5/14/03

IN THE MATTER OF THE APPLICATION OF BACK RIVER LLC, BUCK JONES, PRESIDENT - LEGAL OWNER; SPRINT PCS – C.P. - PETITIONERS FOR VARIANCE ON PROPERTY LOCATED ON THE SW/S BACK RIVER NECK ROAD, 330' SE OF POTTERY FARM RD (810 BACK RIVER NECK RD) 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 02-159-A

* * * * * * * * *

OPINION

This matter is before the Board on an appeal from a decision of the Zoning Commissioner in which the Commissioner granted variances from various setback requirements to accommodate the construction of a 115-foot tall wireless communications tower. The Petition was filed by the Property Owner, Back River LLC, by Buck Jones, President, and the Contract Lessee, Sprint PCS, by Howard Leger, through their attorney. An appeal was filed by the Office of People's Counsel on January 14, 2002. The Back River Peninsula Community Association, Inc., also filed its appeal on January 31, 2002.

A hearing was held on September 25, 2002 and January 21, 2003. The Petitioner was represented by G. Scott Barhight, Esquire, and Jennifer S. Busse, Esquire, of the law firm of Whiteford, Taylor & Preston. The Protestants /Appellants were not represented by counsel. People's Counsel, Peter Max Zimmerman, participated on behalf of the Office of People's Counsel. Public deliberation was held on March 20, 2003.

Facts

Back River Neck LLC is the owner of 4.3 acres zoned M.L. (manufacturing light) at the northern gateway to the Back River Peninsula. Mr. Buck Jones, the builder and owner of the company, purchased the site in early 1999. It is currently improved with two buildings that house Mr. Jones' contracting business and approximately seven other commercial operations. It also has a parking lot which accommodates these uses.

Before the Zoning Commissioner, Petitioners initially sought relief from § 426.6A.3 of the *Baltimore County Zoning Regulations* (BCZR) to permit setbacks of 75 feet from the south and west property lines and 148 feet from the north property line in lieu of the required 200 feet each. In addition, the Petitioners sought relief from § 426.6A.4 to permit setbacks of 40 feet each to the south and west property lines in lieu of the required 120 feet each for proposed equipment cabinets to support the proposed tower.

On May 7, 2002, subsequent to the decision of the Zoning Commissioner, Mr. Keith Kelly of the Baltimore County Department of Environmental Protection & Resource Management (DEPRM), issued a letter to the property's owner, Mr. Jones, informing him that the tower's proposed location would have to be revised due to the location of an existing stream. The additional setback requirements were not identified by DEPRM in the Zoning Advisory Committee Comments as part of the Zoning Commissioner's case. In accordance with DEPRM's request, Petitioners revised the site plan to relocate the tower 60 feet in an easterly direction. This was approved by a letter dated August 29, 2002 from Joseph C. Merry of the Baltimore County Department of Permits & Development Management when he issued a zoning verification letter. Petitioners then erected a 120-foot high wireless communication tower on the subject property.

The variances sought before the Board are as follows:

1. A variance from BCZR § 426.6A.1 to:

   a. Allow a setback of 75 feet at the southern property line (a side setback) in lieu of the required 200 feet for a wireless telecommunications tower.

   b. Allow a setback of 135 feet to the western property line (the rear setback) in lieu of the required 200 feet for a wireless telecommunications tower.

   c. Allow a setback of 148 feet to the northern property line (a side setback) in lieu of the required

200 feet for a wireless telecommunications tower.

2. A variance from BCZR § 426.6A.2 to:

a. Allow a setback of 40 feet to the southern property line in lieu of the required 125 feet for equipment cabinets for a wireless telecommunications tower.

Petitioners contended that the setbacks for the equipment cabinets were not legally necessary since they did not qualify as "structures." They were approximately 5 feet in height and ranged from 22 inches to 30 inches in width and depth. They could not be entered by a person, and technicians simply opened the panels in order to work on the equipment.

In support of its case, Petitioners submitted the testimony of William Bafitis, the representative from the Holly Neck Conservation Association which had voted unanimously to support the Petition, since the Association felt there was a need for telecommunications in the area. They reasoned that it was a matter of safety since it was difficult at times, during emergency situations, for regular telephone communications to be operative, and the telecommunications in the area at the present time were not very good due to lack of a strong signal. The tower would remedy that situation. Additionally, the Petitioners submitted a Memorandum from the County Planning Office indicating that the site in question would be an excellent location for a wireless telecommunications tower due to its size and tree growth on the property.

Petitioners also submitted the testimony of Peter Fastnacht, President of Integrated Wireless Alliance, who was accepted as an expert in wireless site acquisition, and Hassan Khalil, an expert in wireless solutions in the field of radio frequency engineering. The testimony indicated that, based upon complaints received from customers and related studies of Sprint's coverage in the area, Sprint generated a search ring outlining the area in which Sprint needed to locate a wireless telecommunications facility to improve its service by increasing its network coverage. The search ring shown on Petitioner's Exhibit

3 was an oval-shaped area that was bounded by Turkey Point Road to the north and Cherry Garden Road to the south, with Back River Neck Road running in a north/south direction through the middle. The area encompassed by the search ring extended approximately one mile north to south and approximately ¼ mile east and west of Back River Neck Road. The testimony indicated that Sprint has researched whether its need for coverage could be satisfied by locating the antennas on any existing towers or buildings or any other existing structure. The answer to this question was "no." Sprint next looked for a piece of property in a medium or high-intensity zone where such a tower could be located as a matter of right. The subject property appeared to fill all of the requirements. The tower at 810 Back River Neck Road is on currently on property zoned M.L. Sprint reviewed three other properties in the area that were zoned medium to high-intensity and theoretically could accommodate the tower as a matter of right, but the subject property appeared to be the most appropriate location.

