole, is roughly 44 feet from this other line, which the railroad track is the zone line.

MS. DEMILIO: I'm going to object on technicality, Mr. Kellman, and that is I don't know what you're reading from. Is this an exhibit? Is this offered into evidence? Who prepared this? You know, you're looking at this map and you're pointing fingers.

A This was the site plan --

MS. DEMILIO: No, this is your attorney's job to let --

MR. DORF: This is the site plan, all right, that was submitted. I thought we were all agreed we could use the site plan, you could use yours

and I could use this plan.

MS. DEMILIO: I didn't even talk to you about the site plan, Mr. Dorf.

MR. DORF: Well, this is the same thing you used?

MS. DEMILIO: No.

MR. MARINO: No, that is a subdivision next to it.

MS. DEMILIO: You have to put it into evidence anyhow, Mr. Dorf.

MR. DORF: We'll introduce our site plan as exhibit 4.

MR. MARINO: I would object to it being offered into evidence.

MADAM CHAIRPERSON: Right now it's just going to be identified as exhibit 4, I think that would be proper at this point, and you can go ahead and have your --

Mr. Kellman, if you could simply explain or identify what your counsel has noted now as exhibit 4.

A This was a site plan that was prepared for special exception.

MR. MARINO: Mr. Kellman, let me interrupt you for a second so that we all understand each other.

This exhibit is just being offered for identification purposes only at this stage of the game, is that correct?

MADAM CHAIRPERSON: At this stage of the game, that's correct.

MR. MARINO: Okay. Go ahead. I didn't mean to interrupt you.

A So, the question was --

MR. DORF: Well, you know, I know there's three counsel over there, but I already spoke to counsel about the site plans and I was going to introduce this and you were going to introduce this and I stipulated that I wouldn't object to that coming in.

MR. MARINO: Who did you talk about with the site plans?

MS. DEMILIO: Not me.

MR. DORF: Nancy Paige. I said introduce the site plans.

MS. PAIGE: Well, I asked to introduce the site plan and I let my witness go home on the basis that the site plan could be introduced. This is actually an approved site plan.

MR. MARINO: It's not the same site plan, though.

MS. PAIGE: It's not the site plan of the property, it's the site plan of the adjacent property.

MR. DORF: All right. It was my understanding we were both going to introduce site plans.

MADAM CHAIRPERSON: It won't really matter right now. I guess all you have to do is go ahead and make your record. I don't see any prejudice to you right now, Mr. Dorf.

Q Explain where the monopole is.

A I forgot what the question was.

Anyway, the distance of the monopole to the DR-5.5 zone line is 44 feet.

MADAM CHAIRPERSON: You know, I'll tell you, I'm going to interrupt right now because we're not even on the track anymore. We've already jumped.

Mr. Kellman, if you'll permit me for a second, I'm just going to ask you simply to go ahead and identify what that is for us.

THE WITNESS: Okay.

MADAM CHAIRPERSON: What exhibit 4 for identification is.

THE WITNESS: Okay.

Q What is it?

A This is the plan to accompany petition for special exception and variance that went before the zoning commission.

Q Who developed it?

A Who developed the site plan was Daft-McCune-Walker.

Q All right. Who is Daft-McCune-Walker?

A Daft-McCune-Walker is a private engineering company.

Q What was the purpose of the site plan?

A The purpose of the site plan was to submit to the zoning Commissioner for the special exception and the variances.

Q All right. Explain what the special exception and the variances are as to this monopole.

A The special exception is to permit a tower in any ML zone that is closer than two hundred feet to the residential zone. The variance is to permit property line setback of three feet.

Q Is that necessary for this location in order to build this tower?

A Yes, it is.

Q And you're familiar with the fact, you heard the testimony there were other sites that were looked at that were not feasible, is that correct?

A That's correct.

Q Why is this site feasible?

A This site was feasible -- I can't go into explaining what the leases were, but this was -- the property owner was willing to lease the property for this tower.

Q Why was it feasible as far as the zoning aspect was concerned?

A Because of the ML zone.

Q Now, the only problem then is the setbacks, is that correct?

A Yeah.

Q Therefore you need a special exception, is that correct?

A You need a special exception.

Q Therefore under the law you've got to have certain criteria for a special exception?

A That's correct.

Q Are you familiar with these criteria?

A Yes.

Q What are they?

A The criteria?

Q Yes.

A That they're not going to be detrimental to the community, not to create traffic.

Q All right. Let me go though 502.1 with you then. The first one you said is not detrimental

to the health, safety and welfare of the community, is that correct?

A Yes.

Q Would it create any detriment to the health, safety and welfare of the community?

A No.

Q Would this tend to create any congestion of roads, streets or alleys?

A No.

Q Would this tend to create a possible hazard from fire panic?

A In my opinion, no.

Q Would this tend to overcrowd the land and cause undue concentration of the population?

A No.

Q Would this interfere with any school, parks, water source, transportation or other public requirements, conveniences or improvements?

A In my opinion, no.

Q Would this interfere with any light or air?

A In my opinion, no.

Q In your opinion, would this be consistent or inconsistent with the purposes of the property zoning classification and would it be consistent or inconsistent with the spirit and intent of the zoning regulations?

A I think it would be consistent with the ML zoning.

Q Why?

A Because if you were to locate a tower, propose to locate a tower in a DR zone or an RC zone, which requires a special exception, you have to make a diligent search that you tried to find property that was zoned business or manufacturing.

Q All right. Would this in any way be consistent or inconsistent with the surface, protecting the surface and vegetation provisions of the zoning regulation?

A Consistent.

Q Are you aware of the history of the zoning on this piece of property?

A I'm aware that this property did have a rear setback variance.

Q What is the history? Would you tell The Board exactly what the history of it is.

A They had --

MR. MARINO: Objection. I believe the record states that -- I think the plan says it has a side yard setback variance.

Q All right. Has there been any prior zoning history on this piece of property?

A Yes.

Q What is the prior zoning?

A There's been a setback.

Q All right, go ahead.

A You want me to recite the case?

Q Yes.

A Okay. Zoning case 64126-A.

Q And what was the case relative to?

A It was to permit a front building line of 25 feet in lieu of the 75 feet, to permit a side yard of 30 feet in lieu of 50 and it permitted structures

to be located 58 feet from the nearest residential zone boundary in lieu of 25 feet.

Q Were these variances approved by the zoning commission?

A Yes, they were.

MADAM CHAIRPERSON: What was the third one?

THE WITNESS: I can read it right off the plan for you. "A variance from section 255.1, proximity of structures to residential zones. To permit a structure to be located 58 feet from the nearest residential zone boundary line instead of the required 125 feet."

MADAM CHAIRPERSON: Okay. So, you've got a side yard setback variance, front yard setback variance and just sort of a general --

THE WITNESS: General because of residential zone boundaries.

MADAM CHAIRPERSON: Okay.

Q All right. Your firm also, Daft-McCune-Walker, also prepared an environmental

impact statement on this piece of property, is that correct?

A That's correct.

Q Are you familiar with the environmental impact statement?

A Yes, I am.

Q Can you tell me what this statement says in your own words.

A In general, if I could state it in a few sentences, that the proposed --

MR. MARINO: Objection. Mr. Kellman's been admitted as an expert in zoning and land planning; he didn't do this statement. It's hearsay to try to admit it otherwise, to sponsor it, and I don't think his credentials, I don't think at least he's been submitted to, if you want to revoir dire him, but he's not been submitted as an expert, so we can't cross-examine him on environmental impact statements. I can't cross-examine this piece of paper.

Q Have you done any work on environmental

impact?

A I have not prepared environmental impact statements, no.

Q Have you done any work, in your capacity of the various positions that you've held with the Baltimore County government, have you been involved with environmental impact statements?

A Yes, I've reviewed them.

MR. MARINO: I would object. That's irrelevant.

MS. DEMILIO: That's irrelevant.

MADAM CHAIRPERSON: What, if any, involvement do you have with the preparation of this particular environmental impact statement?

THE WITNESS: I did not prepare the environmental impact statement.

Q Well, based on your knowledge of the property and based on your knowledge of the area here, is an environmental impact statement necessary?

MR. MARINO: Objection. It's beyond the scope of his expertise.

MADAM CHAIRPERSON: No, the question now is, is the environmental impact statement necessary. That's a proper question, I think.

A The zoning code states, in 502.7, that the environmental impact statement is required in the RC and DR zones, not in manufacturing business zones. So, it's not required.

Q So, technically, it's not required?

A No.

Q Okay. All right. I won't get into more than I have to.

MADAM CHAIRPERSON: At this point the environmental impact statement is not being offered into evidence?

MR. DORF: No.

MADAM CHAIRPERSON: That's fine.

Q Take a look at this property on the zoning. How would you describe this property as far as property that would be subject to special exception?

A Triangular in shape. Not an exact triangular, but it's triangular in nature.

Q Well, is this a particular type of piece of property? Why are variances unavoidable in this specific piece of property?

MR. MARINO: Objection.

A It's a unique piece of property.

MR. MARINO: What a leading one that one was.

MR. DORF: Let me rephrase it.

Q You're familiar with the laws in variances, is that correct?

A That's correct.

Q You're also familiar with what are the problems considered on granting a variance to a piece of property, is that correct?

A Yes.

Q Okay. Now, is one of these findings of the properties unique?

A Yes.

Q How can you testify that this property is unique?

A Well, number one, variances were granted

on it before; number two, the shape of the property; number three, it is a very narrow property.

Q Let's talk about the shape. Is this property -- does this property have a width of two hundred feet at any location involved with the piece of property?

A No. I mean at the deepest width, it could be up to two hundred.

Q Where would that be?

A At the very end of the property.

Q But it's not two hundred?

A No.

Q Now, is there any way that you could have a monopole zoned on this piece of property without a variance?

A On this piece of property you could not locate a monopole that would meet the requirements.

Q And are you familiar with the zoning regulations as far as special exceptions are concerned?

A Yes.

Q And is it correct that under the law there is a presumption in this type of zone that this is a special exception?

A In this situation, yes, you have to have a special exception.

Q Is there any way to build this without a variance, in this piece of property?

A You couldn't build on this piece of property without the special exception.

MADAM CHAIRPERSON: I don't think that's the question, though.

MR. MARINO: Yeah.

MADAM CHAIRPERSON: The question is --

MR. DORF: I meant to say special exception, not variance.

MADAM CHAIRPERSON: Well, I'm saying that's the two issues.

Can you put a monopole on this property anywhere without requesting a variance? Just the variance.

THE WITNESS: Okay. Variances are

required for the underlying bulk requirements, okay, the requirements as far as the setbacks in the ML zone, okay? The special exception is required because this tower will be located closer than two hundred feet to a residential zone. Nowhere on this site can you locate a tower that will be at least two hundred feet.

MADAM CHAIRPERSON: Right. I understand all that. I'm saying the bulk issue, that's the question.

THE WITNESS: The bulk issue, yeah, you could put it on there and have the site meet the requirements.

MADAM CHAIRPERSON: Where could you put that and satisfy that? Where could you put it on that property?

THE WITNESS: The corner right here. And that is just the variance. You would still be required to have special exception.

MADAM CHAIRPERSON: I understand. That's not the question. You're saying no matter where you

put it, you have to have a special exception here in this case?

THE WITNESS: Exactly.

MADAM CHAIRPERSON: The question I had was, what do you do to get rid of the bulk standard issue? Can you put it somewhere and get rid of the bulk standard issue?

THE WITNESS: You can float it through the property where it's going to meet the setbacks.

MR. MARINO: Excuse me, I didn't hear that answer.

THE WITNESS: You put it within the permitted building envelope that would meet the underlying zoning requirements.

Q Do you know why that hasn't been done here? Are you aware?

A No, I'm not. I don't know what the dealings were with the property owner.

MR. DORF: We'll have further testimony on that.

All right, witness with you.

CROSS-EXAMINATION BY MR. MARINO:

Q Mr. Kellman, I'm just going to clean this up because I think I know, I understand what the thrust of your testimony was.

Initially you testified that the only problem that this site has is it needs a special exception when, in fact, there is a pending request for a variance here too, is that correct?

A That's correct.

Q So, there are two issues before us.

In 1964, when the previous variance was granted, that allowed the building to be built, is that correct?

A Yes. As far as my knowledge, yes.

Q And the building line on this site plan indicates that the line is very close to the -- it's almost like a zero clearance lot line building, is that correct?

A That's correct.

Q And but for the fact that the building wasn't there, if this were vacant land, you wouldn't

need the variance, would you?

A You wouldn't need a variance because nothing's proposed. Are you talking about for the building?

Q If the building had not been constructed, you wouldn't need the variance --

A For the tower, no.

Q The fact is, the reason the variance is being requested is because the building exists?

A Right.

Q Which was previously the subject of a previous variance having been granted in 1964 from the zoning commission?

A That's correct.

Q And the petitioner in that case, I believe, was Mr. Witmyer, is that correct?

A I'm not sure. I believe so.

Q Now, this building is still up and it's functioning, is that correct?

A That's correct.

Q It's a currently functioning building?
A Yes.
MR. MARINO: That's all I have, Mr. Kellman.
BY MS. DEMILIO:
Q Mr. Kellman, did you visit the site?
A Yes, I did.
Q You keep talking about a building on the site. What is it currently used for?
A Light manufacturing use, chemical.
Q And in the area that is being considered for this special exception request, is that being used for anything at this time?
A I think it's used for parking, loading.
Q In conjunction with the light manufacturing use on the rest of the site?
A Yes.
Q And that's permitted, as far as you know?
A That use, yes.
Q That's permitted. So, the entire site at this moment is being used for light manufacturing?

A Right. The use complies with the zoning.

Q Now, when you talked about the preference for a manufacturing -- to identify a manufacturing site for a wireless transmitting, you're familiar with section 426 of the zoning regulations which address wireless transmitting and receiving structures?

A That's correct.

Q And you will agree that in the same category as manufacturing zones are O2 zones, which are office park zones?

A Yes.

Q So, those are also permitted by right?

A Right.

Q And OT zones, they were called office and technology?

A Yes.

Q So, they're permitted by right if they comply in those zones?

A That's correct.

Q And in all business and manufacturing zones?

A Yes, sir.

Q So, it's not just the ML zone?

A Not just the ML.

Q So, it would be all the manufacturing zones, all the business and the OT and the O2, is that correct?

A Yes.

Q Now, but this site does not qualify for that by right because it cannot meet the two hundred foot setback from a residential zone --

A Right.

Q -- is that your testimony?

A That's right. That was why it was submitted for special exception.

Q So, section 426, then, wouldn't give this particular property owner any rights whatsoever. He would fall under the special exception under the manufacturing section?

A It gives him the right to file for special exception.

Q Right.

And in addition to the two hundred foot setback that's not complied with, which makes it a special exception, this petitioner is also asking for a variance under the special exception under the manufacturing zone, is he not?

A He's asking for a variance to the manufacturing zone requirements.

Q So, he doesn't comply with the bulk regulations?

A Right.

Q And then he doesn't comply with the two hundred feet from a residential zone which would give him a right by -- a use by right?

A That's right.

Q Just so we have that clear on what's -- all right.

All right. And then under 427.1C, in order to have a use by right, you also need Environmental Protection Agency standards and guidelines that must be met, is that right?

A That's correct.

Q And so far that hasn't -- of course, that isn't in this case at all and there's no evidence that they would have met it in this case because that's --

A The environmental?

Q Right. That document --

A That's going to be up to the RF engineer.

Q But that's not admitted right now?

A Not right now.

Q So far, then, they wouldn't even comply with that requirement? That has to be --

A That has to be complied with and I assume that if they were issued a license to operate, they would have to comply with those standards.

MS. DEMILIO: Okay. I have no other questions.

MR. MARINO: One further question.

MADAM CHAIRPERSON: That's kind of out of turn at this point.

MS. DEMILIO: Do you want me?

Q I think -- all right, Mr. Kellman. On the site plan --

MS. DEMILIO: And the site plan is only for identification purposes, are we all aware of that?

Q -- there's something indicated future growth. Are you familiar with that, those notations on the site plan?

A They were going to add some extra cabinets, put the cabinets there, equipment cabinets, to support the monopole.

Q Is that included in this request?

A Yes.

Q So, it's future growth for the current petition?

A Yes. The intent -- Baltimore County, as you had stated before, in revising their zoning regulations to these wireless receiving structures and the focus of the county is to co-locate. So, if there are any co-locators, you have to put some additional cabinets in the area that's approved for special exception.

Q Well, Mr. Kellman, did you prepare this site plan?

A Did I prepare it? No.

Q Did someone prepare it under your direction?

A Under my direction? No.

Q Well, you didn't prepare it and no one prepared it under your direction and you're here from Daft-McCune-Walker, as an employee of Daft-McCune-Walker?

A Yes.

MS. DEMILIO: I'll say that, but would The Board just bear with me one moment.

A I --

You answered the question, Mr. Kellman. Thank you.

MADAM CHAIRPERSON: The cabinets you're talking about right now, they are not needed for this erection of this monopole; they are needed, you're saying, to erect a monopole adequate for additional uses of other people that want to latch onto this monopole?

THE WITNESS: I don't want to get into the

technical aspect because I don't know functionally or technically how these structures operate, whether one cabinet is needed or --

MADAM CHAIRPERSON: I'm just asking, you don't know then what, if any, of these cabinets are needed for future growth?

THE WITNESS: No. I will refer back to the engineer.

MADAM CHAIRPERSON: That's fine.

Q Pursuing that, Mr. Kellman; so, the area that -- just so we can clarify this. The area on the site plan that is dotted, that has two cabinets in it, is for the current use. The area of that rectangular box with white space is designated for future growth for cabinets. In your opinion as a land planner, would that future growth also require a variance and special exception for this site?

A No.

Q There would be no further variance?

A No.

Q So, it can come in as a matter of right

then, you're saying, and you can add to this use?

A And I'm saying that from past experiences in approving that in the zoning office when I worked there.

Q But you're not saying that's what the zoning regulations say?

A No, my interpretation of the zoning regulations.

Q In the permit office, that was their interpretation, but that's not necessarily what the zoning regulations require, will you agree with that?

A The zoning regulation would be a very gray area. I think in keeping consistent with the zoning regulations it would be permitted.

Q You think that, but it doesn't say that in the zoning regulations?

A No.

MS. DEMILIO: I have no further questions for Mr. Kellman.

REDIRECT EXAMINATION BY MR. DORF:

Q Your Honor, the question that was asked

about 426 wireless transmitting, I'm not trying to submit hairs, but he's testified that wireless transmitting receiving structures are permitted by right, is that correct --

A That's correct.