People's Counsel presented Jack Dillon, an expert in planning and zoning, who testified that he had reviewed cases involving wireless communication towers and looked at 15 to 20 sites in the Baltimore Metropolitan Area. Mr. Dillon testified that he could see nothing unique about the subject property. He stated that it was zoned M.L. because, in the past, a cement plant had been located on the property. Mr. Dillon admitted that there were three other properties in the area that were zoned M.L., but they would probably all require variances in order to have the tower built upon the property. Mr. Dillon felt that the property was located at the entrance to the Back River Neck Peninsula and Back River Neck Road was a scenic area as set forth in the Master Plan of Baltimore County. Mr. Dillon, and the citizens who opposed the construction of the tower at the present site, discussed other sites in the immediate area that would be more suitable for the location of the tower, such as Chesapeake High School property, Baltimore Recreation Park across Back River Neck Road, and some other large wooded parcels. There was a suggestion that some of the properties where the tower could be located might require special

exception relief but that might be more practical and within the spirit and intent of the law than the location of the tower at the present site.

Decision

The Baltimore County Council, in enacting the zoning regulations with respect to the erection of wireless telecommunications towers, has stated that any variances that were necessary to locate the towers on a property should be presented in accordance with § 307 of the BCZR. BCZR 307.1 states that the Board of Appeals may grant variances:

> ...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship.

This section of the zoning law has been interpreted in many cases, the most prominent case being *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). The Court established a standard which requires that an individual seeking a variance prove:

1. That the land or structure is "unique";
2. That the uniqueness results in practical difficulty;
3. That there is true practical difficulty; and
4. That the practical difficulty is not self-created.

The Court also states:

> "Uniqueness" of a property for zoning purposes requires that the subject property has 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.

If the property cannot be demonstrated to be unique within the meaning of *Cromwell v. Ward*, the Board need not go any further with respect to the practical difficulty or unreasonable hardship.

As to the uniqueness of this particular property, the property is rectangular and flat; there is no unique subsurface conditions, historical significance, or environmental factors to take into consideration. There is no access or non-access to navigable waters and there are no obstructions or abutting properties. The fact that there are trees on the property does not make it unique, since there are numerous properties in the area that possess trees. While this may be the only M.L. property within the "search ring" established by Sprint, this does not make the property unique. The search ring is an artificial area established by Sprint and does not necessarily indicate that there are not other properties in the area where a tower could be located through the granting of a special exception. The fact that a piece of property is zoned M.L. and therefore would allow a tower to be erected on that property as a matter of right does not make the property "unique." *Umerley v. People's Counsel*, 108 Md. App. 497 (1996).

Finally, the Board considers that there is no violation of the Federal Telecommunications Act of 1996 by the denial of the variance in the instant case. While the Telecommunications Act may restrict local jurisdictions from denying wireless telecommunications carriers' permit applications where the effect is a prohibition of the provision of personal wireless services, the Board does not consider that that is the case before us. The Board is not denying Sprint the right to erect a telecommunications tower in the Holly Neck area. It is only saying that there may be a more appropriate piece of property where the tower could be erected and not require the variances that would be necessary on the instant property.

ORDER

THEREFORE, IT IS THIS 14th day of May, 2003 by the County Board of Appeals of Baltimore County

ORDERED that Petitioners' request for a variance from BCZR § 426.6A.1 to allow a setback of 75 feet at the southern property line (a side setback) in lieu of the required 200 feet, a setback of 135 feet to the western property line (the rear setback) in lieu of the required 200 feet, and a setback of 148 feet to

the northern property line (a side setback) in lieu of the required 200 feet for a wireless telecommunications tower and a variance from BCZR § 426.6A.2 to allow a setback of 40 feet to the southern property line in lieu of the required 125 feet for equipment cabinets for a wireless telecommunications tower be and the same 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*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

C. Lynn Barranger, Panel Chair

Lawrence S. Wescott

Melissa Moyer Adams

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

May 14, 2003

Peter Max Zimmerman
People's Counsel for
Baltimore County
Room 48, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: *In the Matter of: Back River LLC, Buck Jones, President* – Legal Owner; *Sprint PCS* – C.P. /Case No. 02-159-A

Dear Mr. Zimmerman:

Enclosed please find a copy of the 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*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** 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,

Kathleen C. Bianco /tts
Kathleen C. Bianco
Administrator

Enclosure

c: Back River Neck Peninsula Community Assn., Inc.
G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Buck Jones, President
Back River LLC
Howard Leger /Sprint PCS
Hillorie S. Morrison /VoiceStream Wireless
Leroy Sennett
Jim Mitchell, VP /Holly Neck Conservation Assn.
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

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on Recycled Paper

3/3/03

RE: PETITION FOR VARIANCE	*	**BEFORE THE**
810 Back River Neck Rd; SW/S Back River Neck Road, 330' SE of Pottery Farm Rd	*	**COUNTY BOARD OF APPEALS**
15th Election District, 5th Councilmanic		
	*	**FOR**
Back River, LLC, Legal Owners		
Sprint PCS, Contract Purchaser	*	**BALTIMORE COUNTY**
Petitioners	*	**Case No. 02-159-A**

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

PEOPLE'S COUNSEL'S MEMORANDUM

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BALTIMORE COUNTY
BOARD OF APPEALS

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Commissioner hearing, and moved into evidence by Petitioner at the hearing, it designated an area for expansion of the uses.

The uses and the parking lot consume most of the site. The site is not wooded, except for what the citizens describe as scrub deciduous trees approximately 60-70feet high, mostly on the northwest corner and the western boundary. The monopole is nearly 120 feet high. It is not located among the wooded area but appears to be about 75-100 feet east of the western boundary tree line, and nearly 100feet from the northern boundary tree line.

Sprint PCS, a corporation out of New Jersey, leases a portion of the site for a cellular communications tower. (Sprint and Back River may be referred to as "Petitioner"). Five variances are requested, for setback reductions of 63%, 26%, 33%, 68% and 68% from what is required in BCZR 426.6A for all towers and the equipment structures.

It is undisputed that Mr. Jones renovated the site. According to testimony of the citizens, it appears to be a viable and well-supported shopping center in the community.

The site is located at the "gateway" to the peninsula. This is a recognized pivotal location as noted in the Master Plan. (See PC Exh. 4). It is within a designated coastal legacy area. (See Master Plan 2010, p. 239). Mr. Leroy Sennett testified that most of the peninsula, including the area adjoining this site, is a designated habitat protection area. The site is surrounded by Resource Conservation property, including homes and residential lots to the north, a recreational park, across Back River Neck Road to the east, and the 104 acre Pottery Farm Baltimore County refuge area to the northeast.

II. THE LAW

Petitioners for wireless communication towers perpetuate a myth that federal law requires local authorities to approve towers applications. That is unfounded and misleading. The law specifically provides a section for "Preservation of Local Zoning Authority." 47 U.S.C 332(c) (7). Congress did not usurp local power but recognized the interests of the local community to establish and enforce zoning regulations for towers as well as other uses. In order to dispel the myth perpetuated here, it is helpful to point out:

- This is a typical variance case. There is no special consideration for a telecommunications tower variance under BCZR and the federal law does not mandate special consideration. The federal law merely requires that local laws shall not prohibit or have the effect of prohibiting the service altogether. 47 U.S.C. 332(c)(7) (B) (I) (II). The use is permitted in some fashion in nearly every zone in Baltimore County. But that does not mean a variance must be granted for every site.
- BCZR 426.11 (the tower legislation) requires strict adherence to BCZR 307 for a variance from the setback requirements; the County Council did not relax standards for a telecommunications tower.
- Petitioner must prove the site is unique under the standards in Cromwell and other appellate cases; there is no special qualification or definition of "uniqueness" because the tower is proposed in a commercial zone.
- According to treatises on zoning and prevailing case law hereafter cited, and in addition to the more typical examples familiar to this Board, "practical difficulty" does not mean:

(i) a demonstration of public benefit - **" . . . a demonstration of public benefit from the proposed use, without proof of hardship, is insufficient to warrant granting a variance."** Anderson's American Law of Zoning 4th Edition, (hereafter "Anderson"), Section 20.33;

(ii) improved efficiency of the applicant's business - **"The courts have consistently held that a variance may not be granted solely on the ground that such relief will enable the applicant to make a greater profit."** Anderson 20.23

(iii) inconvenience to the applicant if the variance is not granted - **" . . . an applicant cannot qualify for an area variance simply by showing that he will be inconvenienced if relief is not granted."** Anderson 20.54

(iv) ability of the applicant to select the preferable alternative if the variance is granted - **"To warrant the granting of an area variance there must be something more than a showing that a variance would permit the applicant to select a preferable alternative."** Anderson 20.54

(v) inability of the applicant to meet other tower restrictions if the variance is not granted. See Evans v. Shore Communications, Inc. et al, 112 Md. App 284, discussed on page 20 of this Memorandum.

1. Federal and Local Law; Delegation of Powers; Exposure of Myths

The federal law gives discretion to local zoning boards to approve or deny proposed towers under local law. The federal government reserves authority over environmental health standards, such as for cancer prevention. Federal law does not give service providers a blank check to deface the countryside. There is no preferred position,

presumption, or favored treatment for service providers as to such classic zoning issues as uniqueness of the site or practical difficulty. When appropriate, aesthetics, visual intrusion or clutter, effect on historic sites, impact on nearby residences, and consistency with the character of the neighborhood may also be considered. These are traditional zoning issues relating to public safety, health and welfare and consistency with spirit and intent of zoning law under BCZR 502.1, BCZR 307 and the zoning enabling law, Code Sec. 26-116.

See in support a series of cases from the United States Court of Appeals for the Fourth Circuit, which includes Maryland, the Virginias, and the Carolinas: AT & T Wireless v. City Council of Virginia Beach, 155 F.3d 423 (4th Cir. 1998); AT & T Wireless v. Winston-Salem Zoning Board, 172 F.3d 308 (4th Cir. 1999), and 360 Communications Co. v. Albemarle County, 211 F.3d 79 (4th Cir. 2000); see also SBA, Inc. v. City of Asheville, 539 S.E.2d 18 (N.C. 2000).

The industry has promoted the primary myth that federal law gives it a favored position. The appellate courts, however, have identified and rejected this and several secondary myths. One myth is that federal law requires 100% coverage of so-called service gaps. The truth is that federal law allows for "dead spots." 360 Communications Co., 211 F.3d at 86-87; SBA, Inc., 539 S.E.2d, at 25. Another myth is that upon expert evidence of need for service in an area (i.e. "service ring" here), federal law requires or indicates approval of a chosen site regardless of adverse impact on the area. Rather, as Judge Luttig wrote in AT & T Wireless:

> **"In all cases of this sort, those seeking to build will come armed with exhibits, experts, and evaluations. Appellees (AT & T Wireless, *et al.*), by urging us to hold that such a predictable barrage mandates that local governments approve applications, effectively demand that**

we interpret the Act so as always to thwart average, nonexpert citizens; that is, to thwart democracy." 155 F.3d at 431

Another myth is that denial of zoning relief translates to prohibition of service in violation of federal law. Judge Luttig explained that the "prohibition of service" subsection applies only to "blanket prohibitions" or "general bans or policies." He gave four reasons, beginning at 155 F.3d 428:

"First, any reading of [the prohibition] subsection to apply to individual decisions would effectively nullify local authority by mandating approval of all (or nearly all) applications, a result contrary to the explicit language of section (B)(iii), which manifestly contemplates the ability of local authorities to 'deny a request.'"

Among other reasons, he showed the Fourth Circuit follows prevailing case law.

A recent significant case that discusses the juxtaposition of local zoning laws and the telecommunications law is Town of Amherst v. Omnipoint Communications, 173 F 3rd 9 (1st Cir. 1999), attached. (In Amherst, the Federal Circuit Court reversed the District Court's grant of a Motion for Summary Judgment prohibiting enforcement of the zoning board's denial of the special exceptions and variances. The Court held the denial was not in violation of the Telecommunications Act.).

2. VARIANCE LAW

" . . . with respect to variances, it is said that a variance is 'designed as an escape hatch from the literal terms of the ordinance which, if strictly applied, would deny a property owner all beneficial use of his land and thus amount to confiscation.'" (citations omitted). Anderson, Section 20.02, p. 411,412.

BCZR 307.1 states that the CBA may grant variances:

"... only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship."