Q -- under 426, subject to the following restrictions, and one restriction is B, which is the minimum setback from any boundary or residential zone shall be two hundred feet --

A Right.

Q -- and that makes it necessary to do what?

A Special exception.

Q For special exception.

MR. DORF: I would -- it's my understanding that this map is part of the file that you all have.

MADAM CHAIRPERSON: Again, we understand that may or may not be so and we may have it, but they were very clear to state that it is a de novo hearing and they are expecting evidence to be admitted here,

period.

I also know that it still is your task, according to what I think was people's counsel's statement, but it's their indication is they are expecting each of those bits of evidence to come properly into evidence in this case today and not just having it roll over. It will sit here as part of the file, but it will be here as part of the file, not as part of our exhibits, unless or until it's entered into evidence.

MR. DORF: Well, then, I'll enter it into evidence at this time as the next exhibit.

MR. MARINO: I'll object.

MADAM CHAIRPERSON: I'm going to sustain at this point because you don't have the proper witness right now and it looks like you do have a witness that will be able to do that later, but, you know, this gentleman said he didn't observe it, he didn't oversee it, he didn't do anything with it and I will right now sustain the objection. I'm going to gather you will have an engineer who can speak to

that.

MR. DORF: All right.

All right, no further questions.

MADAM CHAIRPERSON: I don't think that led to any opportunity for recross, particularly.

Okay, thank you very much.

Your next witness.

MR. DORF: Your Honor, at this time there's been some questions asked about some future growth and I recall, for an explanation of it, Mr. Yglesias back to the witness stand. He can answer that one question; it might clear up a some things.

MADAM CHAIRPERSON: Okay.

MICHAEL YGLESIAS,

a witness for the petitioners, previously sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

REDIRECT EXAMINATION BY MR. DORF:

Q You're under oath.

A Right.

Q Explain what the story is there.

A Based on the site plan here, the way it's drawn, for future growth what we have, for example, is when we need to add extra radios to this cabinet, the way our equipment is set up, we have other equipment cabinets we can sit beside them to add other radios and that's all this is designed for is for AT&T Wireless's use. It's not to add -- I don't know what you're thinking.

Q It's just a cabinet?

A It's a cabinet, about seven feet tall, the size of a refrigerator, basically. It's an air conditioned unit with a transmitter and a receiver in it, is what these are for, and what it's for is that if we need extra capacity, we already have that zoned in and we just drop in a new cabinet at the location.

MR. DORF: Any questions?

MR. MARINO: No questions.

RECROSS EXAMINATION BY MS. DEMILIO:

Q Mr. Yglesias, so you're contradicting Mr. Kellman who said that it was for future attachment onto the tower? Is that what you're saying? You

dispute Mr. Kellman's testimony.

MR. DORF: He didn't say it because he didn't know what it was.

MADAM CHAIRPERSON: That's what Mr. Kellman said. That's why I asked him.

MS. DEMILIO: And I object to Mr. Dorf answering the question I asked the witness.

Q Just answer yes or no. Do you dispute Mr. Kellman's testimony as to what he indicated that future growth would be, yes or no? It's a yes or no answer.

A I didn't hear exactly what he said.

Q Mr. Kellman said that the future growth is proposed for additional towers -- attachments onto the tower, the AT&T tower that's presently being requested.

A This equipment does attach to the tower. It 'll have cable runs coming down from it.

Q So, it could be for a user other than this user?

A It's for this user. It's for AT&T.

Q And not an expansion?

A No, it's for AT&T's expansion, not anybody else's.

Q So, you dispute then Mr. Kellman who said that the policy of the county now is to attach or add to towers other users to the same towers. That's what he said. Are you disagreeing with his testimony then, yes or no?

A It could be for a second -- if we wanted to, we could use this for another carrier also. I'm not going to dispute it, it's versatile. It can be for our own use or another carrier.

Q So, it could be for some other carrier?

A It could for somebody else also, yes.

MS. DEMILIO: I have no other questions.

MR. DORF: Mr. Oakleigh Thorne.

OAKLEIGH THORNE,

a witness for the petitioners, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION BY MR. DORF:

Q Would you state your full name and your company.

A My name is Oakleigh J. Thorne. Oakleigh is O A K L E I G H, initial J, last name Thorne, T H O R N E. I'm the principal in a company called Thorne Consultants, Incorporated, in Kensington, Maryland, in Montgomery County.

Q What does this firm do?

A We're a real estate appraisal and consulting firm.

Q How long have you been in the real estate appraisal and consulting?

A Since 1965, or about 32 years.

Q All right. I am submitting at this time your curriculum vitae and your background that you gave to me, is that correct?

A Yes, that's correct.

MR. DORF: Okay. And based on this curriculum vitae and based on what you've just testified to, the number of years, I would offer him as an expert in land development and valuation,

valuation of properties.

MR. MARINO: He's a certified appraiser.

Q Now, have you visited the site?

A Yes, I have, twice.

Q Are you familiar with the site?

A Yes, I am.

Q All right. Are you familiar with what AT&T is preparing to do as far as building a monopole on this site?

A Yes. I know the pole location and I've inspected the site plan in the neighborhood.

Q Do you have an opinion, based on your expertise, based on your qualifications, do you have an opinion as to whether the property value of this area will be affected by building this monopole?

A They will not be affected in any way with regard to the proposed development of this monopole.

Q Why do you say that?

A We recently completed a study in Baltimore County at the Bais Yaakov School for Girls, as well as four additional studies of monopoles of lower heights

elsewhere in Maryland and one in Virginia.

Q And what did these studies reveal to you?

A That monopoles have absolutely no effect on property values.

Q Now, where is Bais Yaakov? Bais Yaakov was pointed out before, is that correct?

A They are just up Park Heights Avenue, across Reisterstown Road and north about perhaps a mile or two, two miles.

Q Just about a mile or two from this location?

A That's correct.

Q And that's where your study was done, is that correct?

A That's correct.

Q All right. And you say that property areas in this -- property values in this area will not be affected if in fact The Board allows this pole to be built, is that correct?

A That's my professional opinion.

MR. DORF: Okay, witness with you.

CROSS-EXAMINATION BY MR. MARINO:

Q Mr. Thorne, you are aware that there is an apartment project adjacent to this subject property, apparently right around here, is that correct?

A On the south side of the property, that's correct.

Q Did you do any study as to the economic impact of that project when you -- let me strike that.

When you did your study, did you study any economic impact that this mono -- this tower would have specifically on the Brittany Apartments?

A I did not discuss specifically this location, that's correct.

Q How about any other apartment projects?

A We've appraised other apartment projects in Prince George's and Montgomery County that had visibility to monopoles and it doesn't have any effect on the rental income on those rental properties.

Q How about poles that are within 180 feet of the apartment buildings themselves for residents, do you recall whether your studies included any of

those?

A I can't recall specifically the dimensions or the distance from the poles to the apartment buildings.

Q And it's not unlikely that apartment residents and potential tenants, when given the opportunity of living next to a pole, would choose a building -- the preference would be to choose a building further away, is that a fair statement?

A Frankly, I think the railroad has a far greater effect on property values than the monopole.

Q Bear with me. The question is, when given the opportunity, is it a fair statement to say that an apartment resident or potential tenant would choose a building further away from the pole and not closer to the pole?

A That's not been our findings in appraisals of other properties.

Q Have you studied that specific phenomenon?

A Only to the extent that we have rental information that doesn't appear to be any high

vacancies or any lower rent because those tenants have either a visibility or proximity to monopoles.

Q Okay. But have those studies included incidences where the pole was within 180 feet of the rental unit in question?

A The poles have been approximate, but the distances, I at this point cannot respond to that question.

MR. MARINO: Okay. No further questions.

CROSS-EXAMINATION BY MS. DEMILIO:

Q Are you saying, Mr. Thorne, you didn't consider distance in your study?

A Yes, we did.

Q Well, what was the distance considered in the study then? What were the criteria?

A Certainly visibility and reasonable proximity of the poles. They could have been within two hundred feet, three hundred feet, they could have been within a hundred feet.

Q But you don't know?

A I know, but I can't recall at this point

because I don't have those appraisals in front of me at this point.

Q So, those appraisals could be totally irrelevant to the subject site and the surrounding property because you can't testify as to the distances in the study?

A What we found is that --

Q No, just answer the question. Mr. Thorne, answer the question.

A I would like to answer the question.

MADAM CHAIRPERSON: Well, as a technical matter, Mr. Thorne, Mrs. Demilio is entitled to a yes or no answer. Then after that point, if you feel a need to explain something, I'll even permit it in cross right now.

A Would you please rephrase the question.

Q No, I won't rephrase it; I'll try to repeat it.

If you can't recall the distance requirements in the studies that you conducted, then those studies could very well be irrelevant to the

subject site?

A No.

Q But you don't know the distances, that's your testimony today, yes or no?

A That's correct, yes.

MS. DEMILIO: I have no further questions.

REDIRECT EXAMINATION BY MR. DORF:

Q Would the distances be pertinent or the visibility be pertinent?

A Frankly, visibility and/or distances is not relevant. People, basically, generally, do not notice these poles once they're up and in operation.

Q You said there were some other problems contiguous to the Brittany Apartments which would be more detrimental to a person renting than this pole. What would that be?

A Actually, the rail line is an active freight line running into Baltimore. We've done some CSX appraisal work. Although that's not a CSX line, that is a heavily used freight, heavy rail line, with freight traffic, and I know for a fact that there are

some issues of vibration and noise that go far beyond the presence of the pole, which is a silent neighbor.

Q And as an expert and a person valuing property, would this be more detrimental to someone purchasing property or renting property, to have the noise and the train and the vibrations, than to have a pole?

A Certainly the rail line is a greater issue than the presence of the monopole.

MR. DORF: Thank you.

No further questions.

MADAM CHAIRPERSON: Thank you very much, Mr. Thorne.

Q Wait a minute.

There's been some mention of a flood area. Are you aware whether this is in a flood area or not?

MS. DEMILIO: I'm going to object. I'm objecting. That should have been asked on direct, it wasn't and this is, I guess, redirect. Where are we here?

MADAM CHAIRPERSON: We're on redirect

right now.

Q Well, let me ask this question. Are there any other problems in that area we just talked about on redirect with the problem of the railroad? Are there any other problems with the railroad in that area that would be detrimental more so than the pole?

MS. DEMILIO: Objection.

MADAM CHAIRPERSON: I'm going to overrule at this point simply because I think there are some technical ways to perhaps get around that and I think this board would rather find out answers at this point than stand on ceremony.

So, go ahead, Mr. Thorne.

A The only -- first, I have not reviewed flood plain maps, but I have inspected the property and there is a storm water sluiceway that looks to be rather large. There appears to be some evidence of prior flooding, but I can't attest to it. It certainly is a low point in the property.

MR. DORF: All right, thank you.

Mr. Neubauer.

PETER A. NEUBAUER,

a witness for the petitioners, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION BY MR. DORF:

Q State your full name and your position.

A My name is Peter A. Neubauer. I am a structural engineer with the firm Neubauer Consulting Engineers, PA, out of Potomac, Maryland.

Q All right. Would you tell The Board members, would you describe the monopole that we're talking about and the apparatus and explain whether its installation is safe and so forth.

A This monopole is a 170 foot tall monopole. That type of tower is, roughly, circular in cross-section. It starts at the base about four feet in diameter and tapers up to two feet in diameter at the top, on which antenna are hung. In this case, the antenna will be hung all in the top 20 feet. The pole is made out of high strength structural steel, with reinforced concrete foundation and the entire design,

as well as the construction is governed by the Electronics Industry Association's 222 code, which is referenced by the BOCA code here in Baltimore County, which is in effect.

Q Have you seen these poles been put up anyplace else?

A Yes, sir.

Q Have there been any problems with these poles of any kind?

A Not from a structural standpoint, no, not to my knowledge.

Q Is there any chance of this pole being blown over by any wind or will any other elements affect the pole in any other way?

MR. MARINO: Objection.

A No. The fact that --

MADAM CHAIRPERSON: Wait, wait, wait, wait.

MR. MARINO: I never heard this witness be -- I mean I'm waiting for the opinion and I'm as close to it as I'm going to get. So, that's the reason why

I objected.

MADAM CHAIRPERSON: Right now you have not offered this gentleman as an expert witness.

MR. DORF: All right, let's go back.

MADAM CHAIRPERSON: Do you have a resume or a CV?

THE WITNESS: No, I don't.

Q Do you have one with you?

A No, sir.

Q Go into your background.

A I have a bachelor's of engineering degree from Vanderbilt University and I have been a practicing structural engineer for the last 11 years. I'm a registered professional structural engineer in the state of Maryland, as well as six other states. My office is -- my primary duties in the office revolve around structural consulting with respect to radio towers. Our office attended to probably fifty odd individual towers per year.

Q What companies do you represent?

A We represent Nextel, we've worked for

Motorola, MCI, Bell Atlantic Mobile, Nextel and various other -- we've also worked for small radio and television broadcast companies around the country.

Q Have you ever been qualified as an expert?

A Yes, sir.

Q In which field?

A Structural engineering.

Q In which courts or which tribunals?

A In Harford County, Carroll County, Baltimore City and Baltimore County.

MR. DORF: I submit Mr. Neubauer as an expert in structural engineering.

MADAM CHAIRPERSON: The Board accepts him as an expert in structural engineering.

MR. DORF: All right.

A With respect to the question earlier, that the collapse of the monopole is not a concern and is not a worry, simply for the fact that it complies, its design and construction complies with the building code, the build code is not there in place to insure that things fall down, it is there in place to insure

that they stay up.

In addition, the method should any -- well, let me backtrack. The design wind speed for this -- for Baltimore County, as far as the EIA 222 code is concerned, is 75 miles an hour, which this pole has been designed to withstand.

In addition, the code is very conservative because it escalates the wind speeds as the height of the tower increases. For example, about 150 feet up on this tower, the wind speed would actually be about 93 miles an hour, as far as the structural design is concerned.

It is further conservative in the fact that for monopoles the code requires a 70 percent increase in the loads applied to the tower, wind loads applied to the tower. Using the same example I gave before, that 93 miles an hour, which started at 75 close to the base of the tower, is now up near 120 miles an hour by the time you reach 150 feet.

The wind speeds that are used in the code are based on meteorological data. These represent a

once in 50 years mean occurrence, which, from a statistical standpoint, gives on an annual basis about a two percent chance of this wind speed being reached.

Q As a layperson, is there any chance of this tower being blown over?

A No.

Q You've heard testimony about a two hundred foot setback needed under the law, is that correct?

A Yes, I have.

Q Based on the design and based on your knowledge of this tower and so forth, would there be any problem of this tower falling within that area?

A No. The typical method, should wind speeds be excessive enough to permit the tower to collapse, the tower bends over much like you were bending over a straw, it collapses upon itself. So, therefore, you wouldn't -- there is no need for the setback from a structural standpoint.

Q So, the tower would not fall over over that two hundred foot area?

A No, it does not.

Q It would collapse itself, like break in the middle?

A Fall over on itself, yes.

MR. DORF: Okay. Thank you.

No further questions right now.

CROSS-EXAMINATION BY MR. MARINO:

Q Mr. Neubauer, are you familiar with the types of soils which lie beneath this projected location for the tower?

A No, I'm not.

Q So, you don't know what kind of foundation this tower would be built upon?

A I know the type of -- the foundation, yes, that has been designed for this pole, yes.

Q But when you testified about the structural stability, in fact if the soil types below it are fill or have not been compacted properly, then that would have an impact on the foundation, wouldn't it?

A It would have an impact on the foundation design, yes.

Q And you're not aware if there are any ground water problems beneath this monopole tower either, are you?

A I have no idea.

Q Or any drainage patterns, you can't really talk about those?

A No.

Q You haven't done any studies as to any vibration problem which would exist with regard to this railroad that's going by --

A No.

Q -- its impact on the foundation.

Do you know why there is a two hundred foot setback, Baltimore County zoning regulations require a two hundred foot setback for a monopole tower?

A I don't know the reasoning behind the code. I personally feel it's something just more of a -- just to satiate the public's need for perceived safety, but that's my opinion. I have no idea what they had in mind.

MS. DEMILIO: I have no questions.

MR. DORF: No further questions.

MADAM CHAIRPERSON: Thank you very much, Mr. Neubauer.

MR. DORF: Mr. Bob Denny.

ROBERT W. DENNY, JR., P.E.,

a witness for the petitioners, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

MR. DORF: May Mr. Oakleigh be excused?

MR. MARINO: That's fine, counselor.

EXAMINATION BY MR. DORF:

Q Mr. Denny, state your full name, please, and your occupation.

A My name is Robert William Denny, Jr. I'm a consulting engineering and president of the firm of Denny & Associates, PC, in Washington, D.C. The firm deals with radio communications.

Q All right. Do you want to give us some background. What are you an expert in?

A I am a -- I have a Bachelor of Science in physical engineering from Drexel University. I have been engaged or employed as a communications engineer since 1976. I've been a registered professional engineer for over 11 years. My practice is limited to radio communications issues.

Q You're an expert in RF frequency, is that correct?

A Yes.

Q And you've testified before in this as an expert?

A Yes.

Q And where have you testified, which tribunals?

A I've testified in Baltimore County, Baltimore City, Harford County, Prince George's, Montgomery County, Charles County.

MR. MARINO: I'll stipulate.

MADAM CHAIRPERSON: And you're stipulating to him as an expert in, what is it, RF?

MR. MARINO: Radio frequency.

MR. DORF: Radio frequency.

MADAM CHAIRPERSON: I'm making sure. Is that the area?

THE WITNESS: Radio frequency exposure issues.

MADAM CHAIRPERSON: Right.

Q Rather than for me to start asking questions, give me an idea what this AT&T installation is and does it meet the standards adopted by the FCC and what, if any, detriment is it to the general public as far as radio frequency is concerned.

A The Federal Communications Commission under the National Environmental Policy Act of 1969 is required to evaluate every proposal, not just this one, but every single proposal requiring an FCC license for compliance with the factors that come into play under the act, the NEPA act of 1969.

In this particular instance, the one that I've come to discuss has to do with human exposure to radio frequency energy and the FCC in Title 47 in the telecommunications title and the code of federal

regulations, in section 24.52, requires PCS licensees like AT&T Wireless to construct their base station sites in such a way as they don't cause excessive exposure of the public or to workers at the site to radio frequency energy.