This standard requires proof of the following:

1. That the land or structure is "unique," a zoning term of art;
2. That the uniqueness "results" in "practical difficulty" pertinent to zoning compliance;
3. That there is true "practical difficulty," another zoning term of art; and
4. That any such "practical difficulty" is not self-created.

The first inquiry here is whether the property is peculiar or "unique." If evidence of uniqueness is insufficient or unpersuasive, the inquiry ends there. Cromwell v. Ward 102 Md. App. 691 (1995); Umerley v. People's Counsel 108 Md.App. 497 (1996); Riffin v. People's Counsel 137 Md. App. 90 (2001). If this threshold is passed, the further question is whether the unique condition results in "practical difficulty." McLean v. Soley 270 Md. 208, 213-15 (1973).

(a) UNIQUENESS DEFINED AND ANALYZED

The word "unique" is defined strictly. Otherwise, anyone could make some sort of claim. In Cromwell, 102 Md.App. at 710 (1995), the Court stated:

> **"In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, 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."**

Here, the undisputed evidence demonstrates the property is not unique. Petitioner did not produce a single witness who attributed to the site the characteristics of uniqueness stated in Cromwell. The property is *rectangular*, a common shape, and *flat*, topography prone to development. There was no evidence of unique *subsurface conditions, historical significance, environmental factors*. There is no issue of *access or non-access to navigable waters* that make this site different from any other on the Back River peninsula. There are *no obstructions on abutting properties*, most of which are vacant. There is nothing unusual about the structures on the site, which served various uses over the years.

The Petitioner's engineer, Ms. Kiernan, could not recite a single unique factor, other than the site is narrow. But it is not too narrow to accommodate uses already on the site, or other uses in the zone. The setbacks in the M.L. zone are less restrictive than the setbacks for a tower. The property is 225 ft wide. The M.L. zone requires side yard setbacks of 50 ft, (30ft where the front of the site adjoins a B.L. zone). This would allow, at a minimum, a 125ft building at the width of the site, nearly the length of the shopping center there. Additionally the length of the site is approximately 770 ft. The M.L. zone requires a 75 ft. front yard setback and a 50ft rear yard setback, permitting here a building envelope of 645 ft along the length of the property. Any number of the nearly 100 uses permitted by right, and the 11 permitted by special exception could locate here.

The site is not unique just because it cannot accommodate the setbacks for a tower. A property owner is entitled to a reasonable use of his property. He is not entitled to every use in the zone.

Moreover, the tower setbacks apply to all potential sites, regardless of the zone in which it is proposed. Petitioner cannot by-pass the traditional uniqueness standards because the site is within the medium or high intensity commercial zones, which permit a tower by right. There are numerous sites in these commercial zones that may not be able to meet the tower setbacks. See the attached 1000 scale zoning map (PC Exh. # 2) highlighted in yellow are sites that are similar in size to subject site. Anderson, 20.60 explains:

> **"Thus a landowner was not entitled to a variance to relieve his land from a restriction which applied to all lots of similar size."**

Finally, Petitioner has the burden of proving it meets the variance standards.

Judge Cathell in Cromwell, quoted with approval several Pennsylvania cases that held:

> **"([P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship which is unique to his particular property . . .").**

The Petitioner **"must fully satisfy the dictates of the statute authorizing the variance."** North v. St. Mary's County, 638 A.2d 1175, 99 Md. App. 502. Riffin v. People's Counsel. 767 A.2d 922, 137 Md. App. 90, cert denied 770 A.2d 168, 363 Md. 660. Judge Cathell pointed out in Cromwell, supra:

> **"The general rule is that the authority to grant a variance should be *exercised sparingly and only under exceptional circumstances. See, e.g.,* A. Rathkopf, 3 The Law of Zoning and Planning Section 38 (1978)."** Id. 651 A.2d 424,430.

Mr. Jack Dillon, a long-time planner for Baltimore County, including the 5th Councilmanic District here, testified as a planning and zoning expert against the proposed variances. Mr. Dillon stated he was familiar with the site and "did not see anything particularly unique about this property that would warrant the variances needed, or

requested." Mr. Dillon said he is familiar with other M.L. and non-residentially zoned sites with a similar shape, topography, and distance from the road. Mr. Dillon also noted the features of the site have not prevented numerous other uses to operate there.

Petitioner failed to meet its burden, plain and simple. Applicants for telecommunication towers present a plethora of technical testimony and jargon concerning the "service ring" where the tower must locate, the need to fill a gap in service for optimum service, and the needs of its customers. But none of these satisfy the variance requirements under BCZR 426 and 307. The County Council did not modify variance standards for towers to include technical considerations. The technical testimony about the "service ring" etc. is not a substitute for evidence of the uniqueness of the site causing practical difficulty for the property owner. It is important to distinguish the technical testimony from the requirements of BCZR 307 and Cromwell. Petitioners in tower variance cases try to impress the authorities with technical evidence, but it is usually irrelevant to uniqueness and practical difficulty.

While BCZR 426.9 sets out additional standards for a *special exception*, including consideration of some technical evidence, there is no provision in the statute requiring technical evidence for a *variance*. The only purpose to present it here is to mislead the Board on the standards of uniqueness and practical difficulty.

(b) PRACTICAL DIFFICULTY DEFINED AND ANALYZED

The Court of Appeals listed the criteria in McLean v. Soley, 270 Md. 208, 214-15 (1973):

> "1) Whether compliance with the strict letter of the restrictions governing area, set backs, 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.

2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

These criteria are interrelated and must be analyzed together

(i) <u>Traditionally, Variance Relief Is Intended For A Property Owner, Not A Lessee</u>

A variance provides limited relief, in the proper case, for a property owner's investment in his land. It is no accident that when the Court of Appeals articulated the criteria for proof of "practical difficulty" in the <u>McLean</u> case, *supra*, 270 Md. at 214-215, two of the three criteria referred to the property owner explicitly:

"1) Whether compliance with the strict letter of the restrictions ... would unreasonably prevent the **owner** from using the property ..."

"2) Whether a grant of the variance applied for would do substantial justice **to the applicant as well as to other property owners in the district**, or whether a lesser relaxation than that applied for would give substantial **relief to the owner of the property involved** and be more consistent with **justice to other property owners.**" (Emphasis supplied).