And in section 1 point, it would be, 47, CFR 1.1307B sets forth the criteria for evaluation and the -- basically says that there are limits, maximum permissible exposures for the public and for workers and they are set forth in 47 CFR 1.1310 and I have evaluated this proposal with respect to those applicable maximum permissible exposures and have found that the AT&T base station will result in an exposure of 0.03 percent of the maximum permissible exposure for general population and uncontrolled environments.

Q Your testimony then is, basically, there can be no exposure because of the tower, is that correct?

A My testimony is that there is exposure, but the exposure is so small that it doesn't raise any

concern with respect to meeting the established criteria adopted by the Federal Communications Commission for human exposure.

Q I'm going to let you continue in a minute, but are you familiar with section 332C7 of the 1996 Telecommunications Act as far as whether a state or local government may regulate the placement or construction of a wireless on the basis of environmental effects of radio frequency?

A Yes, I am.

Q What does the Telecommunications Act of 1966, specifically section, I think it's, 332C7 say as to whether or not the -- a local government or a state may regulate the RF frequency?

A Do you want me to recite the section or tell you what --

Q No, recite the section and explain it.

A The section says that "No state or local government or instrumentality thereof may regulate the placement, construction and modification of personal wireless service facilities on the basis of the

environmental effects of radio frequency emission to the extent that such facilities comply with the commission's regulations concerning such emissions."

Q And does this facility, as you've investigated, and in your expert opinion, does this facility comply with the commission's regulations concerning such emissions?

A Yes, it does.

Q So, technically, then, you're telling me that your testimony would not be necessary or required under the Telecommunications Act, is that correct?

A That's correct. And even under the FCC's rules, this facility is categorically excluded from the *environmental* --

Q But it is AT&T's policy to put you on just for your testimony that the emissions here are based on all the qualifications, is that correct?

A That's correct, yes.

MR. DORF: Witness with you.

CROSS-EXAMINATION BY MR. MARINO:

Q Mr. Denny, your calculations were made

based on specifications submitted to you by AT&T on a pole which is yet to be constructed, correct?

A That's correct.

Q So, what you're saying is, if they build it the way they say they're going to build it and operate it the way they say they're going to operate it, then those levels will be as you testified for them to be, is that correct?

A That's correct.

Q And that's kind of a prospective testimony because the pole is not there, so we can't know whether it's functioning within those levels or not, can we?

A We can't measure them, no; we can only analyze them, that's correct.

Q Let's assume for a second that it's properly built, properly constructed and operates within those levels. Given your experience in testifying in these matters, notwithstanding the scientific criteria, is it a fair statement to say that -- and you probably heard testimony to this

extent earlier this morning -- that nearby residents still perceive a harm which is thrust upon them by these types of poles? Is that a fair statement?

A It's not possible for me to tell you what other people are thinking.

Q Well, have you heard the concerns of other people when you've testified in these types of cases?

A Not in this case, no.

Q Not in this case, but I'm talking about in other cases you've testified in.

A What other cases specifically?

Q The other court cases. I don't know how many you've testified in. The other pole cases that you've testified in.

A Well, you know, there are times and it is the greater percentage of the time when there really aren't any concerns or the public is interested in hearing an explanation of the physics and asked a few questions and they're satisfied and it's a very small percentage of the time, actually, where people, after hearing the explanation and reading my report, still

are -- have some degree of concern. So, the bulk of the time the public is either not too concerned or their concerns are addressed in the public hearing.

It's been my experience that the human exposure to radio waves has mitigated somewhat because these phones are becoming ubiquitous and everybody's got one and people aren't dying in the streets and exposure from the base station is thousands of times less than the exposure to the phone itself. And, you know, it's been my experience that it's been more a visual thing rather than an exposure thing and that the exposure is actually just a surrogate for some other irritation.

MR. MARINO: That's all I have with you.

CROSS-EXAMINATION BY MS. DEMILIO:

Q Mr. Denny, I think you mentioned there are some studies that have been done concerning the emissions, is that correct?

A I did an analysis of the potential exposure, yes.

Q But in terms of studies done on long-term

effects, are you familiar with any studies?

A I'm familiar with some studies, yes.

Q What's the time span on those studies? How far back do they go?

A Are you talking about long-term exposure? There have been no studies related to extremely long-term exposures to very, very low levels, such as the ones that we're talking about here. The bulk of the studies involve extremely high level exposures, not exposures like this. So, there really are no -- I didn't understand the question.

Q I'm sorry, maybe I didn't phrase it correctly.

So, there are no studies then that prove that --

A No, no long-term studies, no.

Q When you say extremely long-term, you're talking about within someone's life-span now?

A Within generations, yes.

Q Forgive me if I don't know all the technical jargon, but the standards that you talk

about that the FCC has adopted and implemented, are those particular to the United States or are they universal standards?

A Well, the ones that the FCC has adopted are United States standards. It's actually the FCC rules are an amalgam, if you will, of the NCI triple E C95.1-1992 standards, as well as the National Council on Radiation Protection and Measurement puts out bullet number 119, which was developed under the auspices of the EPA.

The FCC Chairman Hunt let the Environmental Protection Agency lead the way in advising the FCC as to what standard should be adopted and the FCC adopted the EPA recommended standard, which was NCRP standard, and then modified it by adding certain other components.

Q But those standards are all particular to the United States. Do you know of any other countries that have higher standards?

A Well, other standards have -- other countries have different standards. Many countries

have the same standards.

Q Does any country have higher standards?

A There were some Soviet bloc countries that had much higher standards and it's my belief in that regard --

Q I didn't ask you.

A Okay. Well, it's misleading.

Q Well, he can ask you that.

A Okay.

MADAM CHAIRPERSON: I'll let him go?

A I believe that the standards in the former USSR were set so stringent as to preclude any kind of radio transmission whatsoever for political reasons rather than any real biological concern. It was such that in the former USSR a common, everyday garage door opener would not meet their standards.

Q Are those standards still in place in the --

A I don't believe so, no.

Q You don't know for certain?

A No.

Q You don't know?

A They were USSR standards and insofar as the USSR doesn't exist anymore, I guess those standards are not in place.

Q But you're not sure of that?

A Well, there's no USSR anymore.

Q Right, I know, but separate countries could have adopted those same standards, Russia and --

A I'm not aware of any that have, that's the point I'm trying to make.

Q And you're not aware of any that have not been either? You just don't know?

A No, I'm not saying I don't know. I am not aware of any country that has adopted that high a standard. There are countries that have adopted other standards, modified our standards, but they're all pretty much based on a four watts per kilogram and don't offer anything on any kind of biological concern.

MS. DEMILIO: Thank you.

I have no further questions.

MR. DORF: I have no additional questions.

MADAM CHAIRPERSON: Okay. Thank you very much.

Can counsel approach the bench right now.

(A discussion was held off the record.)

ANTHONY J. VITTI, SR., L.S.,

a witness for the petitioners, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

THE WITNESS: My name is Anthony J. Vitti, V I T T I. I'm a vice president with Daft-McCune-Walker, a company that does land planning and the engineering company that prepared the zoning plan.

DIRECT EXAMINATION BY MR. DORF:

Q I'm going to show you the zoning plan which is here. I've got another one. I won't take that off. This was prepared by Daft-McCune-Walker, is that correct?

A Daft-McCune-Walker, yes.

Q How long have you been with

Daft-McCune-Walker?

A I've been with them for eight months.

Q Were you with them when this plan was prepared?

A Yes, I was.

Q Was this plan prepared under your supervision?

A Yes, it was.

Q Are you familiar with this plan?

A Yes, I am.

Q And do you recognize this plan as the one that was prepared under your supervision?

A Yes, it is.

Q Under your direction and control, is that correct?

A That is correct.

Q This was done in the ordinary course of business as to Daft-McCune-Walker for AT&T Wireless, is that correct?

A That is correct.

MR. DORF: We would ask that the plan be

introduced as exhibit 5.

MR. MARINO: Objection. The reason for my objection, really, I didn't know the problem was going to be sponsoring a plan, that came up later on, but -- let me give you the proper cite, Madam Chairman.

Appendix E, rule two, petitions in preliminary view, B50, of the zoning regulations require that in cases where yard setbacks or areas are to be determined, the locations of all principal buildings within the distance of at least two hundred feet from each joint side property line be shown, and in this case that's exactly what we have here, none of those properties are shown on this plan. The plan fails on its face because it really shouldn't have been taken in, but it fails on its face, it's defective on its face and you can't go any further. Absolute requirement under the zoning regulations. This is a threshold issue.

MR. DORF: This is a plan that was submitted to the zoning board and accepted by them.

THE WITNESS: May I approach the plan? I

may have an answer for you.

MADAM CHAIRPERSON: Go ahead.

THE WITNESS: If you take the regulation at its worst, this plan does fail to show the actual building, but we have given the setback to the two closest buildings that are within two hundred feet, one to the closest Brittany apartment building, over here to the west, and the plan shows it to be 180 feet to the residential use that is the building, and to the northeast we have a dimension -- dimension line with an arrow that shows that it's 187 feet to the residential use, which is the closest building up here to the northeast.

MR. MARINO: My response would be, those measurements say what they say, but the code says that you have to measure from the property line, not from the tower and those measurements go from the tower. Notwithstanding that --

MADAM CHAIRPERSON: Is that right, Mr. Vitti, they go from the tower?

THE WITNESS: Yeah, they do go from the

tower.

MR. MARINO: Notwithstanding that, the properties to the north aren't shown. They're not indicated at all. It's a total blank.

MADAM CHAIRPERSON: I will say this, and I think Ms. Demilio knows this, this is a disfavored objection. Having said that, this is a case, obviously, of serious import and everybody is held accountable for the rules. What I'd like to do right now, I'm going to reserve on that. So, nobody's prejudiced in terms of proceeding today. I would like -- I want an opportunity to look at the law again and also see if we can't do something crazy and look at the underlying purpose of the law and see if that's been met as a practical matter or not.

MR. MARINO: Fine.

MADAM CHAIRPERSON: So, Mr. Vitti would not need to be recalled and I would conditionally right now accept this as entered into evidence, but it's going to be conditional because we do have to explore whether or not there has been compliance with

the appendix E rules. And I guess on the break it may be a good idea for Mr. Dorf to be, make sure he has a copy of the rule in question. And that is the only actual violation is the -- you said there's a bunch of them in there.

MR. MARINO: Excuse me?

MADAM CHAIRPERSON: That's the only one you're raising is that --

MR. MARINO: There are a bunch of structures there.

MADAM CHAIRPERSON: I understand. That's why I'm asking.

MR. MARINO: Yeah.

MADAM CHAIRPERSON: Okay.

MR. MARINO: Frankly, Madam Chairman, it was brought to my attention this morning because we have the development plan of a neighborhood directly north of it, scaled it off and clearly it just popped out.

THE WITNESS: I need to add two items, if I might.

MADAM CHAIRPERSON: Well, there's no question right now, but let me --

MR. DORF: May I ask a question?

MADAM CHAIRPERSON: Is this in response to his objection?

MR. DORF: Is this part of the plan, this whole diagram down below?

MR. MARINO: That misses it too.

MR. DORF: It misses what? It shows everything there.

MR. MARINO: No.

MR. DORF: It does not show businesses?

THE WITNESS: Right there, total blank. In addition, the measurements are taken from the wrong line.

MADAM CHAIRPERSON: I understand, although mathematically we might actually go figure that one out.

MR. MARINO: Yeah, but --

MADAM CHAIRPERSON: I understand. I understand what you're saying and I know it could be

wrong.

MR. MARINO: 50 feet off.

MADAM CHAIRPERSON: Yeah.

MR. MARINO: That's my only observation.

THE WITNESS: I was just going to point out that most of the buildings are zoned on the portion of the zoning map that we have attached to the plan. It appears that -- well, I'd have to take a closer look at their site plan. It appears that maybe one of the buildings is missing, but certainly the Brittany Apartments to the southwest are on this plan, which is part of the zoning plan.

MR. MARINO: Okay.

MADAM CHAIRPERSON: All right. Thank you, Mr. Vitti.

MR. MARINO: No questions, Madam Chairman.

MADAM CHAIRPERSON: What we will do then is we will recess until about five after 1 and we'll go ahead with --

That closes your case in chief, Mr. Dorf?

MR. DORF: Yes.

MADAM CHAIRPERSON: Okay.

MR. MARINO: We'll be ready.

MADAM CHAIRPERSON: Okay.

(Luncheon recess.)

MADAM CHAIRPERSON: Go ahead with your first witness.

MR. MARINO: My first witness is Helen Fox.

HELEN FOX,

a witness for the protestants, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION BY MR. MARINO:

Q Mrs. Fox, could you state your name and address for the record, please.

A Helen L. Fox, 4 Deauville Court, Pikesville, Maryland.

Q How are you employed, Ms. Fox?

A I'm leasing manager for the Brittany Apartments.

Q How long have you been the leasing manager

for the Brittany Apartments?

A About 11 years.

Q How long have you been in the property management business?

A About 25 years.

Q Has that been in the residential area?

A Yes.

Q In apartments?

A Yes.

Q Are you familiar with the site adjacent to the Brittany Apartments?

A Yes.

Q And can you see the entrance of the -- I'm going to call, for the purposes of this dialogue, this area, which is your neighborhood, the subject property so that you understand what I'm talking about.

MADAM CHAIRPERSON: And for the record, indicating --

MR. MARINO: The pole tower --

MADAM CHAIRPERSON: Location, right.

MR. MARINO: -- which is the subject of

this petition for zoning request.

Q Now, can you see the subject property from the entrance of your property?

A Yes.

Q Can you come up and point to The Board the entrance, and what I mean the entrance to your property, I mean the entrance to get into the Brittany Apartments.

A Where you come off of Old Court Road onto Greenwood Road, you come down a tree-lined area here. This is the entrance into our leasing office and this is where the tower is.

Q Do you want to point so The Board can see.

A This is the entrance to our leasing office; this is where the proposed tower is, directly across.

Q That's your driveway?

A At the end of our driveway.

MR. DORF: Could you put an X where the leasing office is.

THE WITNESS: Right here, this building.

Q And there are three apartment buildings on Deauville Court, is that correct?

A Yes, there are three buildings.

Q What's behind here? What's behind the Deauville Court --

A More apartments.

Q How many apartments are in this job?

A 210.

Q What, if any, impact to the current tenant population does the prospect of this tower have?

A I've spoken to --

MR. DORF: I would object to what possible impact it may have to whom and when, how.

MR. MARINO: I'll rephrase it.

MADAM CHAIRPERSON: I'll sustain it.

Q What, if any, impact have you heard -- what, if any, complaints have you heard from the current tenant population about the prospects of this tower?

MR. DORF: And I would object. Anything she heard would be hearsay.

Q What is your knowledge of your tenant population with regard to the prospect of this tower?

MR. DORF: Again I would object.

MR. MARINO: It's firsthand, it's her knowledge.

MR. DORF: Well, I would like him to lay a foundation. I don't know if she's even talked to anybody.

MADAM CHAIRPERSON: How many tenants do you have right now?

THE WITNESS: We're 98 percent.

MADAM CHAIRPERSON: 98 percent leased? How long have you been 98 percent leased? Is that a typical, I mean, status for you?

THE WITNESS: Yes.

MR. MARINO: I'll be glad to get into it.

Q Do you live on the property, Ms. Fox?

A No.

Q Do you attend there every day?

A Yes.

Q Do you have everyday, day-to-day

interaction with your tenants?

A Yes.

Q Can you describe how that interaction occurs.

A They either come into the leasing office or they phone the leasing office or I'm out on the site and see them.

Q Based on your interaction with your tenants, what is your -- to your personal knowledge, what, if any, impact will this tower have upon your current tenants?

MR. DORF: Objection.

A They're very unhappy.

MADAM CHAIRPERSON: I'm going to sustain that because we're still in an area of speculation and you haven't qualified her as a soothsayer or something that's, you know, going to know --

MR. MARINO: That's fine.

MADAM CHAIRPERSON: -- what's going to happen.

Q During the course of your duties as the

resident manager there, do you have interaction with the current tenants?

A Yes.

Q Do you monitor the tenant complaints?

A Yes.

Q Have you received any complaints?

A Yes.

Q What, if any, complaints have you received?

A I've received numerous complaints from residents about the proposed tower.

MR. DORF: I'd like a foundation.

You mean they just walk in?

MR. MARINO: Well, if you let her proceed, she'll tell you how it happens.

A They read the paper, they watch television, they saw the balloon being flown where the proposed tower would be and based on that they called the office. Or I've seen them out on the property or they come into the leasing office.

Q Has anybody come in and voiced a positive

opinion about this prospective tower?

A No.

Q You've gotten nothing but complaints?

A Correct.

Q What is the nature of the complaints that you have received?

MR. DORF: May we narrow it down as to who came in, identify the person before we get to complaints.

MADAM CHAIRPERSON: That's fine.

How many complaints are you talking about?

THE WITNESS: Between fifty and a hundred.

MADAM CHAIRPERSON: That's a big gap. Are they all by telephone or do people do written complaints? Do you have a procedure for filing complaints?

THE WITNESS: We have people who call in, people that I see when I'm out on the property walking around and people who come into the leasing office.

MADAM CHAIRPERSON: So, you've had face-to-face and telephone?

THE WITNESS: And telephone, correct.

MR. DORF: Again, I renew my objection unless she can identify the people who she got the complaints from, otherwise I have no idea who these people are.

MR. MARINO: I don't believe she has to do that. If she can, if that's necessary, that would even compound the amount of complaints, but I don't think she has to do it if the question is, "Have you received complaints?" The answer is, "Yes." "How many have you gotten?" "50 to 60."

MADAM CHAIRPERSON: Fifty to a hundred she said --

MR. DORF: Fifty to a hundred.

MADAM CHAIRPERSON: -- which is a big disparity.

Q Can you recall some of the names of the people who complained to you?

A Yes.

Q I'm sure you can. Well, would you give Mr. Dorf the benefit of some of the names.

A Okay. First and last name, do you care?

MR. DORF: Are you representing the Brittany?

MR. MARINO: She's the resident manager.

THE WITNESS: I'm the manager at the Brittany.

MR. DORF: Do you have authority to give information on the people who made complaints to you?

MR. MARINO: You asked the question. You asked her what the names were.

MR. DORF: That's right, and if she doesn't have authority, she can't give them to me.

MR. MARINO: That's for her to worry about.

MR. DORF: I'm just asking you.

MS. DEMILIO: May I say something?

MADAM CHAIRPERSON: Everybody else is, why not? We're not following rules here anyhow.