There does not appear to be any reported Maryland decision which approves a variance to suit a tenant, commercial or otherwise. A Virginia case described it as follows:

"Because a facially valid zoning ordinance may prove unconstitutional in application to a particular landowner, some devise is needed *to protect landowner's rights* without destroying the validity of zoning ordinances." (Emphasis added). <u>Packer v. Hornsby</u>, 267 S.E. 2d 140.

The Baltimore County zoning regulations do not define "owner". Its use in BCZR 426 does not refer to variance law, but the tower owner's regulatory duties.

Webster's Third New International Dictionary, Unabridged defines "owner" as:

> **"one that owns : one that has the legal or rightful title whether the possessor or not"**

A communications company that leases a site may be in possession, but does not have legal title. Title, not possession, is operative.

Since uniqueness, and the concomitant undue hardship or practical difficulty, relate to the land, a lessee, who has the option of other sites, cannot be deprived of all use of the property he does not own.

> **"A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship *to the individual landowner, unique to that parcel* and not shared by other *property owners* in the area. . ."** (Citations omitted). (Emphasis added). Cromwell, supra 718.

Nor does Sprint here meet the definition referred to in Anderson, supra at 20.30:

> **"One New York court said: 'It is not the uniqueness of the plight of the owner, but uniqueness of the land causing the plight that is the criterion.'"**

Cromwell also makes this distinction in quoting Anderson, supra at 14.55:

> **"It follows that the unnecessary hardship . . . must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance. . . In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulation upon the land in question. . . Reviewing a wide variety of variance applications based on reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship."**

If the standard is high for a property owner, it must certainly be higher for a prospective lessee who has choices.

Moreover, the Courts have disqualified self-created hardships, coupled with other evidence that a hardship or difficulty does not exist. Cromwell discussed this principle in quoting Marino v Mayor and City Council of Baltimore, 215 Md. 206:

> **". . . it was incumbent [on the applicant] to [show] . . . that the hardship was not the result of the applicants' own actions."**

Judge Cathell noted that "foreign jurisdictions are generally in accord." Cromwell, supra at 721.

> **" 'Self-inflicted or self-created hardship , . . is never considered proper grounds for a variance.' . . . Were we to hold that self-inflicted hardships 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. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted."** (Citations omitted).

Here Sprint claims it must locate in the service ring. But this is not practical difficulty, resulting from uniqueness of the site, only the desire of Sprint to attract more customers and expand its business in this area. Sprint selected this site in the ring, and was able to make a favorable financial arrangement with the owner. If the site cannot meet the tower setbacks, Sprint put itself in the position of facing such a difficult burden of proof. A contract can always be contingent on zoning relief. Sprint operates nationwide and knows about local zoning laws. If its Lease is binding here, it has dug its own hole.

Additionally, there is no evidence of practical difficulty for the owner, Mr. Jones. He had ongoing uses before Sprint came along. He appeared to have plans to expand. The desire, or even the need, to add to his rental income is not evidence of hardship or difficulty to support a variance request. Anderson states:

"The courts have consistently held that a variance may not be granted solely on the ground that such relief will enable the applicant to make a greater profit." 20.23

"Proof that more profitable use could be made of the applicant's land if an area variance was granted is not sufficient to establish practical difficulty, or otherwise to warrant the granting of an area variance." 20.53

Maryland cases are in accord. See Easter v. Mayor and City Council of Baltimore, 195 Md. 395, Gleason v. Keswick Imp. Ass'n., 197 Md. 46.

Mr. Dillon testified that a denial of the variances would not prevent Mr. Jones a reasonable use of his property and would not be an injustice to him. This testimony was uncontroverted by Petitioner's witnesses. Mr. Jones never testified.

(ii) "Medium Intensity" Zoning Under BCZR 426 Is Not Grounds For Variance

The sole advantage of having an M.L. designation for a tower is that the use is permitted by right, and does not need a hearing, as does a special exception use. The zone provides no advantage or benefit for a variance request. The setback requirements for a tower and the accessory structures under BCZR 426.6 A. are the same for all zones. Unless specifically stated in a statute, variances are decided without consideration of the site's zoning classification. The standards under BCZR 307 do not vary from zone to zone. There is no relaxation of standards from zone to zone. Other than establishing the bulk regulations, the zoning classification is not relevant in a variance hearing.

There is no provision in the tower legislation that establishes different standards for a variance from one zone to the next. On the contrary, BCZR 426.11 requires that any variance from the height and area restrictions, including setback requirements, shall be in accordance with BCZR 307. The applicant must prove uniqueness and practical difficulty as discussed previously in this Memorandum. Implicit, if not explicit, in Petitioner's

presentation here is that the M.L. zone confers an advantage to obtain the requested variances. Petitioner claims that the Board should look favorably at his request because the site is in a medium intensity commercial zone under BCZR 426.5. But there is nothing in the tower legislation that carries the advantage beyond designation of the tower use as permitted by right. There is no exception under variance law that favors one use over another, so that the variance should be granted at all costs in certain cases. Petitioner here tries to capitalize on the permitted use status, and create that aura in the variance case as a kind of substitute for uniqueness or practical difficulty. There is no authority for this under the federal telecommunications statute and Baltimore County zoning regulations.

This Board was not distracted from the proof required in a variance case In the Matter of Albert Bierman, Case No 99-239-A. The Board denied a variance even though the owner claimed he was entitled to relief largely because the use was permitted by right and could not otherwise fit on the site. See Umerley v. People's Counsel., 108 Md. App. 497 (1996).

A variance is not intended as an *entitlement* to allow a property owner to develop for every listed permitted use, regardless of noncompliance with area standards. See 3 Young, Anderson's American Law of Zoning, 4th, Sec 20.02 (1996), quoted *supra* ...

In other words, a property may be, and usually is, unsuitable for some of the listed permitted uses in the zone on, by right or by special exception. The variance mechanism is not intended to allow a property owner to squeeze intense uses on a narrow or small property.