MS. DEMILIO: I apologize for being out of the courtroom for a second to make a photocopy for something for this case. So, when I came in, it's my

understanding that this woman is going to testify in her capacity as the resident agent of the Brittany Apartments.

MR. MARINO: Resident manager.

MS. DEMILIO: I'm sorry, the resident manager of the Brittany Apartments. In that capacity I think she is entitled to testify as to her perception of the Brittany Apartments' populations' reaction to this tower without naming individuals and without bringing individuals in. If Mr. Dorf wants to attack her recollection, what she considers a complaint or whatever, I think he's entitled to do that on cross-examination, but he can't prevent her from giving that testimony, because she's certainly in the area and she's giving it in her capacity. So, this is her perception of what these people are telling her, so it's not hearsay. She's giving her perception of what her duties are, what her responsibilities are and --

MADAM CHAIRPERSON: Well, it's hearsay within an exception.

MS. DEMILIO: Right. Right. Right.

MR. MARINO: That's exactly right.

MS. DEMILIO: That's what I meant to say, right.

MADAM CHAIRPERSON: And that's why I didn't even entertain an objection once we got into the fact that as a manager she handles complaints and she's been receiving complaints, and it is proper as such. The probative value is really what we're getting at at this point and it's not a basis for objecting to it unless it's so lacking in probative value and so damaging or prejudicial, and I'll be honest with you for this board it hasn't been particularly probative or damaging at this point. So, I'm going to admit it for what it's worth and you will have the opportunity to cross-examine.

Q What is the specific nature of the complaints which you have received, Ms. Fox?

A People are, perceive it, they're frightened of it. They perceive it to be dangerous, they perceive it to be unsafe, unhealthy, and,

additionally, an eyesore.

Q Have you gotten any complaints about rentals specifically on the buildings that are closest to the tower?

A You mean from people who live there?

Q Yes.

A Yes.

Q What is the nature of those complaints?

A They don't want it there. They feel that it's ugly, that it's going to be ugly. They're afraid of it.

Q Do you have any young people living in those units?

A Yes. We have young people throughout the community, women and children.

Q Women of childbearing age?

A Yes.

Q Have you received any comment or any complaints from people --

MR. DORF: I don't want to keep objecting, but --

MADAM CHAIRPERSON: I'll entertain this objection.

MR. MARINO: Madam Chairperson, I got to tell you --

MR. DORF: I object to anything that is going to go into RF frequency unless he has an expert here to prove it's detrimental.

MR. MARINO: Well, all it is is their perception.

MADAM CHAIRPERSON: It's their perception --

MR. MARINO: That's exactly right.

MADAM CHAIRPERSON: -- but I think you're going far afield at this point in terms of women of childbearing age and young people and so forth. I'm going to sustain that objection. I'm sure there are people of every type there and --

MR. MARINO: I'm trying to move this along. This morning we just let Mr. Dorf lead every one of these witnesses in the interest of trying to move this case along.

MADAM CHAIRPERSON: I understand.

MR. MARINO: I could rephrase the question and say, "What, if any, complaints have you received from -- "

MADAM CHAIRPERSON: She's already said people are frightened of it, they perceive it to be dangerous, they think it's going to be ugly, you know? So, she's articulated those concerns.

Q What strata of the population, of your tenant population, have you received those specific complaints from?

A I've received complaints from all different residents and different people.

MR. MARINO: That's all I have for Ms. Fox.

MADAM CHAIRPERSON: Okay, cross.

CROSS-EXAMINATION BY MR. DORF:

Q Have you gotten any complaints from your people about the railroad?

A No.

Q The noise from the railroad?

A No.
Q You never got any complaints about that?
A Not in the 11 years I've been there, no.
Q Is the Brittany in the flood plain?
A I don't know. It hasn't flooded in the 11 years that I've been there.
Q You're the rental agent. If I come to rent a piece of -- if I come in to rent an apartment in the Brittany --
A Yes.
Q -- and I ask you a question, "Is this apartment in the flood plain," what are you going to answer me?
A To my knowledge --
MS. DEMILIO: Objection.
A -- it hasn't --
MS. DEMILIO: Objection.
MADAM CHAIRPERSON: Sustained.
MS. DEMILIO: Ms. Fox, when there's an objection, you stop your response. It's sustained, so you don't have to answer that question.

Q Are you a member of the Real Estate Board?
A No.
Q Are you a Realtor?
A No.
Q Have you talked to any of the people that you've talked to, these either fifty or a hundred people, about appearing here today?
A Yes. They've -- yes.
Q How many are here?
A They aren't here.
MR. DORF: No further questions.
MS. DEMILIO: Is it proper for me to go at this time?
MADAM CHAIRPERSON: Yes.
DIRECT EXAMINATION BY MS. DEMILIO:
Q Ms. Fox, you said you've been working at the Brittany for 11 years as a rental agent?
A Correct.
Q Has any single issue generated this number of complaints at the Brittany in your time there?
A No.

Q So, this issue has generated more controversy and negative complaints than any other single issue among the Brittany tenants?

A Yes.

Q And has the -- to follow-up on the question; have you ever experienced any flooding problems at the Brittany Apartments?

A Not since I've been there, no.

Q And in response to Mr. Dorf's question, you -- did you ask tenants to come and testify today or did your conversation reflect that you were coming to testify today?

A It reflected that I was going to testify today.

Q So, you didn't ask anyone to come and testify?

A No, I did not.

Q And they understood that you would -- strike that.

Do you consider it part of your responsibilities as a rental agent to participate in

cases that -- in which your tenants have registered complaints or to pass on those complaints? Is that part of your responsibilities?

A Yes.

MS. DEMILIO: I have no further questions.

CROSS-EXAMINATION BY MR. DORF:

Q Counsel asked you whether this issue has engendered some problems?

A Yes.

Q And she said has this been a problem greater than any other issue and the answer was yes?

A Yes.

Q What other issue --

A Since I've been there.

Q What other issue has there been since you've been there that you're comparing this one with.

MS. DEMILIO: Objection. It's irrelevant what other issue. My former question was has this single issue generated more negative response than any others and the answer was yes and that's all we need

to know. What the other issues were is irrelevant.

Q Were there any others that you're comparing it with?

A I can't compare it to any. I haven't had any issues that generated this much response.

Q Well, then, your answer was this has generated more response than any other issue. There has been no other issue that you're comparing it to?

A I can't think of any other issue of this magnitude, no.

MR. DORF: Thank you.

I ask that the answer be stricken.

MADAM CHAIRPERSON: I think the answer was her own attempt to be responsive. I don't think I'll strike it.

MR. DORF: No further questions.

MR. MARINO: That's it.

MADAM CHAIRPERSON: Okay, thank you.

MR. MARINO: We would call Ms. Martha Poehler to the stand.

MARTHA POEHLER,

a witness for the protestants, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION BY MR. MARINO:

Q Ms. Poehler, can you state your full name and address for the record, please.

A Martha S. Poehler, P O E H L E R, 30 East Padonia, Timonium, Maryland, 21093.

Q How are you employed, Ms. Poehler?

A I'm employed by Apartment Services.

Q And what is Apartment Services?

A Apartment Services is a management company for the Brittany Apartments.

Q What is your position at Apartment Services?

A Executive vice president.

Q How long have you been with Apartment Services?

A 19 years.

Q And are you familiar with the subject site and the Brittany Apartments?

A I am.

Q How long have you been familiar with the Brittany Apartments?

A We assumed management of the Brittany Apartments 12 years ago.

Q Now, I'm going to direct your attention to an open space. I'm going to show you something which we'll mark for identification as protestants' exhibit number 1 and ask you to identify it.

A That is the proposed playground site.

Q Does that drawing show all the buildings, all the apartment buildings, located within the Brittany complex?

A Yes, it does.

Q And you're indicating what as a proposed playground site?

A Right here.

Q The area circled in red?

A Yes, it is.

MR. MARINO: It's not to scale or anything.

MR. DORF: I would object to anything that's going to be proposed; it's not a reality at the present time. We're hearing this case today and what exists today. I don't know what's going to be proposed in the future.

MR. MARINO: Let me continue.

MADAM CHAIRPERSON: I don't know if I can rule on that until I hear where it's going, but I'll hold on to that.

Q Why do you characterize that as a playground site?

A The demographics of the Brittany have changed in the last few years and we have more families with younger children. Prior to the Fair Housing Act, it was mainly an adult only, older community.

Q What, if any, preparation has the ownership of the Brittany Apartments made with regard to creating a playground here?

A As I said, because of the demographics and the change, we designated this site for a playground.

Q Now, what did you do in connection with that, if anything?

A We had various playground people come and look at the Brittany and this was the area that was unanimously chosen to put up the playground, tot lot.

Q Did you buy any equipment with regard to that?

A Yes.

Q I'm going to show you what's titled as a quotation from W.H. Hope & Associates, Inc., and ask you to identity that.

MR. DORF: Your honor, I object.

MADAM CHAIRPERSON: You object why?

MR. DORF: I object to anything coming in from W.H. Hope & Associates unless Mr. William Hope is here.

MADAM CHAIRPERSON: I'm sure there's going to be a question about whether she knows anything about this and we'll find out at that point whether or not she's the proper witness for that.

Q Can you identify that?

A Yes. This is the quotation that we accepted on the playground equipment for the Brittany Apartments.

Q What, if anything, did you have to do with this playground equipment order?

A I approved it.

Q What was the date on this playground equipment order?

A May the 29, 1997.

MR. MARINO: I see from the plan, I just noticed this this morning, the submittal was made after 6/6/97. That was the last revision of the plan. I don't know when it was submitted to the zoning commissioner.

Q What does this equipment consist of?

A Oh, it's a modular placed structure, has a sliding board and climbing bars, the type that's colorful now and quite popular.

Q Why did you select that location for a playground?

A It was located where we felt would best

serve the needs of our residents. It was also close to the swimming pool and to the clubhouse area.

Q Now, why didn't you stick it on the other side of the complex?

MR. DORF: If it please The Court, I don't know where we're going here. Are we leading up to the fact that the site of this tower is going to bother these kids in the playground?

MADAM CHAIRPERSON: I don't know, it's not my case.

MR. DORF: Is that what we're leading to?

MR. MARINO: I think we're going to find out what we're leading to.

MR. DORF: Well, I'll ask him to proffer, maybe it will save some time, because if he's leading to something else, I think he's getting himself in quicksand.

MR. MARINO: No. We're leading to the fact that a project has been stalled because we have direct complaints from tenants that they're not going to use this playground because of this pole being

here, so what's the point of putting it up and she has actual knowledge of that. That's what we're leading to. She can testify as to the firsthand experience that we have complaints not to even bother doing it.

MR. DORF: Well, the last witness testified as to complaints; she never did say anything about a playground. I'll note a continuing objection. I don't know where you're going.

MR. MARINO: I just told you where we're going.

MADAM CHAIRPERSON: I'll overrule it right now. I think there's some limited value to this.

MR. MARINO: It goes to the 502.1 --

MADAM CHAIRPERSON: I understand.

MR. MARINO: -- criteria, Your Honor.

Q I've forgotten where we are, Ms. Poehler.

MADAM CHAIRPERSON: There's a pending question.

Q Why did you put it there instead of further away?

MADAM CHAIRPERSON: Right.

A This was the area which we felt was most convenient and we also had several residents who joined in a sort of semi-committee, with Ms. Fox and Ms. Marion, and this was the area that it was decided upon.

Q What, if any, meetings have you had with tenants regarding concerning this after the pole issue has come up?

A I personally have not had any; Mrs. Fox and Ms. Marion.

Q Okay, that's fine.

Now, your property -- let me ask you this. You're familiar with the Brittany. We'll stipulate that this leasing plan is not to scale, but would you -- can you say as in your capacity as the executive vice president of Apartment Services that this is the open space within which you were planning on putting this playground?

A Yes, it is.

Q As designated in red?

A Correct.

MR. MARINO: I'd offer this as protestants' exhibit 2.

MR. DORF: I would note an objection.

What was 1?

MADAM CHAIRPERSON: Proposed playground site is 1.

MR. MARINO: It's been IDed.

MADAM CHAIRPERSON: And we will admit it at this point, although, Mr. Dorf, you are certainly welcome to cross-examine. That is, by admitting it into evidence, we're not indicating its probative value, we're just saying it's admissible.

Q You can verify the fact that this quotation was accepted by your company, you authorized it to be accepted?

A Yes.

Q Were you authorized by your company to authorize the payment?

A Yes.

Q Where is this playground equipment right now?

A In the warehouse.

MR. MARINO: I want to ask that this be admitted as protestants' exhibit 2. I know Mr. Dorf is going to object.

MR. DORF: That I'll object to. It's prepared by someone else.

MADAM CHAIRPERSON: I understand. She's indicated she received it and she approved it and she's obviously spent the money purchasing it. I'm not sure what else it's being offered for or what your objection would be.

MR. MARINO: That's all.

MADAM CHAIRPERSON: The only hearsay is they offered us a quote and they've already bought it and --

MR. DORF: My objection is she already testified to the facts in this and the paper itself is objectionable. It's coming in from somebody else, written by somebody else, signed by somebody else, it's not her sheet and her testimony is in already.

MADAM CHAIRPERSON: Overruled.

Q Your property comes to, if I may, your property comes to a point right here, is that correct?

A Yes.

Q And you have open space between you and the adjacent -- the subject property which is the subject of this zoning request, is that correct?

A Yes.

Q Could you build another building within that open space, another apartment building within that open space?

A I don't think Baltimore County would allow that.

Q Why wouldn't they allow it?

A Well, I guess we'd have to go through procedures and variances.

MR. DORF: I hate to object.

MADAM CHAIRPERSON: Sustained.

Q Nevertheless, you have open space between you and the adjacent property. Your company has not attempted to do anything with regard to that open space?

A No.

MR. MARINO: That's all I have for Mrs. Poehler.

MS. DEMILIO: Shall I go next?

MADAM CHAIRPERSON: I prefer it just because I don't want to have two sets of cross-examination. That's what my preference would be. Go ahead.

DIRECT EXAMINATION BY MS. DEMILIO:

Q Ms. Poehler, would you describe your duties and your position as vice president of Apartment Search.

MR. DORF: The only reason I'm objecting is she went through it.

Q What are your duties and responsibilities?

A I'm, basically, the chief operating officer.

Q Do you have any contact with prospective tenants in your capacity?

A No.

Q In your position, are you required to

determine prospective tenants needs for a particular location?

A Absolutely.

Q And in that capacity, what are the concerns that tenants have when they look to rent a place?

A The amenities.

Q And what do you mean by that?

A The amenities would be the features.

Q Of the unit itself?

A Yes, and also the amenities of the property, which would be your swimming pool, your open areas, your clubhouse, exercise rooms, playground.

Q And I assume price has something to do with it. So, we can all assume that, obviously, price has something to do with it.

Now, what effect, if anything, would the aesthetics of the location have upon a prospective tenant's interest in a locale?

MR. MARINO: Your Honor, I would object. There's case law that aesthetics can't come into it

unless she can specifically give you an example.

MADAM CHAIRPERSON: You're now talking about the specific case law that --

MR. DORF: I'm objecting to her giving an opinion at this time on the aesthetics coming in based on what somebody might feel.

MADAM CHAIRPERSON: I think her area actually is, and she hasn't been explored on this, and again it would go to the weight of it, but the question is, you know, what importance, if any, is there to aesthetics in terms of tenant appeal.

MR. DORF: I note my objection to it.

Q You can answer it.

A The term that's used in our trade is curb appeal. It's the first impression, it's the feel of the community, it's the look when a prospective person immediately comes into a property.

Q When you say the appeal of the community, you mean something beyond the actual site of the apartment building?

A Absolutely.

Q In your opinion, would construction contiguous to the apartment site have an affect on the on the desirability of a location for a effect, based on your experience?

A Yes.

Q And what effect, if any, based on your experiences, would the proposed tower have on tenant preferability for this particular Brittany location site?

A It would have a detrimental.

MS. DEMILIO: I have no further questions.

CROSS-EXAMINATION BY MR. DORF:

Q Are you aware of the railroad being contiguous to your property?

A Yes.

Q Has that had any effect on your renting?

A Absolutely not.

Q People aren't concerned about the trains, the noise, the vibrations?

A We have no vibrations, nor have we had any complaints about vibrations.

Q Do you hear the trains when they go by?
A Occasionally.
Q In other words, they don't complain about the noise of the trains?
A No.
Q But they would complain about the visual tower, is that what you're saying?
A Yes.
Q Are you in a flood plain?
A No.
Q Are you sure?
MS. DEMILIO: Objection. If that calls for a legal conclusion based on interpretation of the zoning regulations, I think it's an unfair question for this witness.
MR. DORF: I'm asking if she's aware of it.
A I'm not aware. To my knowledge, we're not.
Q Did you manage this apartment under Mr. Walden when he owned it?

A No.

Q Did you manage it under Mr. Steffee when he owned it?

A Yes.

Q So, you started out with Steffee?

A Yes.

Q You weren't aware of a flood at the Brittany?

A No. Oh, you mean prior?

Q Yes.

A Yes.

Q Then you are aware of a flood?

A That was prior to my -- to Apartment Service managing the community.

Q But you're aware of it?

A Yes.

MS. DEMILIO: I'm going to object because is he asking her a flood or a flood plain?

MADAM CHAIRPERSON: I know.

The initial question was whether or not it was in a flood plain and she said she wasn't aware of

that, she's aware there was a flood.

Q This playground we're talking about, what is going to be the size of this playground?

A It has seven pieces of equipment and two benches for the adults and a trash container.

Q Is it going to be enclosed in a fence of some kind?

A Currently we don't have any plans for that.

Q How far would this playground be away from the railroad tracks?

A Oh, considerable.

Q A child could walk from the playground to the railroad tracks, couldn't they?

A No.

Q Could not?

A No.

Q Why not?

A Well, it's up a hill.

Q Children walk up hills.

A Well, this is a tot lot.

Q Well, did you decide what age you're going to have on that lot?

A The playground was designed for younger children. We have benches there for their parents or baby-sitters.

Q Does the tot lot require supervision? Would it require supervision like a swimming pool --

A No.

Q -- to watch these children?

A I think it's always prudent for adults to be with children on playgrounds.

Q Why would you think that a tower would bother these children?

A The tower has been objected to by many of the residents at the Brittany. These same residents are the ones that we consulted with as far as the tot lot was concerned.

Q But it's my understanding of your testimony that you haven't talked to any of the residents of the Brittany about the tower. Am I correct? Isn't that what you said on direct?