Variances are denied even when the use is only permitted in a single zone. Here the M.L. zone is only one of 11 zones where the tower can located by right, in addition to the special exception tower use in all the R.C., D.R. and 7 other zones. It does not appear that a tower is prohibited in any zone in Baltimore County.

Because the variances are not warranted, this site, regardless of its zoning classification, is not suitable for a tower, and certainly less suitable than other sites where variances are not required, including sites where the special exception requirements can be satisfied.

In recognition of long standing zoning principles, BCZR 426.2 B. only recommends a tower locate in a medium or high intensity commercial zone, (using the word *should* instead of the mandatory "must") *when available*. And, under BCZR 426.9 C.1.a.& b., for a special exception, a petitioner need only show that there is no *available* or *suitable* site in a medium or high intensity zone, or due to topographic or other unique features, locating in a residential or transitional zone is more consistent with the spirit and intent of the legislative policy for towers than a site in an available medium or high commercial zone.

Apparently, the County Council believed that towers should not locate on certain commercial lots, regardless of the zoning classification. As an alternative to those commercial sites, it established the special exception use in a multitude of zones. Otherwise, the Council would have eliminated or substantially relaxed setback requirements for towers on commercially zoned properties, but chose instead to maintains setbacks. Moreover, the evidence shows the Back River Peninsula has other sites that should be explored as a site for a tower.

There is no requirement that opponents to a tower provide alternative sites. If the variances are not warranted, the use is not permitted at that location. A lessee can go elsewhere, a more flexible position than a property owner. Even so, Mr. Dillon and the citizens discussed the other sites in the immediate area that would be more suitable (Chesapeake High School, the Baltimore County Recreation Park across Back River Road, large wooded parcels). Some sites are in the coveted "service ring," although the creation of a ring is not a license to construct a tower anywhere in derogation of zoning regulations. No opponent to this tower said towers should be prohibited on the Peninsula altogether. The citizens and Mr. Dillon tried to be accommodating and open-minded. They suggested special exception sites may be more within the spirit and intent, particularly if the tower is disguised or concealed as required by BCZR 426.6 C and 426.9 C.3. Petitioner refused to consider another location, but could not refute the citizens' and Mr. Dillon's testimony. The opponents, while giving compelling arguments that the site was not unique and that no legal practical difficulty exists, even suggested, as a compromise, that the tower here be disguised as a flagpole. Ms. Kiernan, Petitioner's expert engineer, admitted there is no reason this tower could not be disguised. Mr. Fastnacht, who locates sites for Sprint, could not discount other locations. He chose the site because it is "commercial." He was not familiar with Baltimore County zoning regulations. He selects a site where he can negotiate a lease, regardless of BCZR. Mr. Khalil provided a lot of technical testimony, but that is not a criteria for variance relief. Even the federal law does not give the tower owner *carte blanche*. Need or "significant gaps" do not "trump other factors." See 37 Real Property, Probate and Trust Journal, Volume 37, No. 2.

The issue here is whether Petitioner has met its burden of proof for a variance. But Petitioner argues that the variances should be granted here because there are so few commercial zones in the area. It claims it has no where else to go as justification for the variances. There may be more appropriate sites where the use is permitted by special exception. While this is legally incorrect, even giving such impression is inaccurate and unfounded. While our office does not claim that special exceptions are automatic, we recognize there is a presumption of validity for a special exception use. Certainly, there is no presumption for a variance. It may be helpful to review the law on the distinctions between a variance and special exception to discount the Petitioner's argument that this is *an ideal site.*

In Cromwell, Judge Cathell emphasized the "general rule that variances are rarely appropriate" in a discussion of the important distinctions between a variance and a special exception:

> **"Special Exceptions (and Conditional Uses) and Variance – Distinguished**
>
> **The treatise writers define the concept as:**
>
> **'A variance is an authorization for [that] . . . which is prohibited by a zoning ordinance . . .**
>
> **[T] he difference between the two [variances and special exceptions] . . . is of practical significance . . .**
>
> **' . . . [T]he variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception contemplates a permitted use . . .[once] the prescribed conditions therefor are met.'**
>
> **. . . [A] variance is 'authority . . . to use his property in a manner forbidden . . . ,' while an exception 'allows him to put his property to a use which the enactment expressly permits.'**

[T]he standards for exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.

'A special exception . . .is one which is controlled and . . . permissible in a given zone. It is granted . . .upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized . . . where the literal enforcement of its terms would result in unnecessary hardships.'" Cromwell, supra 700 quoting 3 Robert M. Anderson, ***American Law of Zoning 18.02-03 (2d ed.) 1977.***

" . . . an exception is legislatively permitted whereas a variance is legislatively prohibited . . ." Cromwell p. 702 (citations omitted).

Judge Cathell pointed out there were only a total of five reported cases in Maryland at the time of the Cromwell decision in which the Court affirmed the grant of a variance or reversed a denial. But even in those cases:

"[N]owhere . . . 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." Cromwell, supra at 712.

Clearly, a variance request for a tower that does not meet the standards of 307 cannot be granted just because the site is in an M.L. zone. Without a legal variance, the site is *unavailable and unsuitable*, as 426 provides.

3. THE WIRELESS TELECOMMUNICATIONS FACILITIES LAW

BCZR 426 regulates wireless telecommunications facilities. It provides, among other things, the zones where the use is permitted and the setback requirements. BCZR 426.2 lists recommended policies:

"A. Antennas should be placed on existing towers, buildings and structures, including those of public utilities, where feasible.

B. If a new tower must be built, the tower should be:

1. **Constructed to accommodate at least 3 providers.**

2. **Erected in a medium or high intensity commercial zone when available; and**
3. **Located and designed to minimize its visibility from residential and transitional zones."**

None of these policies is mandatory, and all are equally recommended. Yet Petitioner prioritizes the policies he chooses to follow and ignores the rest. But the County Council did not rank its recommendations. It is just as important to place a tower "on existing buildings and structures" and to design it "to minimize visibility from residential and transitional zones". Instead, Petitioner uses #1 and #2 above as leverage to win support for the variances.

Petitioner conveniently disregards the citizens' preference to locate on nearby institutional buildings or to disguise the tower to minimize visibility. The Board cannot give weight to Petitioner's preferences under the tower statutes as justification for the variances.