A Mrs. Fox is the leasing manager of the property.

Q I'm not asking you Mrs. Fox; she's already testified. If I heard your testimony correctly, you personally have not talked to any residents or people who rent from the Brittany about the tower.

A No, I have not.

MR. DORF: Okay, thank you.

No further questions.

REDIRECT EXAMINATION BY MR. MARINO:

Q Mrs. Poehler, just one thing. Do you know the technical definition of a flood plain?

A No.

MR. MARINO: Okay.

MS. DEMILIO: I have one question. Can I ask a question?

MADAM CHAIRPERSON: Go ahead.

REDIRECT EXAMINATION BY MS. DEMILIO:

Q Ms. Poehler, is it part of your responsibilities to communicate with Ms. Fox concerning her duties and responsibilities and what

she does and what she hears at the Brittany?

A Absolutely.

Q Is that the way you learned about the tenants' complaints?

A Yes.

MS. DEMILIO: I have no further questions.

MR. MARINO: That's all we have from Ms. Poehler.

MADAM CHAIRPERSON: I was waiting to see if Mr. Dorf had anything.

MR. DORF: No further questions.

MR. MARINO: I call Mr. Chadsey to the stand.

RICK CHADSEY, P.E.,

a witness for the protestants, first affirming to tell the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION BY MR. MARINO:

Q Mr. Chadsey, can you state your name and address for the record, please.

A My name is Frederick Newton Chadsey, IV,

usually referred to as Rick. I work for G.W. Stephens, Jr., and Associates in Towson. I'm vice president with the company there and the address is 658 Kenilworth Drive.

Q How long have you worked for them?

A For eight years now.

Q Do you currently hold any licenses in the state of Maryland?

A Yes. I'm a Registered Professional Engineer in the state of Maryland, as well as the state of Oklahoma.

Q And you've been admitted as an expert before this Board of Appeals in the areas of civil engineering and planning on several occasions, is that correct?

A That's correct. I've sat here next to this gentleman several times.

MR. MARINO: I'm going to move that Mr. Chadsey be admitted as a civil engineer and a planner.

MADAM CHAIRPERSON: Any voir dire,

Mr. Dorf?

MR. DORF: I don't question the decision of The Board if you've admitted him before.

MADAM CHAIRPERSON: We're always free to reconsider, Mr. Dorf.

All right, we're going to accept him as a civil engineer and --

MR. MARINO: And a planner.

MADAM CHAIRPERSON: -- and a planner, okay.

Q Have you visited the site?

A Yes, I have. I've visited the site as --

MR. DORF: You better talk up; that doesn't work.

A I visited the site as recently as Saturday and yesterday.

Q And by the site -- well, let me -- let's talk about, again, let's get the definitions down. We'll call the subject property which is going to be the subject of the zoning requests, we'll call that the subject property, and we'll call the apartments

the Brittany Apartments. It makes it easy enough to understand.

Okay. Can you describe the subject property.

A The subject property is a small property with an existing building essentially taking up 40 percent of the property. 90 percent of the property is covered by either building or impervious surfaces. The existing building is within approximately ten feet on what is designated on the east side of the plan as the side yard. It is essentially one to two feet off the rear property line, adjacent to an existing railroad spur, and approximately 40 feet from that property line exists an elevated -- slightly elevated above the finished floor of the building, a railroad track. Along the front portion of the property is parking spaces, the driveway. The western portion of the property, near the area of the proposed tower, is a facility right now being used as a storage yard, parking for tanker trucks. That's pretty much used to most of its capacity.

Q Now, what, if any, zoning relief has this property previously received?

A As was testified to earlier, there was a zoning variance -- excuse me, I'm going to get up -- a zoning variance in 1964 to provide for the bulk of the existing building being -- the portion of the building on the eastern portion of the site was the original building with what appeared on a very difficult to read plan from microfilm some type of a covered or could have been enclosed, narrow, long facility which looks like some remnants exist near the area of the tower, and in that particular case they requested a zero set -- side yard setback, some front yard setbacks, as well as a setback relief to existing residential zoning lines which were described in detail by Mr. Kellman.

Q And so was it necessary to obtain that variance in order to build the building as we see it today?

A As the building is currently built today, it was very much necessary to use -- to acquire that

variance.

Q And I think it was your testimony that the site is being used now?

A Currently it is being -- it is an active warehouse site, it appears, of some type, manufacturing use of some type.

Q Is the subject property completely developed?

A In my opinion, the property is completely developed and utilized. Like I said, 90 percent of the site is either covered by building or pavement at this point in time.

Q From your observations after having visited the site, were there any subsequent additions to the building after 1964?

A It appears -- I have not been able to trace a paper trail to that effect and no additional variances appear in the zoning history, but as the building was from the original building with the long covered or enclosed structure along the north property line, there appears to have been at least one

addition, maybe multiple additions to include further portions of an enclosed building on what I would call more a southwestern portion, to try and give you some directions that will point --

Q While you're at the plan there; when you were at the site, you drove -- were you able to observe any of the adjacent properties either to the north or the south or the east?

A Yes. Typically, when I make a site visit, I try to work around the perimeters of the site as much as possible. Obviously, there's limited access on what I would call the western portion of the site, but I was able to go to Woodholme Avenue, Greenwood, the portion I think that we call Old Court Road up until it re-enters into the Brittany Apartments.

There's a 7-11 near the intersection of the Old Court and Greenwood, another what I would consider a manufacturing type use between the subject site and the 7-11. There's a large parcel, unknown why it's sitting there, but there's a large parcel being used, residential zoned O2, which fronts on Old

Court Road, and to what I would say to the north is primarily what I would call a town house development sort of woven in some existing larger single family homes, as well as there are some larger, very nice, actually, I was surprised, single family homes on old Old Court Road set back a-ways off the road, nicely landscaped.

Q Okay. Does this plan depict, from two hundred feet from the property line, the houses which exist north of the site or any of the structures you described south of the site?

A To the north of the property line, which would be the north -- northern property of the subject site, the only what I call culture, which would be roads, buildings, railroad tracks, that are shown -- here's the railroad tracks -- there's a slight indication of the proximity of Woodholme Avenue. I'm not sure whether we're showing the north or south portion of Woodholme Avenue, but it doesn't show any of the existing buildings in that vicinity.

Q Are those buildings within two hundred

feet of that property line?

A Yes, they are.

Q Okay, go ahead.

A On the south side, with the direct relation to what I call the plan view, where, typically, we show the culture within two hundred feet, and with relation to the plan view, it doesn't indicate any of the structures within two hundred feet of the property line, however they have an insert of the zoning map, which, as you can tell from the reproduction, doesn't match up exactly, but it's about the best that Baltimore County has to offer us, it shows some of the culture with relation to the buildings, existing cover, to the south property line.

Q Now I'm going to ask you to describe in a little more detail the specific area within which the zoning variance, and I guess the special exceptions, are being requested. Previously you talked about what, if anything, was being used there now. Can you focus on that because I'm going to ask you next to introduce some photographs that you took.

A Currently on what I'll call, we'll say, the western portion of the site, near the narrowest portion of the building and the narrowest of the site, there is the end of the building with an existing retaining wall and it appears as if the retaining wall is a projection of the foundation in that particular location. The topography as you enter the site, you start at a relatively level section as you enter into the subject property and then it falls off as you move west going downhill.

In the western portion of the site, specifically in the area of where the proposed tower is, there's a storage of, it appears to be, barrels, pallets, various items you would expect to find in this type of a use. As you come further west, close to the cedar fence they were required to put in as a part of the '64 hearing, there is -- there was yesterday and Saturday, a tanker, just the trailer portion of it, appeared to have been backed in there, as well as some more storage of barrels and so forth. It's all paved, macadam paved.

Q Is it currently actively being used?

A Currently actively being used as a storage facility.

Q Now, you took some photos while you were at the site. I would like to show them to Mr. Dorf first and Ms. Demilio.

A You'll have to excuse the quality of the photos. It was windy and sunny and the Polaroid didn't like it.

Q I'm going to have to ask you to identify each of those photographs and describe what they are and we'll have to ask that they be marked and, if you could, after each identification pass them along.

MR. MARINO: I would like to initially mark them for identification. I think that would be protestants' 3, sequentially.

MADAM CHAIRPERSON: For the record, though, Mr. Chadsey, if you would, identify them as 3A and pass them on to us. Say "3A" and tell what it depicts. These are all photos you took yesterday?

THE WITNESS: I took them yesterday. As

you recall, it was bright sunny and very windy.

A 3A through C are photographs taken standing just before the entry into the subject property trying to catch a view down the driveway and along the front face of the building.

Like I said, you have to excuse the quality. Standing in the shade and shooting into the sun kind of made it a little hazy.

3D is a photograph standing at the brick building adjacent to the subject property, at what I would call the northeast corner of the building, taking a photograph down the back side at the railroad spur and the actual railroad track.

What I'm going to call 3E is a photograph standing on top of the railroad tracks, plus or minus 50 feet, maybe 30 feet from the eastern edge of the building, shooting down into the area of the subject tower and the area that's being used as a storage yard right now.

The photograph I'll call 3F is a photograph standing just beyond the cedar fence, the

western cedar fence, photographing down, again, from the railroad embankment -- not on top of the tracks this time, but on the embankment -- down into the subject yard area at the western edge of the building.

And the last photograph, which should be 3G, I'm standing in approximately the same location, but on the railroad track this time, shooting down, trying to get a reference in the proximity of the railroad track and the building to the rear property line.

Q Mr. Chadsey, based on your observation of the property and your experience as a civil engineer and a planner, what special circumstances or conditions, if any, exist that are particular to this particular site?

A None. The site is being used to its capacity. I don't see anything that creates a special circumstance.

Q What, if any, practical difficulty or hardship exists to justify the request for the variance, based on your observations and experience as

a civil engineer?

A My observation is that the practical difficulty that would be created would be that they've used the site to its fullest extent, and due to the construction of the existing buildings, they've created the fact that the portion of the site that lies within the required zoning setbacks, they can't meet constructing a tower there without the variances. So, they've created, I guess you could say, an artificial uniqueness by their actions of constructing a building and then coming back and saying, "Okay. We can use our whole side yard here, so we need a variance so we can use our side yard."

Q Now, how is that area of side yard different than any other area of any other side yard with the same ML zoning throughout the area, throughout the community?

A Throughout the county you're going to find parcels of different sizes and shapes and every property has a side yard setback and a rear yard setback and a front yard setback that's supposed to be

met in accordance with the zoning regulations. If this was a nice rectangular piece, they might have a little more opportunity to do something, however they've gone to the extent of obtaining previous variances to be able to do what they can do on there now. If we allowed everyone to come by and say, "Okay, I've got a little piece of side yard I can't use anymore, I want to put something in here," then you're going to see numerous cases running through Baltimore County. I'll be the first one bringing you some.

Q Now, this petition is a two-fold petition, it's one for variance which you've just spoken about, accompanied by a request for a special exception. It needs a special exception because it's within the two hundred feet and other reasons. Now, does that joint request pose any specific problem to you as a civil engineer and a planner?

A Well, I've been involved in numerous cases and since the Cromwell Ward and the Umberly decisions, the industry has rethought their application and their

approach to variances and, specifically, variances in association with special exceptions, and this case actually creates what I would consider something similar to the Umberly case whereby, to basically put it bluntly, you're permitted to have a special exception. It's a use permitted by the regulations via special exception if you have the zoning in place, which would mean the zoning being in place means you have to meet the zoning regulations, the bulk regulations, the height regulations, the area regulations. So, in order to meet the zoning, you have to get a variance. And as I interpret, not being a lawyer, but as I interpret or had it related to me, also is that you can't use the special exception to justify a variance or you can't justify a variance with a special exception.

Q Well, since you talked about special exceptions, let's talk about them for a second. 502.1, which you're very familiar with, requires that before any special exception may be granted, it must appear that the use for which the special exception is

requested will not -- and there's a litany of items and I'm going to run down them -- be detrimental to the health, safety and general welfare of the locality involved, and let me preface these one, two, three, four, five, six, seven, eight questions by based on your experience, your visual observations of the site, your experience as a civil engineer so I don't have to say it every time, but does it appear that the requested special exception will not be detrimental to the health, safety and general welfare of the locality involved, in your opinion?

A With relation to that particular question, if I might -- I would like to stand up; you'll have to excuse me. With relation to the health, safety and welfare issue, number one, we heard testimony this morning from the structural engineer that we didn't know what the soil condition was, we don't have the design of a foundation, we don't know if there's water problems. I know for a fact that the property slopes from the railroad track, down. There is a small swale, as you can see I think in probably 3G, a slight

swale along the back of the property, but under a significant rainfall I would --

MR. DORF: Is he qualified to --

Are you going to testify as to the soil there?

MR. MARINO: He can talk about the soil conditions. He's a civil engineer.

MS. KINGSBURY: We do have it.

MR. MARINO: Their case is over.

MR. DORF: It's not over, we still have rebuttal, but it's not over. I'm just saying --

MADAM CHAIRPERSON: I know we've tried to be somewhat casual here, but I want to know -- I mean I've got to hear an objection or something so I can rule one way or another.

MR. MARINO: I think Mr. Dorf's concern is --

MADAM CHAIRPERSON: I think if you're worried about just where he's headed --

MR. DORF: I'm objecting to testifying about soil if he doesn't know anything about soil.

MADAM CHAIRPERSON: That's probably good fodder for cross-examination if that's what isn't explained on direct.

MR. MARINO: His expertise allows him to talk about soil because he's a civil engineer.

MR. DORF: I won't accept that.

MADAM CHAIRPERSON: That's not a question, okay?

MR. DORF: But I object to the statement made for the record.

MADAM CHAIRPERSON: That's fine. I'll strike that statement.

MR. DORF: Okay.

MADAM CHAIRPERSON: Go ahead.

A Okay. At this point in time we do not know the safety related to the foundation or the structural stability of the foundation with relation to the tower. That was not testified to this morning.

Second of all, as I've heard and as you've heard, there is a perceived health risk. I'm not going to testify that there is a health risk, but

there is a perceived health risk which has impacted from, as you've heard from Ms. Fox and Ms. Poehler, has impacted their decisions with relation to the apartment complex.

MR. DORF: I object to what we call a perceived health risk. There's been no testimony to health risk. Because somebody else might perceive it's one, he can't say it's a health risk.

MADAM CHAIRPERSON: I don't think he's offering it as a health risk, per se, I think he's offering it as a perception and that's it and we're only going to accept it as a perception. It's not going to be accepted or even offered as a health risk.

MR. DORF: Well, then, technically, shouldn't that come under health, safety and general welfare?

MADAM CHAIRPERSON: I assume it's coming under general welfare in some fashion and we're teetering on that.

Q Would it tend to create congestion in roads, streets or alleys therein?

A Again, the function of the site, due to its nature is -- you actually have to be there to really understand how congested this particular property is. As the actions or the turning movement that's occurring from the tanker trucks that are entering into and out of the site, they are coming down Greenwood and turning in such a fashion as they can back this tanker truck into the facility. Now we're going to further congest the facility by providing a tower, cabinets and so forth. So, in my opinion, there is a congestion issue that exists there today and the construction of this tower and facility would further exacerbate that.

Q Would it create a potential hazard from fire, panic or other dangers?

A No, it should not.

Q Would it tend to overcrowd the land and cause undue concentration of population?

A No, it should not. Excuse me, wait a minute; it says "and cause undue concentration."

Q Yes.

A It's pretty darn crowded on that site right now. I would say it was overcrowded land, that it doesn't have any relation to concentration of population.

Q Would it interfere with the adequate provisions for schools, parks, water, sewage, transportation or other public requirements, conveniences and improvements?

A It would not.

Q Would it interfere with adequate light and air?

A It would not.

Q And would it be consistent with the purposes of the property zoning classification or inconsistent? Let me rephrase that.

Would it be inconsistent with the purposes of the property zoning classification or in any other way inconsistent with the spirit and intent of the zoning regulations?

A I believe it would be inconsistent.

Q Would it be inconsistent with the

impermeable surface and vegetative retention provisions of the zoning regulations?

A It would not.

Q As a civil engineer and a planner and from your observations of the site, were you able to draw a conclusion as to whether or not this site meets the test of the special exception as applied in 502.1?

A In my opinion, it does not.

MR. MARINO: That's all I have for Mr. Chadsey.

MADAM CHAIRPERSON: What is it that is inconsistent with the spirit and continuity under of the zoning regulations?

THE WITNESS: The fact that --

MS. DEMILIO: That's was my question. I waited too long.

MADAM CHAIRPERSON: I'm trying to speed things up here.

THE WITNESS: The fact that the zoning variance is needed to make the special exception work, number one. Number two, if someone came to build a

building in the same fashion, utilizing the side yard to this extent, we wouldn't even be here today, it would never had gotten past the zoning commission. The only reason I believe it's here today is because it's a tower. It's a principal use.

MR. DORF: I'm objecting to those comments as to the side yards and so forth. I don't know what --

MADAM CHAIRPERSON: You don't know what?

MR. DORF: He's saying that if it came before the zoning commissioner for side yards and so forth, I don't know what the commission would hold. All I know is what the commission held in this case.

MADAM CHAIRPERSON: I think I understand what he's saying, I'll be honest with you. I mean I'm not --

MR. DORF: If you do, fine.

MADAM CHAIRPERSON: I'm interested in what you're saying, but I don't think he's phrasing it in that fashion. I think he's just talking about we're talking about a different kind of animal here, and

because it's a different kind of animal, it didn't have to go through certain hoops that it might have had to go through had it been a building. I think that's what he's getting at.

MR. DORF: All right. That's not what I understood what he said.

THE WITNESS: Yes, that's exactly what I was trying to relay.

CROSS-EXAMINATION BY MR. DORF:

Q Based on what you just said, any time that we would bring a special exception or variance before this board, they shouldn't approve it?

A In combination, that's what the Umberly case says.

Q That's not what the law says. The law says, first of all, special exceptions should be granted. There's a presumption they should be granted, am I correct there?

A That's correct and that variance is --

Q Wait a minute, let me just finish. That's why you have special exceptions, so The Board, under

proper cases, can, in fact, can grant a special exception, am I correct?

A No, I'm denying that.

Q Well, then, let's take a look at something a minute. You're saying under 502.1, which are the criteria for special exception, and most of this, a lot of this is for land development, isn't it, under special exceptions?

A Yes.

Q You're saying it would be detrimental to health, safety or general welfare. Your answer was yes. Where would it be detrimental to the health to have this tower built?