4. <u>THE COURT OF SPECIAL APPEALS DENIED A VARIANCE FOR A TOWER IN EVANS V. SHORE COMMUNICATIONS, INC.</u>

This case is a good example of how a site that may be appropriate for a tower *use*, is not appropriate for a tower *variance*. The Petitioners (Shore Communications, Inc. "SCI" and its president) construct radio communications towers for use by companies that provide service for cellular phones, paging devices etc. Petitioners sought a special exception for a telecommunication tower and a height variance for a 300 feet tower in lieu of the 200 feet permitted by special exception. Petitioner leased approximately five acres of agriculture land for the tower.

SCI chose the site because "(1) it will be able to serve the most useful purpose in the network of other towers utilized by the communications companies seeking use of Petitioners' proposed tower; (2) the chosen site is the highest elevation in the general area which allows the tower height to be reduced from that which would be required if constructed on a lower elevation; (3) the proposed location is nearly equidistant from two nearby village centers. . . which are relatively dense residential areas; (4) the proposed location is adjacent to a dense grove of tall trees which will create a visual buffer of the lower portion of the tower on its west side; (5) the proposed location is adjacent to Maryland State Route 50, a heavily-traveled four lane highway where property values will least likely be affected and residential activity least interrupted; (6) the proposed location is adjacent to existing electric power lines running parallel to Maryland Route 50 and rising over 100'in height, thus reducing the visual impact of the height of the proposed tower on the neighboring properties."

Additionally, SCI emphasized the fence around the tower site would be buffered with landscaping. Three of the 6 capacity user companies have already subscribed to locate on the tower. Petitioners stated the tower would close the current gap in transmission coverage for one of the subscribers. Petitioners also noted that the tower would accommodate the needs of the Emergency Management Agency and Emergency Medical Services, and "enhance the performance of the local police and fire companies and other public services . . ." Petitioners noted there are several towers in the area that exceed 200 feet. They said an increase in height would prevent a future proliferation of towers to accommodate the needs of the area. Petitioners stated the need for the variance

"results from the general public's increasing demand for more communications service on one hand," and the zoning regulations that limit 1 tower per 3 mile radius.

Petitioners argued "With the potential number of towers in the County limited by the three (3) mile regulation, the only means of fulfilling the demand for space to mount transmission equipment is to extend the towers beyond the 200' limit." SCI claimed no adverse effect on the environment, and that opposition based on aesthetics is unfounded since an additional 100 feet will have insignificant visual impact.

A representative of the Maryland Institute for Emergency Medical Services testified in favor of the tower, and described the benefits of Petitioners' services.

The Talbot County variance statute in Evans requires a finding of "uniqueness" as defined and applied in Cromwell. SCI's argued the requirement was satisfied for three reason: "First, the land is located just outside the three-mile radius of another tower north of the site." But Judge Davis, writing for the Court, dismissed this argument stating, "All land located 360 degrees just outside a three-mile radius of an existing tower – any tower in the zoning district – would satisfy this 'circumstance.'"

"Second, the property is the only property in the vicinity that will accommodate the networking requirements of the three users who have subscribed for space on the tower." The Court also dismissed this argument and agreed with the Board of Appeals that these circumstances were created by SCI, not by the property itself. The Court affirmed with approval the Board's language: "In other words, the second 'special condition and circumstance' claimed by SCI – the needs of its subscribers – are not peculiar to the land, but created by SCI. We agree." The Court also dismissed this argument as the type of "hardship" required for variance relief: " The needs of SCI's

customers have nothing to do with the peculiarity of the property in question. This, any hardship claimed by SCI – the second prong of the test – is self-inflicted, and thus not a ground for a variance." Id. 309.

SCI's third argument claimed that because the site has one of the highest elevations in the area, it would allow for a shorter tower than lower sites, and thus is "uniquely ideal." The Court dismissed this argument as "irrelevant". The Court said to grant a variance now so that SCI would not ask for a taller one in the future conflicts with the language in Mossburg v. Montgomery County, Md, 329 Md. 494, 506. In Mossburg, the Court stated that variances and special exceptions pertain to *specific* activity at a *specific* location as decided in an administrative proceeding. They are not legislative proceedings to regulate future variance requests. Judge Davis said Mossburg means " . . . variances cannot be granted to stem future variance requests, nor may deviations from zoning restrictions find their justification in hypothetical situations." Id. 308.

Evans is significant because the Court distinguished the standards for a special exception and a variance. It did not confuse the required evidence of one for the other. The Court was not swayed into granting the variance because the special exception had merit. Similarly, the Board here should not be influenced to grant variance relief merely because the tower is a permitted use at this site. The arguments of SCI in Evans are remarkably similar to the arguments presented by Sprint. But even after hearing evidence to support the special exception, the Court was able to sort though it and separate the standards for a special exception from a variance, distance the emotional appeal of emergency services, ignore the double-talk about Petitioners' predicament, and hold the Petitioners to the variance standards of Cromwell.

The Court of Appeals recently remanded for further consideration a denial of a variance in Stansbury v. Jones, 372 Md. 172 (2002). It did not disturb the decision in Evans. In Stansbury, the zoning board decided the undersized lot created by Petitioner was a "self-created" hardship and denied the variance. It did not consider other evidence but stopped at that finding. Judge Cathell, writing for the Court, ruled the determination that the Petitioner's actions were self-created was unfounded. He noted the undersized lot resulted when a new plat combined other undersized lots in an old subdivision as required by statute (an Anne Arundel County codification of the merger doctrine discussed in Friends of the Ridge v. BGE, 352 Md. 645). The Court reasoned that because the property owner was following the law, she did not create the hardship. The Court remanded so other evidence could be considered. The Court did not decide whether a legitimate self-created hardship, absent other evidence, could support denial.

Judge Cathell distinguished the denial of the variance in Evans. He noted with approval that in Evans, the Petitioners' own actions, including leasing the site, were offered and rejected as a basis for uniqueness, the first-prong test for a variance. Evans rightly held that the needs of the Petitioners' customers had nothing to do with the peculiarity or uniqueness of the property.