A So far I haven't had demonstrated to me that there is adequate provision for the design of the tower.

Q Well, have you been here all day?

A Yes, sir.

Q Did you listen to the testimony of the person who was my expert who talked about the tower?

A Yes, sir. Did you hear the question with

relation to what the soil was and the design of the foundation? I can't ask you a question, I'm sorry.

Q Well, let me ask you a question. When this permit was given to Baltimore County, issued, did they go into the soil?

A I haven't seen this and it's not a part of any evidence that I've heard or witnessed.

Q Fine. It hasn't come in yet, I'm showing it to you right now. Take a look at this. This was introduced as Baltimore County proof. Is there anything there that has a problem with soil?

A It has to pass the building permits.

Q Did it pass the building permits?

A I see a building permit here.

Q Is this a building permit?

A I see a building permit here.

Q Do you recognize it?

A No, this is the first time I've ever seen it; how can I recognize it?

Q Do you recognize it's a building permit?

A Yes, I recognize it as a building permit.

Q Do you recognize it as a building permit that's been permitted?

A Yes, I recognize that.

Q When Baltimore County goes into permitting a building permit, do they check the soil?

A They review the drawings submitted by your engineer.

Q Are these the drawings?

A How am I supposed to know that?

Q I'm asking you to take a look.

MR. MARINO: I'm going to object to this line of questioning.

MADAM CHAIRPERSON: Counsel, can we approach the bench on this.

MR. MARINO: This is way beyond the scope of direct.

MR. DORF: I intend to have other testimony in rebuttal.

(A discussion was held off the record.)

Q In B, it says "tends to create congestion in roads, streets and alleys therein."

A Yes.

Q You're saying this pole is going to create congestion because of what problem?

A Right now there is a congestion problem due to maneuvering of the tanker trucks in the particular siding. If you would observe the pictures that were handed to The Board, you'll find that there are numerous items stored in that particular location.

Q And that's your interpretation?

A And the movement of the trucks tend, and if you read the word, it says, number one, it says "appears," number two, it says "tend to create congestion."

Q You as an expert interpret that "tend to create congestion in roads, streets or alleys therein" to be a congestion on this parking lot where trucks come in?

A I'm telling you that right now they have difficulty maneuvering in as it is on the roads, which is Greenwood and Old Court, and now you're further constraining the site.

Q You've already said that. I heard that.

MS. DEMILIO: Objection. He's arguing with the witness.

MR. DORF: He's saying the same thing he said before.

MS. DEMILIO: But you asked him the question.

MADAM CHAIRPERSON: You've asked him the questions about it and he's allowed to reiterate --

Q Go ahead and finish your answer.

A I'll try to regain my thought.

Q I apologize.

A My point is, there's uses on the site as the site exists now. They can barely maneuver into the site as it exists now without creating congestion in the existing road. Now you're going to further utilize the property, relocate where I don't know the existing storage and create -- and I think create further congestion, in my opinion. That's what I'm testifying to, my opinion.

Q That's how you interpret this congestion

in roads, streets or alleys, you don't interpret as streets or roads leading in and alleys contiguous, you don't interpret that? You interpret as to the trailer trucks being on this piece of property?

A I don't know where I'm having difficulty. When we do a design of a site, nowadays we would have to insure that a truck, without inhibiting Greenwood and Old Court, old Old Court, we'll call it, get in without inhibiting that traffic maneuver. They do it today. Now you're taking a whole area out of the picture that they're using for storage and assuming that they're going to be able to store this somewhere else, I guess, and not make any difference the way the traffic movement is. My opinion is the traffic movement will be impacted by this facility, as well as the relocation of the storage that's in that location.

Q Are you telling me that Greenwood and Old Court are going to be impacted by this pole?

A It's going to be more difficult for the trucks to maneuver into the site.

Q Where, down here, at Greenwood and Old

Court?

A Old Court has two pieces, sir; you might need to go to check the site. There's a piece of Old Court that exists right there, just west of existing Old Court. It's old Old Court. That's why I keeping referring to it that way.

Q How far is that going to be from this pole?

A It is at the entry where there are roads, and as it exists today, they pull out, block the traffic in the road, they pull in, block the traffic and then try to maneuver their way in here. Now you've got to relocate all -- more of the same thing. You've got to relocate all of this storage so they can still maneuver and it tends to create congestion.

Q Isn't it all parking here, storage and parking?

A I don't know where you're going with it. I'm saying --

Q Well, my question is, you're telling me it's going to impede the flow of traffic before it

comes into this area from down here at Greenwood and Old Court, which is down here.

A I don't know how to reanswer the question.

Q But is that your answer?

A My answer is --

Q It's just a yes or no. It's perfectly okay.

MR. MARINO: I object and it's not a yes or no question.

A Right there. The entry to the Brittany Apartments is there, the entry to that facility is right there. They're blocking those facilities by the maneuvering of their vehicles.

Q You talked about buildings, residential buildings, being two hundred feet away from this driveway.

A Yes, sir.

Q So, there's residential to the north, there's residential in this area and there's residential down here, is that correct?

A That's correct.

Q What is this piece of property zoned?
A Manufacturing, light.
Q So, AT&T Wireless has picked a manufacturing light piece of property in the middle of a residential property, is that correct?
A Yes.
Q The property they picked you said was contiguous to a railroad track, is that correct?
A I didn't say anything about picking anything, but I said that the subject site was contiguous to a railroad track.
Q I stand corrected. The subject site was contiguous to a railroad track?
A Yes.
Q You also said the subject site had storage yards all over it, is that correct, and parking area?
A That's not correct. I said that the western end of the site was being used as storage yard and parking tankers.
Q So, the western part is being used for storage and parking of tankers?

A Yes.

Q And next to the railroad, okay? And then you said that it was developed about 40 percent by the building and 90 percent by building, parking areas, storage areas and so forth, is that correct?

A That's correct.

Q That's what you have on this piece of property, is that correct?

A That's correct.

Q And you also said that they store a lot of barrels in this piece of property, is that correct?

A That's correct.

Q You also said they store a lot of pallets on this piece of property, is that correct?

A That's correct.

Q And you also said when you were there yesterday there was a portion of a tractor or trailer, is that correct?

A The back end of a -- it would be towed by a semi-sized truck, the tanker portion of that.

Q So, this is the type site we're talking

about that we have selected to put a tower on, is that correct?

A Okay. Yes.

Q Thank you.

Is there any other site in this area here that you think is preferential?

A In that particular area?

Q What we're talking about in this area here.

A Well, that's not my area of expertise, sir. I'm not an RF or all the other terms that whether determining radius or -- that's not my duty.

Q Let me ask you this question. As a planner --

A Okay.

Q -- which you are, would you have selected to put it in a residential area here or a residential area here or this area here, which is manufacturing, light, next to a railroad track, with barrels and storage and everything else on it?

A Sir, I'm not denying --

Q Which one would you have picked?

A I'm not denying that I would have looked at the manufacturing location. As pointed out earlier by one of your witnesses, there was a more appropriate location for the tower that did not need the variance relief. There is -- has been discussed numerous times the MARC train station that's in the vicinity --

Q Talking about this area here?

A -- there's the top of this building. There are numerous opportunities to make this work without having to request variances.

Q Would you call this piece of property unique because of the fact that either all of it or the majority of it doesn't have two hundred feet on either side? Would that be uniqueness?

A No, there are several properties like that in the county.

Q I'm not talking about someplace in Essex, I'm talking about here. The subject piece of property, is it unique because of the way it is? That's all I'm asking you, as an expert, as a planner.

MS. DEMILIO: Objection, asked and answered.

MADAM CHAIRPERSON: I think he has answered it and I'm not even sure he can answer it as phrased right now because I don't know what it means when you say "the way it is."

MR. DORF: Well, he's been out there and he's looked at the property.

MADAM CHAIRPERSON: Right, but he's already testified he doesn't think this property is unique. I don't think he's going to be your person that satisfies your requirement that the property is unique.

MR. DORF: Well, he has testified the property is unique.

MADAM CHAIRPERSON: I'm not saying you haven't produced somebody; I'm just saying he's not your person.

MR. DORF: All right. I thought it was cross-examination. He said it wasn't unique; I'm trying to find out why he doesn't think it's unique.

MADAM CHAIRPERSON: And he said there are other properties with that configuration in the county.

MR. DORF: All right. No further questions.

MADAM CHAIRPERSON: Any?

MR. MARINO: No.

MADAM CHAIRPERSON: Thank you very much.

MR. MARINO: That's all.

MS. DEMILIO: No. This is not people's counsel's case, but I believe that before Ms. Paige left -- did you introduce that site plan -- the attorneys all stipulated, is my understanding, that the previous subdivision plan should be admitted into this case because it identifies the neighborhood. I believe that was her purpose. So, just because she has left, I told her that I would or one of us would submit this and I believe Mr. Dorf had told Ms. Paige that there was no objection.

MADAM CHAIRPERSON: So, this will be protestant's next exhibit.

MR. DORF: Well, you know, just for the record, you know, I'm put on tenable position here of another counsel not here coming up to me this morning and saying, "Can I put in this plat?" I've got this plat on, I'm showing this plat and she's showing me this plat. I said, "Look, I'm putting this one in. I have no objection to you putting that one in." I let it in. First of all, it's a CRG plat, it's not even the same as this plat, it shows a concept of it and I'm stipulating to let it in and they're objecting to my plat. I will stand by my stipulation because I made a commitment to counsel who is not here that I would let it in, but I say it and I'm noting it.

MADAM CHAIRPERSON: Just so you understand, and I appreciate your standing by what you say, because it will be according to stipulation, but this is not being offered as a plan upon which somebody is going to develop something, so it has different requirements. They had somebody here who could testify to it, agreed not to call them out of turn because you were stipulating to it. So, that's a

separate issue. As far as what you think has happened to you on your exhibit, that is a site plan which has very specific requirements under the rules to which the party as a developer is required to comply.

MR. DORF: But they could also stipulate that that is based on specific --

MADAM CHAIRPERSON: They certainly could, but I can't make and you can't make people stipulate anything. That's why I say to you I have as kind of a disfavored objection made because it is sort of technical.

MR. DORF: Right. And it was my understanding that they were both going to come in, but I'm not going back on my commitment to her that I would not object to it, but I just wanted to let you know that I thought it was very strange because she's not here now and I'm caught in the middle. Okay, note that for the record.

MS. DEMILIO: And I also believe Ms. Paige had shown Mr. Dorf a series of pictures.

Is that correct?

MR. DORF: Yes.

MS. DEMILIO: Do you have any objection to that?

MR. DORF: No.

MADAM CHAIRPERSON: For the record, we have exhibits 5A through 5F, 5A depicting the balloon floated by AT&T to demonstrate the location of the tower and the prospective view looking toward Woodholme Avenue while on Trenton and Anandale Court; 5B is that same balloon behind houses on Anandale Court; 5C again is the same balloon behind houses on Anandale Court; 5D apparently is offered to show the balloon in relation to the Brittany Apartments and I guess 5E -- yes, 5E is the same, and as is 5F.

MR. MARINO: That's it for us.

MS. DEMILIO: No further evidence from or no evidence at all, I guess, from people's counsel.

MR. MARINO: We rest the people's case.

MR. DORF: And for rebuttal we'd like to call Mr. Parsons.

MADAM CHAIRPERSON: You don't have to be

sworn in again; you're still under oath.

BRIAN S. PARSONS,

a witness for the petitioners, having been previously sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION BY MR. DORF:

Q You're still under oath.

A Yes, sir.

Q Did you the file an application in Baltimore County, Maryland, for this tower?

A Yes, sir, I did.

Q Is this the application you filed?

A Yes. This is the culmination of the application I filed. I pulled this building permit personally.

Q Personally?

A Yes.

Q In filing the application, did you in any way advise them what the soil was and so forth there?

A Yes, sir. I had to file a foundation report for the tower that was designed specifically

for the soil conditions. There was a soil report prepared by Hillis Carnes Engineering and that's what the foundation design was based upon.

Q Did you personally file that report?

A Yes, sir. I filed two copies of that report with Baltimore County.

Q And was this part of the report that was based upon for your permit?

A Yes. The permit was predicated upon this report and construction drawings as well.

Q Did you file the entire booklet I have in front of me?

A Yes.

Q So, this is all a culmination, is that correct?

A Yes, sir, that's correct.

MR. DORF: I want to introduce this as an exhibit.

MADAM CHAIRPERSON: Okay. What number is that? 5.

MR. DORF: No further questions.

MADAM CHAIRPERSON: Okay, any cross? No cross?

MR. MARINO: No cross.

MADAM CHAIRPERSON: Okay, thank you very much.

Any other rebuttal witnesses, Mr. Dorf?

MR. DORF: I would at this time call the owner of the property.

Would you step up.

HENRY M. WITMYER,

the witness, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

THE WITNESS: My name is Henry M. Witmyer, Jr. I reside at 11 Court Bellmore, Palm Coastal, Florida.

DIRECT EXAMINATION BY MR. DORF:

Q Mr. Witmyer, you own this piece of property, is that correct?

A Yes.

Q Mr. Witmyer, there's been various

negotiations with you as to putting a tower on your property, is that correct?

A Yes, correct.

MR. DORF: And I'm going to lead him, but you can stop me.

MR. MARINO: Go ahead.

Q Is it my understanding that after the various negotiations with Ms. Kingsbury and other people at AT&T, you said this was the only spot you would allow the tower, is that correct?

A Correct.

Q So, there have been requests or AT&T Wireless had requested you to allow them to move the tower someplace else, is that correct?

A That's correct.

Q You have denied that request?

A That's correct.

Q So, if they want to use your property, they're going to use it here or they're not going to use it?

A That's correct.

Q Now, let me ask you one other question. You heard some testimony today from the prior witnesses that there's congestion on your property and this tower because of where it would be situated.

I'm not going to ask you anything about getting down here. I don't think that's pertinent.

Let's talk about your land itself, okay? Is there any congestion on your property, would there be any congestion as a result of the tower?

A As far as congestion, where that is located would not interfere with our truck traffic or with storage. What we had stored in there I think probably has been moved by now. We had some what we call mini tanks, small tanks that are no longer used and they're being disposed of.

MR. DORF: All right, thank you.

No further questions.

CROSS-EXAMINATION BY MR. MARINO:

Q Mr. Witmyer, you talked about negotiations. How much is AT&T intending to pay you per month for this tower?

MR. DORF: I object. I don't think it has any bearing on this case what we pay.

MADAM CHAIRPERSON: It didn't come up on direct.

MR. MARINO: Well, he said he negotiated it.

MADAM CHAIRPERSON: I understand. It's getting a little far afield, although. Yes, I'm more interested in why that's the only spot he permits, but that's the only place I can see it coming in. It's a little dicey.

MR. MARINO: Let me go on.

Q Mr. Witmyer, you live in Florida now?

A We're residents of Florida, yes.

Q Do you operate the operation that currently is existing on the property right now?

A Yes.

Q It's an owner operated --

A The company that's operating there.

Q You own the company that does operate it?

A Yes.

Q And you received the previous variance allowing -- did you build the building in 1964?

A Yes.

Q And it was your property in '64, you were the same Witmyer that was part of that same 1964 zoning case?

A Correct.

Q So, you built the building based on the relief that you received in the variance in 1964?

A Correct.

Q And did you put in an additional subsequent to '64?

A Yes.

Q Then, from what I've just heard, this is the only location which you will allow AT&T to put this prospective tower, is that correct?

A That's correct.

Q That's your personal preference?

A Yes. Well, yes.

MR. MARINO: Okay, that's fine.

That's all I have for Mr. Witmyer.

MR. DORF: I have no further questions.

MS. DEMILIO: I have a couple questions for Mr. Witmyer.

CROSS-EXAMINATION BY MS. DEMILIO:

Q You reside in Florida?

A Yes.

Q Full-time?

A Yes.

Q So, the business is operated by somebody else, the day-to-day management, I assume?

A Yes.

Q And it's been there since 1964?

A 1964.

Q And it continues to this date?

A Pardon?

Q And it still continues to this date?

A Oh, yes. Sure.

Q So, it's enabled you to retire and move to Florida?

A Well, semi-retire. I'm still president of the company.

Q So, it continues to be a viable operation at this site?

A Yes.

Q Is this your primary business or do you own other businesses?

A Yes. We had two other companies, two in Alabama.

Q But this is a self-sustaining one in Maryland here?

A Yes.

MS. DEMILIO: I have no further questions.

MR. DORF: No further questions.

MADAM CHAIRPERSON: Thank you, Mr. Witmyer.

MR. DORF: That would be our case, Your Honor.

MADAM CHAIRPERSON: That concludes our cases for today. In light of our time crunch and in light of the fact as well there are legal issues involved, I'm going to be looking to counsel to be submitting proposed findings of fact, coupled with a

memorandum of law in lieu of closing argument.

MR. DORF: Do you have a time when you want that?

MADAM CHAIRPERSON: I was going to ask you your abilities in that regard because it's really your discretion.

MR. DORF: It's always been my procedure before I submit findings of fact and memorandum of law that I would like to have the transcript because I give you quotes from the transcript itself and so it would depend when the transcript would be available as to the time that I would request to be able to write the memo.

MADAM CHAIRPERSON: If you get the transcript in two weeks, how long would it take you --

MS. DEMILIO: Can we have after Christmas?

MR. DORF: Can we have till January 15, if the transcript is within two weeks?

MADAM CHAIRPERSON: We don't have a problem with it, that's fine. January 15 you would be submitting your proposed findings of fact and --

MR. DORF: And we all submit on the same day.

MADAM CHAIRPERSON: -- and memorandum of law.

Yes, that's fine.

MR. DORF: All right, January 15.

MR. MARINO: That's fine.

MADAM CHAIRPERSON: We will do it that way and then once we have that, we will go ahead and set the case in for deliberation.

All right, that closes it for today.

(Hearing concluded at 2:50 P.M.)

STATE OF MARYLAND

COUNTY OF BALTIMORE SS:

I, Barbara A. Rupply, Registered Professional Reporter and Notary Public of the State of Maryland, do hereby certify that this proceeding was recorded stenographically by me and that this transcript is a true record of the proceedings.

I further certify that I am not of counsel to any of the parties, nor an employee of counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.

As witness my hand and notarial seal this. 17th day of December 1997.

_____
Barbara A. Rupply, R.P.R.
Notary Public

My Commission Expires:

January 29, 2000

I N D E X

Petitioners' witnesses: Page:

Michael Yglesias
Direct 13
Cross 22, 27

Brian Parsons
Direct 32
Cross 44, 50, 55

Michael Kellman
Direct 60
Cross 83, 86

Oakleigh Thorne
Direct 100
Cross 103, 106
Redirect 107

Peter A. Neubauer
Direct 110
Cross 116

Robert W. Denny, Jr., P.E.
Direct 119
Cross 124, 127

Anthony J. Vitti, L.S.
Direct 131

Protestants' witnesses:

Helen Fox
Direct 139, 155
Cross 153, 157
Redirect 155

Martha Poehler
Direct 159, 170

Cross 173
Redirect 178

Rick Chadsey, P.E.
Direct 179
Cross 202

Petitioners' Rebuttal Witnesses:

Brian S. Parsons
Direct 220

Henry M. Witmyer
Direct 223
Cross 225, 227

Petitioners' Exhibits:

1	Drive Test Plot
2	Search Ring Map
3	Overlay of Exhibit 1
4	Site Plan
5	Application

Protestants' Exhibits:

1	Proposed Playground Drawing
2	Playground Equipment Order
3A-G	Photographs
4	Site Plan
5A-F	Photographs

WOODHOLME GREEN

C.R.G. PLAN

BALTIMORE COUNTY, MD.

ELECTION DISTRICT No. 3 PUBLIC SERVICES C.R.G. No. 80353 PLANNING No.

D.S. THALER & ASSOC., INC.
CIVIL ENGINEERS — SURVEYORS
LANDSCAPE ARCHITECTS — LAND PLANNERS
11 WARREN ROAD
BALTIMORE, MD. 21208
(301) 484-4100

DST&A

PROJECT No. 8631
SHEET No. 1 OF 1

OWNER/DEVELOPER
WOODHOLME GREEN LTD. PARTNERSHIP
2324 W. [redacted]
LUTHER[redacted]
(301) [redacted]

VICINITY MAP
SCALE: 1" = 2000'

SITE

DATE: 5/10/01
SCALE: 1" = 100'
C.I. 5'
DESIGNED BY:
DRAWN BY:
CHECKED BY:
APPROVED BY:

REVISIONS 6/11/01 #4, 11/9/01 #2, 12/21/01 TIDAL WOODS WAY, BALTO. COUNTY, MD. SCALE: 1" = 100' DATUM: SEA LEVEL

Cultural Cycles

NOTES

#1A ALL EX WELLS WILL BE FIELD LOCATED & SHALL BE PROTECTED DURING CONSTRUCTION. IF ANY WELL IS DISTURBED, IT SHALL BE REPLACED BY A LICENSED WELL DRILLER.

#1B EX HOUSE ON LOT #11 WILL BE CONNECTED TO PUBLIC WATER WHEN AVAILABLE.

#1C ALL GRADING, PAVING & CURBING TO BE IN ACCORDANCE WITH BALTO. CO. STANDARDS & SPECIFICATIONS.

#1D ALL FIRE HYDRANTS SHALL BE A MINIMUM OF 6" DIA.

#1E UNLESS OTHERWISE NOTED ALL STREETS SHALL BE 24' PAVING WITH 6" CURB & GUTTER.

#1F ALL CURVES MEET OR EXCEED (UNLESS OTHERWISE NOTED) REQUIREMENTS OF SECTION III.F.2.2 (CURVES).

#1G ALL FIRE HYDRANTS SHALL BE A MINIMUM OF 6" DIA.

#1H UNLESS OTHERWISE NOTED ALL STREETS SHALL BE 24' PAVING WITH 6" CURB & GUTTER.

#1I ALL CURVES MEET OR EXCEED (UNLESS OTHERWISE NOTED) REQUIREMENTS OF SECTION III.F.2.2 (CURVES).

#2 THE DEVELOPER WILL DO THE FOLLOWING IN THOSE AREAS WHERE STEEP SLOPES (OVER 25 %) EXIST:

ENSURE THAT GRADING PLANS CONSIDER PROTECTION OF THESE AREAS FROM INCREASED RUNOFF THAT WILL INCLUDE DRAINING ROOF DOWNSPOUTS AND DRIVES TO STORM DRAINS AND/OR STORM WATER MANAGEMENT SYSTEMS.

RETAIN A GEOTECHNICAL ENGINEER TO REVIEW GRADING PLANS, IN THESE AREAS, PROVIDE ON-SITE INSPECTION AS REQUIRED TO ENSURE COMPLIANCE WITH THE ABOVE AND TO PROVIDE DESIGN ASSISTANCE FOR ANY SPECIAL OPERATIONS THAT MAY DEVELOP DURING GRADING OPERATIONS.

#3A THE PROPERTY FROM PARCEL 'A' MAY NOT BE DEVELOPED UNTIL PARCEL 'B' IS DEVELOPED OR A MINIMUM OF 9,375 UNITS ARE DEVELOPED UNDER DR 5.5 ZONING.

#3B THE FINAL LANDSCAPE PLAN WILL CLEARLY IDENTIFY ALL TREES THAT WILL BE PRESERVED & METHODS OF PROTECTION DURING CONSTRUCTION.

#3C KEY TO WINTER PARKING ON EACH COURT

NO SCREEN PROVIDED

LEGEND

EXISTING

- 4--- EXISTING CONTOURS
- EXISTING ROAD
- TRACT BOUNDARY
- ZONING LINE
- FLOOD PLAIN LIMITS
- WETLAND SCRUB LIMITS
- SLOPES > 25 %

PROPOSED

- PROPERTY LINE/ROW LINE
- PROPOSED CONC. CURB & GUTTER
- SANITARY SEWER & MAN HOLE
- STORM DRAIN, INLET & MAN HOLE
- WATER LINE
- FIRE HYDRANT
- STREET LIGHTS
- BUILDING ENVELOPE
- PROPOSED CONTOUR
- # OF AVERAGE DAILY TRIPS
- LOCAL OPEN SPACE
- STREAM BUFFER
- SIGHT LINES

EXISTING UTILITIES REF DWG

WOODLING WAY	EX 8" WATER MAIN
BALTO CO. DPW DRWG #	50-1954
	50-1957
WOODHOLME AVE	EX 16" WATER MAIN
BALTO CO. DPW. DRWG #	54-1010
	54-1011
INTERSTATE 695	EX 20" WATER MAIN
BALTO CO DPW DRWG #	60-0060
	60-0061
PEACHTREE COURT	EX 2" GAS MAIN
BALTO CO. DPW DRWG #	52-2-69
	52-2-75
OLD COURT RD	EX 4" GAS MAIN
BALTO CO DPW DRWG #	52-2-65
INTERSTATE 695	EX 4" GAS MAIN
BALTO CO DPW DRWG #	52-2-65
	52-2-75
WOODLING WAY	EX 8" SEWER MAIN
BALTO CO. DPW DRWG. #	62-554
	66-1032
	66-1037
	71-0249
OLD COURT RD	EX 12" SEWER MAIN
BALTO CO DPW DRWG #	62-555
WESTERN MARYLAND RAILROAD	EX 12" SEWER MAIN
BALTO CO DPW DRWG #	75-0259
	75-0256
OLD COURT RD	EX 18" STORM DRAIN
BALTO CO DPW DRWG #	69-420

1. All development shall be in accordance with the Baltimore County Landscape Manual.
2. Forest conservation requirements will be met by the retention of existing forest and the planting of new forest on site.
3. Stormwater management will be provided by the construction of a wet pond.
4. Sediment control will be provided by the construction of a sediment trap and silt fence.
5. Water and sewer service will be provided by public systems.
6. Soils information is from the Baltimore County Soil Survey.
7. Site is not within the Chesapeake Bay Critical Area.
8. Site is not within a Metropolitan District.
9. Site is not within a Historic District.
10. Residential Transition Areas
   a. The existing use is residential, and the proposed use is residential.
   b. Existing plantings will be supplemented to satisfy buffer requirements.
   c. Existing lighting is shown on plan as ⚠. Proposed lighting is shown with a 16' mounting height. See plan for location, width, alignments and grades.
11. Parking Lot Details
   a. Lighting will be provided.
   b. Maintenance of pedestrian driveways will be the responsibility of the individual homeowners.
12. ADT's
   Average Daily Trips -
   Single Family 132 x 10 = 1320
   Townhouses 42 x 8.5 = 357
   1677
13. A.D.T.'s are shown on plan
14. Storm water management alternatives are being investigated. Potential storm water management areas are shown on plan.
15. Grading shown is schematic only.
16. Existing vegetation will be retained in areas not needed for construction or grading
17. All roads will be posted to Fire Lane and no parking.
18. Proposed 300' sight lines are shown on plan and will be cleared and graded to Balto. Co. Standards.
19. Proposed Roads designed to Baltimore County Department of Public Works Urban Collector Standards.
20. Existing roads to be razed will be inspected for asbestos prior to demolition.
21. Existing structures or construction will be permitted in the stream buffer only as allowed by Baltimore County Water Quality Policy.
22. Boundary survey and topography from survey prepared by Dept. of Public Works, dated November 1, 1999.
23. Site survey and topography from boundary and topographic survey prepared by Dept. McCune & Walter on previous CRG plan, prepared by Dept. McCune & Walter dated November 1, 1999.

ELEVATION AND SETBACK DETAIL

(not to scale)

PROPERTY LINE — STREET R/W LINE

HEIGHT

1: For maximum height of 28' to 35', distance should be 35' minimum.
2: For maximum height of 35' to 45', distance should be 38' minimum.

TRACT BOUNDARY

LAYOUT DETAIL

(not to scale)

TO LOCAL OPEN SPACE

WATER, PARKING & SIDE WALK

PARKING ON COLLECTOR

(not to scale)

30' PAVING

8' WIDE STALL

23' LANE

Part. Sch. #4

GENERAL NOTES

1. CURRENT OWNER AND STREET ADDRESS: HENRY M. WITMYER, JR. ET UX
   7 GREENWOOD PLACE
   BALTIMORE MD. 21208

2. CONTRACT LESSEE / APPLICANT: AT&T WIRELESS SERVICES, INC.
   8403 COLESVILLE ROAD
   SILVER SPRING, MARYLAND 20910

3. SITE AREA: 0.92 AC. +/-

4. EXISTING USE: MANUFACTURING

5. SITE ADDRESS: 7 GREENWOOD PLACE
   BALTIMORE MD. 21208

6. SITE DATA: TAX MAP 78, BLOCK 1, PARCEL 400
   TAX ACCOUNT NO. 0323054030
   ELECTION DISTRICT NO. 3
   COUNCIL DISTRICT NO. 2
   EXISTING ZONING: ML & DR-16
   ZONING MAP NO.: N.W.7-F, N.W.8-F
   LIBER 4223 FOLIO 58

7. NO WATER OR SANITARY UTILITIES ARE REQUIRED FOR THE PROPOSED FACILITY.

8. THE BOUNDARY INFORMATION AND LOCATION SHOWN HEREON HAVE BEEN COMPILED FROM DEEDS AND OTHER SOURCES BELIEVED TO BE RELIABLE, HOWEVER THEIR ACCURACY IS NOT GUARANTEED AND IS SUBJECT TO CHANGE.

9. THERE ARE NO NEW SIGNS PROPOSED FOR THIS FACILITY.

10. NO ADDITIONAL SITE, ANTENNA LIGHTS OR WHITE STROBOSCOPIC LIGHTS ARE PROPOSED FOR THIS FACILITY, UNLESS REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION.

11. EXISTING UTILITY LOCATION INFORMATION SHOWN ON THESE PLANS IS FOR THE CONTRACTORS CONVENIENCE ONLY. WHILE THE INFORMATION SHOWN HAS BEEN GATHERED FROM SURVEYS AND SOURCES DEEMED TO BE RELIABLE, THE CORRECTNESS OR COMPLETENESS OF THE INFORMATION SHOWN IS NOT WARRANTED OR GUARANTEED. THE CONTRACTOR SHALL VERIFY ALL INFORMATION TO HIS OWN SATISFACTION.

12. THE CONTRACTOR IS TO NOTIFY MISS UTILITY (800)-257-7777 A MINIMUM OF 3 WORKING DAYS PRIOR TO ANY CONSTRUCTION OR EXCAVATION. THE CONTRACTOR IS TO ALSO NOTIFY A PRIVATE UTILITY CONTRACTOR FOR ALL ON-SITE UTILITY LOCATIONS.

ZONING HISTORY

13. THIS SITE WAS THE SUBJECT OF ZONING CASE NO. 64-126-A IN WHICH THIS PROPERTY WAS IDENTIFIED AS PARCEL 1. CASE NO. 64-126-A REQUESTED A VARIANCE FROM SEC. 255.1 AS SET FORTH IN SEC. 243.1 - FRONT YARD - TO PERMIT A FRONT BUILDING LINE OF 25 FEET FROM THE FRONT PROPERTY LINE INSTEAD OF THE REQUIRED 75 FEET.

A VARIANCE FROM SEC. 255.1 AS SET FORTH IN SEC. 243.2 - SIDE YARD - TO PERMIT A SIDE YARD OF 30 FEET MEASURED FROM THE SIDE PROPERTY LINE INSTEAD OF THE REQUIRED 50 FEET.

A VARIANCE FROM SEC. 255.1 AS SET FORTH IN SEC. 243.4 - PROXIMITY OF STRUCTURES TO RESIDENTIAL ZONES TO PERMIT A STRUCTURE TO BE LOCATED 58 FEET FROM THE NEAREST RESIDENTIAL ZONE BOUNDARY LINE INSTEAD OF THE REQUIRED 125 FEET.

THE REQUESTED RELIEF WAS GRANTED IN ORDERS DATED JUNE 17, 1964 SUBJECT TO THE FOLLOWING CONDITIONS:

THAT THE PETITIONERS CAUSE TO BE CONSTRUCTED ALONG THE NORTHEAST LINE OF THE PROPERTY OWNED BY THE PROTESTANTS, BERNARD LUTZKY AND SELMA LUTZKY, A CEDAR FENCE 240 FEET IN LENGTH AND 7' IN HEIGHT TO PROVIDE SCREENING FOR SAID PROPERTY.

THAT THE PETITIONERS SHALL PROVIDE AT THE NORTHWEST CORNER OF THE PROPERTY OWNED BY MITCHELL GOULD 50 FEET OF WHITE PINE TREES (5-6 FEET IN HEIGHT) OR NORWAY SPRUCE TREES (3.5-4 FEET IN HEIGHT) AND TO BE PLANTED 6 FEET ON CENTER TO PROVIDE SCREENING FOR SAID PROPERTY.

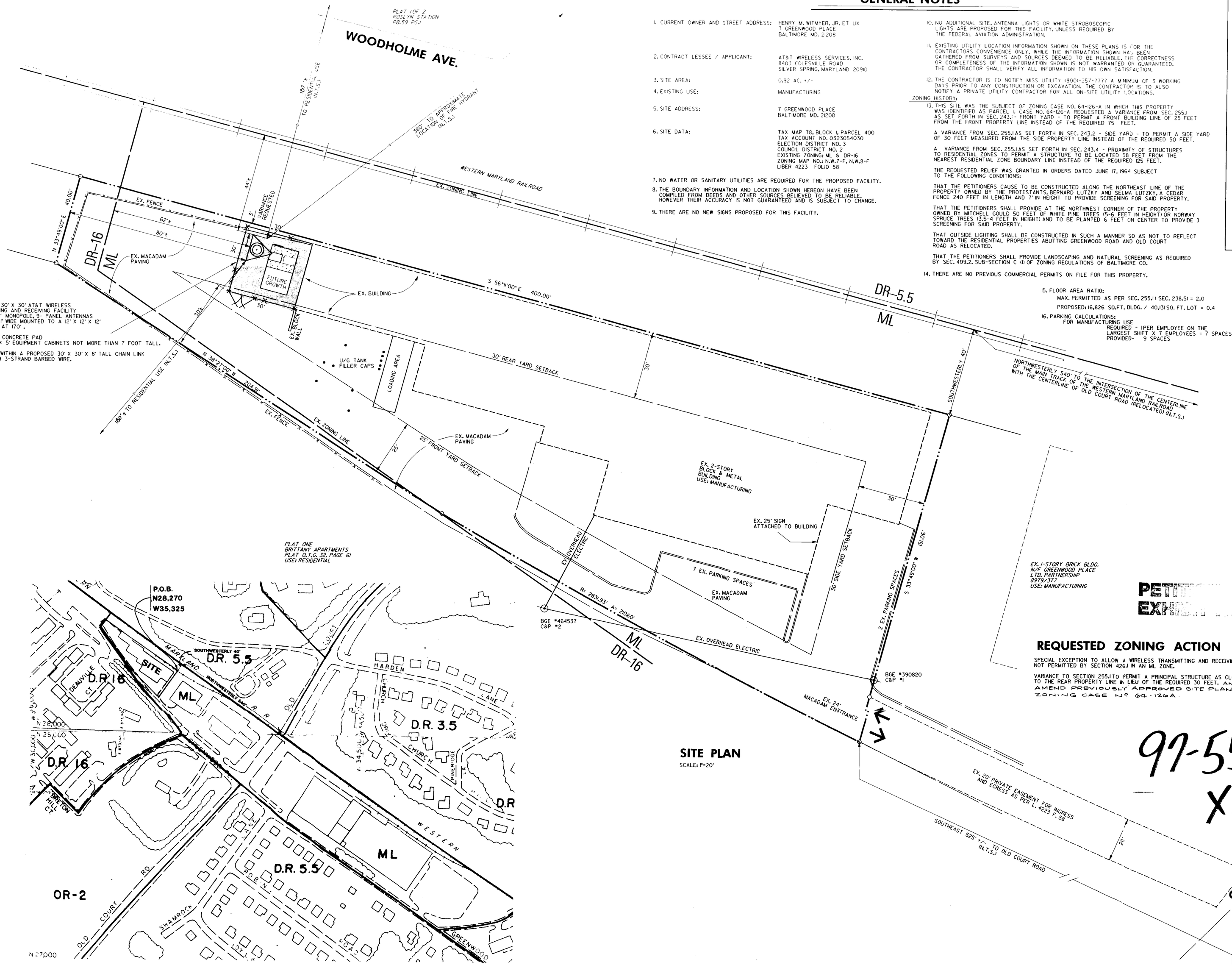
THAT OUTSIDE LIGHTING SHALL BE CONSTRUCTED IN SUCH A MANNER SO AS NOT TO REFLECT TOWARD THE RESIDENTIAL PROPERTIES ABUTTING GREENWOOD ROAD AND OLD COURT ROAD AS RELOCATED.

THAT THE PETITIONERS SHALL PROVIDE LANDSCAPING AND NATURAL SCREENING AS REQUIRED BY SEC. 409.2, SUB-SECTION C (1) OF ZONING REGULATIONS OF BALTIMORE CO.

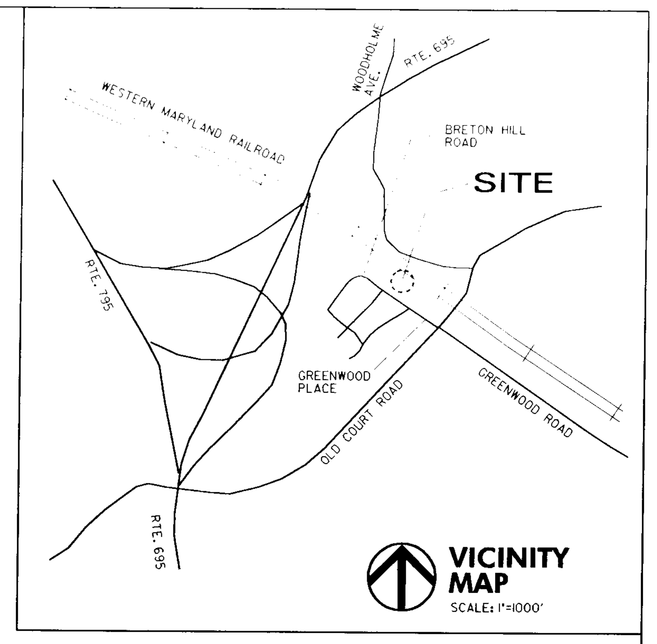
14. THERE ARE NO PREVIOUS COMMERCIAL PERMITS ON FILE FOR THIS PROPERTY.

15. FLOOR AREA RATIO:
    MAX. PERMITTED AS PER SEC. 255.1 (SEC. 238.5) = 2.0
    PROPOSED: 16,826 SQ.FT. BLDG. / 40,131 SQ. FT. LOT = 0.4

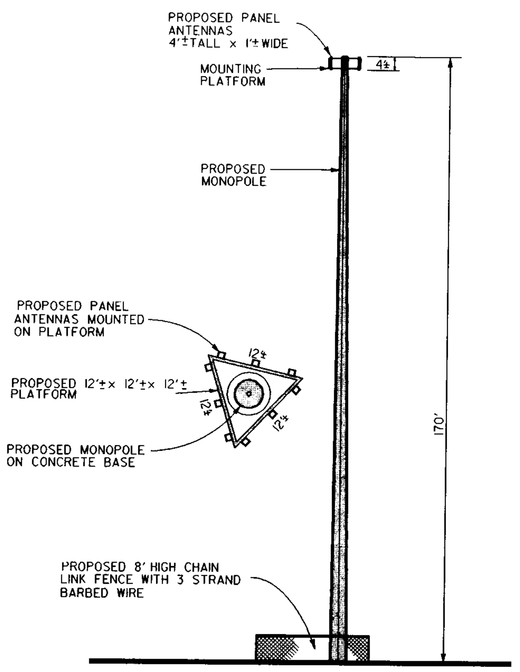
16. PARKING CALCULATIONS:
    FOR MANUFACTURING USE
    REQUIRED - 1 PER EMPLOYEE ON THE LARGEST SHIFT X 7 EMPLOYEES = 7 SPACES
    PROVIDED- 9 SPACES



SITE PLAN
SCALE: 1"=20'



VICINITY MAP
SCALE: 1"=1000'



MONOPOLE ELEVATION
NO SCALE

PETITIONER'S EXHIBIT 3

REQUESTED ZONING ACTION

SPECIAL EXCEPTION TO ALLOW A WIRELESS TRANSMITTING AND RECEIVING FACILITY NOT PERMITTED BY SECTION 426.1 IN AN ML ZONE.

VARIANCE TO SECTION 255.1 TO PERMIT A PRINCIPAL STRUCTURE AS CLOSE AS 3 FEET TO THE REAR PROPERTY LINE IN LIEU OF THE REQUIRED 30 FEET, AND TO AMEND PREVIOUSLY APPROVED SITE PLAN IN ZONING CASE Nº 64-126A

97-556-XA

PORTION OF BALTIMORE CO. ZONING MAPS N.W.7-F & N.W.8-F
SCALE : 1" = 200'

PRINTED
JUN 6 1997
DAFT-McCUNE-WALKER, INC.

DMW
Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Engineers, Surveyors & Environmental Professionals

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION AND VARIANCE

WITMEYER PROPERTY

ELECTION DISTRICT NO. 3 BALTIMORE CO. MD.
COUNCIL DISTRICT NO. 2

DATE	BY	REVISIONS
6/6/97	LTM	ZONING REQUEST LANGUAGE

BASE: LTM
DRAWN: LTM
DESIGNED:
CHECKED BY:
DATE CHECKED: 5 / 23 / 97
SCALE: AS SHOWN
DRAWING: 1 OF 1
PROJECT NO.: 96035.43

Wed May 28 15:44:06 1997 d:\dmw\96035.47\96035543.dgn

55C

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BALTIMORE MD. 21208

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10. NO ADDITIONAL SITE, ANTENNA LIGHTS OR WHITE STROBOSCOPIC LIGHTS ARE PROPOSED FOR THIS FACILITY, UNLESS REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION.

11. EXISTING UTILITY LOCATION INFORMATION SHOWN ON THESE PLANS IS FOR THE CONTRACTORS CONVENIENCE ONLY. WHILE THE INFORMATION SHOWN HAS BEEN GATHERED FROM SURVEYS AND SOURCES DEEMED TO BE RELIABLE, THE CORRECTNESS OR COMPLETENESS OF THE INFORMATION SHOWN IS NOT WARRANTED OR GUARANTEED. THE CONTRACTOR SHALL VERIFY ALL INFORMATION TO HIS OWN SATISFACTION.

12. THE CONTRACTOR IS TO NOTIFY MISS UTILITY (800)-257-7777 A MINIMUM OF 3 WORKING DAYS PRIOR TO ANY CONSTRUCTION OR EXCAVATION. THE CONTRACTOR IS TO ALSO NOTIFY A PRIVATE UTILITY CONTRACTOR FOR ALL ON-SITE UTILITY LOCATIONS.

ZONING HISTORY:

13. THIS SITE WAS THE SUBJECT OF ZONING CASE NO. 64-126-A IN WHICH THIS PROPERTY WAS IDENTIFIED AS PARCEL 1, CASE NO. 64-126-A REQUESTED A VARIANCE FROM SEC. 255.1 AS SET FORTH IN SEC. 243.1 - FRONT YARD - TO PERMIT A FRONT BUILDING LINE OF 25 FEET FROM THE FRONT PROPERTY LINE INSTEAD OF THE REQUIRED 75 FEET.

A VARIANCE FROM SEC. 255.1 AS SET FORTH IN SEC. 243.2 - SIDE YARD - TO PERMIT A SIDE YARD OF 30 FEET MEASURED FROM THE SIDE PROPERTY LINE INSTEAD OF THE REQUIRED 50 FEET.

A VARIANCE FROM SEC. 255.1 AS SET FORTH IN SEC. 243.4 - PROXIMITY OF STRUCTURES TO RESIDENTIAL ZONES, TO PERMIT A STRUCTURE TO BE LOCATED 58 FEET FROM THE NEAREST RESIDENTIAL ZONE BOUNDARY LINE INSTEAD OF THE REQUIRED 125 FEET.

THE REQUESTED RELIEF WAS GRANTED IN ORDERS DATED JUNE 17, 1964 SUBJECT TO THE FOLLOWING CONDITIONS:

THAT THE PETITIONERS CAUSE TO BE CONSTRUCTED ALONG THE NORTHEAST LINE OF THE PROPERTY OWNED BY THE PROTESTANTS, BERNARD LUTZKY AND SELMA LUTZKY, A CEDAR FENCE 240 FEET IN LENGTH AND 7' IN HEIGHT TO PROVIDE SCREENING FOR SAID PROPERTY.

THAT THE PETITIONERS SHALL PROVIDE AT THE NORTHWEST CORNER OF THE PROPERTY OWNED BY MITCHELL GOULD 50 FEET OF WHITE PINE TREES (5-6 FEET IN HEIGHT) OR NORWAY SPRUCE TREES (3.5-4 FEET IN HEIGHT) AND TO BE PLANTED 6 FEET ON CENTER TO PROVIDE SCREENING FOR SAID PROPERTY.

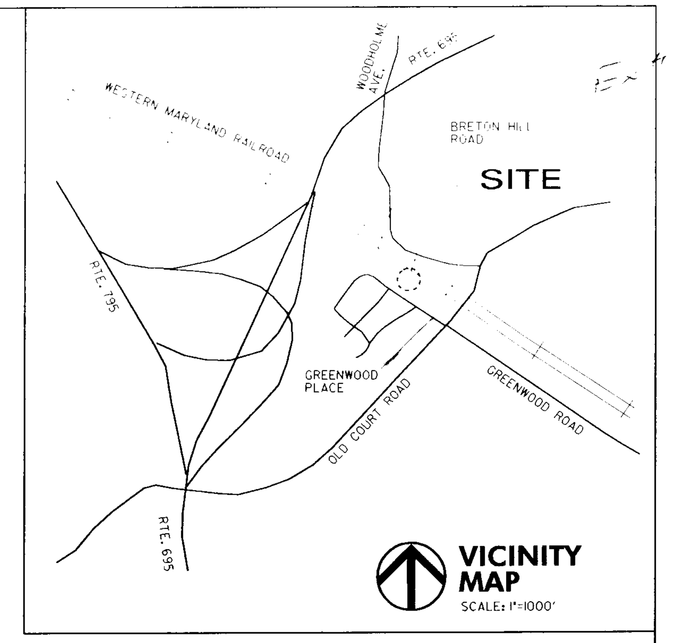
THAT OUTSIDE LIGHTING SHALL BE CONSTRUCTED IN SUCH A MANNER SO AS NOT TO REFLECT TOWARD THE RESIDENTIAL PROPERTIES ABUTTING GREENWOOD ROAD AND OLD COURT ROAD AS RELOCATED.

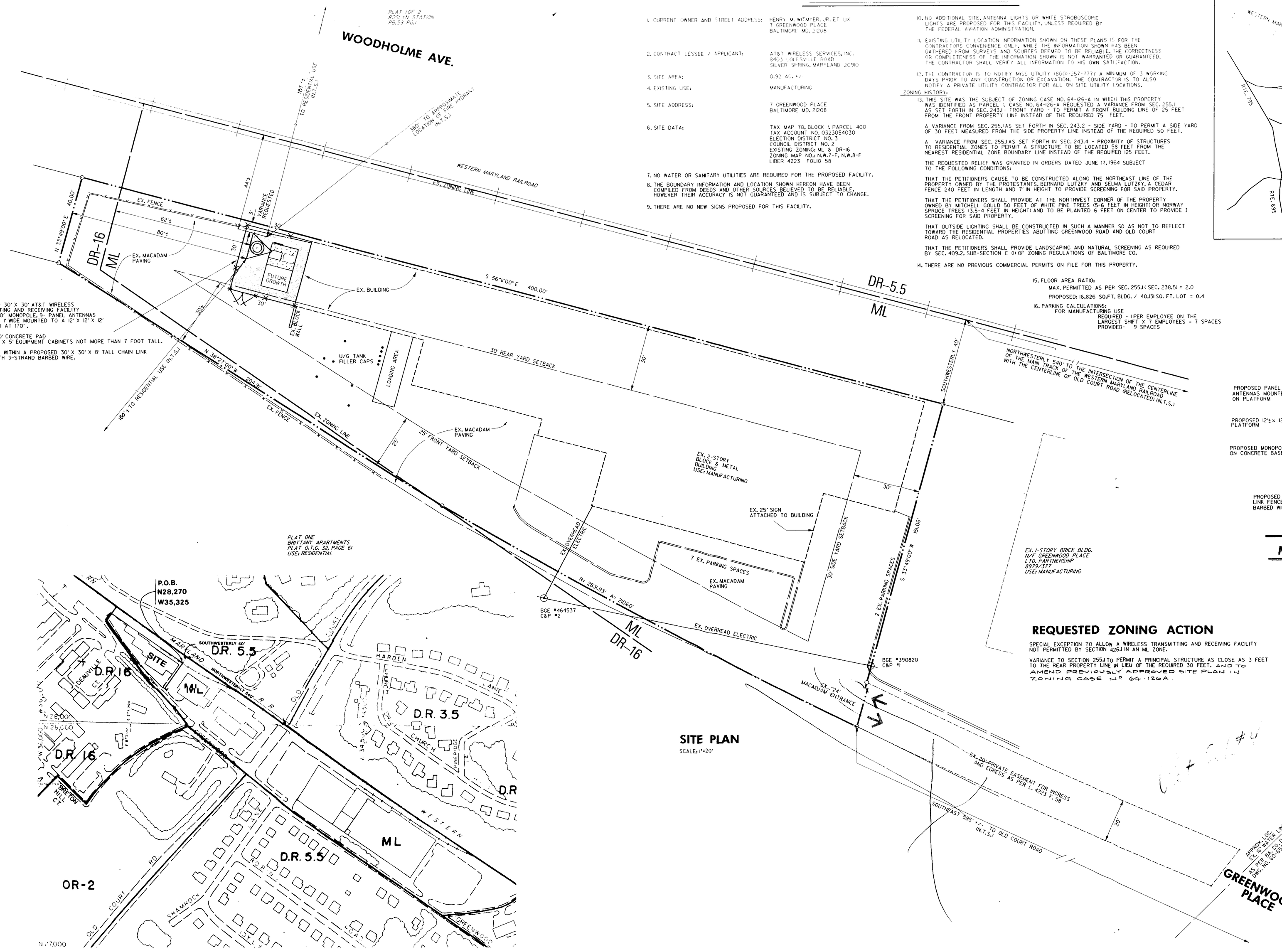
THAT THE PETITIONERS SHALL PROVIDE LANDSCAPING AND NATURAL SCREENING AS REQUIRED BY SEC. 409.2, SUB-SECTION C (1) OF ZONING REGULATIONS OF BALTIMORE CO.

14. THERE ARE NO PREVIOUS COMMERCIAL PERMITS ON FILE FOR THIS PROPERTY.

15. FLOOR AREA RATIO:
MAX. PERMITTED AS PER SEC. 255.1 (SEC. 238.5) = 2.0
PROPOSED: 16,826 SQ.FT. BLDG. / 40,131 SQ. FT. LOT = 0.4

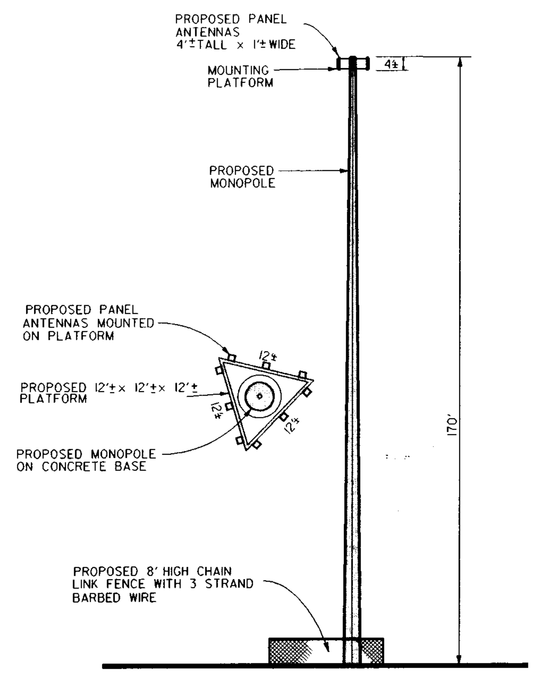
16. PARKING CALCULATIONS:
FOR MANUFACTURING USE
REQUIRED - 1 PER EMPLOYEE ON THE LARGEST SHIFT X 7 EMPLOYEES = 7 SPACES
PROVIDED - 9 SPACES





SITE PLAN
SCALE: 1"=20'

PORTION OF BALTIMORE CO. ZONING MAPS N.W.7-F & N.W.8-F
SCALE: 1" = 200'



MONOPOLE ELEVATION
NO SCALE

REQUESTED ZONING ACTION

SPECIAL EXCEPTION TO ALLOW A WIRELESS TRANSMITTING AND RECEIVING FACILITY NOT PERMITTED BY SECTION 426.1 IN AN ML ZONE.

VARIANCE TO SECTION 255.1 TO PERMIT A PRINCIPAL STRUCTURE AS CLOSE AS 3 FEET TO THE REAR PROPERTY LINE IN LIEU OF THE REQUIRED 30 FEET, AND TO AMEND PREVIOUSLY APPROVED SITE PLAN IN ZONING CASE Nº 64-126A.

DMW
Daft-McCune-Walker, Inc.
200 East Pennsylvania Avenue
Towson, Maryland 21286
(410) 296-3333
Fax 296-4705

A Team of Land Planners, Landscape Architects, Engineers, Surveyors & Environmental Professionals

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION AND VARIANCE

WITMEYER PROPERTY

ELECTION DISTRICT NO. 3 BALTIMORE CO. MD.
COUNCIL DISTRICT NO. 2

DATE	BY	REVISIONS
6/6/97	LTM	ZONING REQUEST LANGUAGE

BASE:	LTM
DRAWN:	LTM
DESIGNED:	
CHECKED BY:	
DATE CHECKED:	5 / 23 / 97
SCALE:	AS SHOWN
PROJECT NO.:	96035.43
DRAWING:	1 OF 1

Wed May 28 15:44:06 1997 d:\dmw\96035.43\96035430.pro

I-795
MD 140
OWINGS MILLS BLVD
HUNTERS MILL RD
RED RUN BLVD
MD 26
LYONS MILL RD
MD 26/LIBERTY RD
MD 129/PARK HEIGHTS AV
JONES FALLS EXPY
I-83/I-695 EXIT 21 RAMP
I-695
B-638.1
B-639.3
B-626.5
Hackeman
B-644.3
Pikesville Sapper
B-645.1
Randallstown
B-643.2
Bel-Park Towers
NORTHERN PKWY
WABASH AV
COLD SPRING LN
MD 26/LIBERTY HEIGHT AV
a1_b640_MS1_Follow by MESSAGE_TYPE
Handoff (52)
Release - DTC (5)
a1_b640_MS1_Follow
-75 to -35 (1089)
-85 to -75 (2674)
-95 to -85 (5056)
-115 to -95 (3677)