Evans continues to be dispositive of the instant case. Sprint's choice to locate a tower here to satisfy the alleged gap in coverage does not stem from uniqueness of the site and is not an element of uniqueness. Even if the Board could reach the second-prong, practical difficulty, Sprint's purported lease as a self-created hardship, is one of several grounds to deny the variance for lack of practical difficulty.

III. TESTIMONY OF THE WITNESSES OPPOSED TO THE VARIANCES

The citizens and Mr. Dillon pointed out the Back River Neck Peninsula is a "Coastal Designated Rural Legacy Area" under the Master Plan 2010. The Master Plan also identifies the site as a "gateway" to a designated "scenic view" along Route 702 through the peninsula to the Chesapeake Bay. Mr. Dillon indicated these designations give the area "scenic importance" and "scenic value". He said development should adhere to "some additional care to trying to preserve the character of that area." He believed this tower is totally "alien" to the environment here and is "harming" to the character of the area. Because Petitioner seeks to cram the tower on this site with other uses, it cannot be camouflaged, or alternatively, strategically located on a qualified site that would not conflict with these Master Plan designations. The relief requested here conflicts with the spirit and intent of the variance law and causes injury to public health, safety and general welfare.

The pictures presented as People's Counsel 8A-C show an unattractive and unimaginative lattice tower that stands out well above the tree line. The sparsely line of scrub deciduous trees on the site do not camouflage it, just as the citizens predicted. The tower's unsightly appearance in light of the Master Plan's designations also make this M.L. site "unsuitable" and "unavailable" under BCZR 426.

The 1999 letter of Karen Brown from the Office and Planning and Zoning. (Pet. Exh. 14) is incomplete and inaccurate. Ms. Brown disqualified the other site mentioned, My Friend's Tavern, because it would not accommodate the 200ft setback. Presumably, she was not aware that variances would be needed for the instant site as well. Three of the variances for the tower here are from the same 200 ft. setback. At the date of her letter,

Mr. Jones had not begun renovations. The prior uses had been discontinued and the site was an "eyesore." The Planning Office will often sacrifice zoning laws to clean up an eyesore. On some occasions, they favor planning over zoning, and this appeared to be one of them. If the size of the site disqualified My Friend's Tavern, those same standards should apply to the instant case. Because it appears the facts have changed and/or weren't apparent at the time of Ms. Brown's letter, it is not probative evidence.

Moreover, as this Board is aware, the tower was in place at the time of the January hearing date. Sprint constructed the tower at its own risk. The existence of the tower has no bearing on the consideration of the variances.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. DeMilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3 day of March, 2003, a copy of the foregoing People's Counsel for Baltimore County's Memorandum was mailed to:

G. Scott Barhight, Esquire and Jennifer Busse, Esquire, Whiteford, Taylor & Preston, LLP, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

3/21

IN THE MATTER OF:	*	BEFORE THE
BACK RIVER, LLC,		
BUCK JONES – LEGAL OWNER,	*	COUNTY BOARD OF APPEALS
SPRINT PCS – PETITIONER and		
CONTRACT PURCHASER	*	
		OF BALTIMORE COUNTY
PETITION FOR VARIANCE	*	
810 BACK RIVER NECK RD		
SWS BACK RIVER NECK RD,	*	
330' SE OF POTTERY FARM RD		CASE NO. 02-159-A
15TH ELECTION DISTRICT	*	
5TH COUNCILMANIC DISTRICT		

* * * * * *

MEMORANDUM OF PETITIONER, SPRINT PCS

G. Scott Barhight, Esq.
Jennifer R. Busse, Esq.
Whiteford, Taylor & Preston, L.L.P.
210 W. Pennsylvania Avenue,
Suite 400
Towson, Maryland 21204
410-832-2000

Attorneys for Petitioner, Sprint PCS

Sprint PCS/APC Realty & Equipment Company, LLC et al.
vs.
Baltimore County, Maryland

*
*
* IN THE
* COURT OF SPECIAL APPEALS
*
*
* No. 00047
* September Term, 2004
*
*

O R D E R

The Court of Special Appeals, pursuant to Maryland Rule 8-206(a)(1), orders and directs that the above captioned appeal proceed without a Prehearing Conference.

BY THE COURT

JAMES R. EYLER, JUDGE

Date: April 19, 2004

SUZANNE MENSH, CLERK
CIRCUIT COURT FOR BALTIMORE COUNTY
(See attached Mailing List)

Dear Clerk: Will you kindly place this order with the record in this cause (003C03005849). The date of this Order establishes commencement of the 10 day period under Md. Rule 8-411(b) and the 60 day period for transmittal of the record under Md. Rule 8-412(a).

RECEIVED
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BALTIMORE COUNTY
BOARD OF APPEALS

NO. 00047, SEPTEMBER TERM, 2004

Mailing List: JAMES R. MICHAL, ESQUIRE
SYEDA B. RAZA, ESQUIRE
SUZANNE MENSH, CLERK
C. LYNN BARRANGER, ESQUIRE
KATHLEEN C. BIANCO, ESQUIRE
CAROLE S. DEMILIO, ESQUIRE

IN THE MATTER OF BACK RIVER, LLC	*	IN THE CIRCUIT COURT
	*	FOR BALTIMORE COUNTY
	*	CIVIL
	*	DOCKET SM
	*	CASE NO. C03-5849

NOTICE OF APPEAL
SENT TO
THE COURT OF SPECIAL APPEALS

In accordance with Rule 8-412, the above captioned Appeal was transmitted to the Court of Special Appeals on June 16, 2004.

Elizabeth A. Domozych
Frank DiGiacomo
Appeal Clerks

SPRINT PCS/APC REALTY & EQUIPMENT COMPANY, LLC	*	IN THE CIRCUIT COURT
	*	FOR BALTIMORE COUNTY
VS	*	CIVIL
	*	DOCKET SM
BALTIMORE COUNTY, MARYLAND	*	CASE NO. C03-5849

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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

06/16/04

Case Number: 03-C-03-005849 AE
Date Filed: 06/11/2003
Status: Closed/Active
Judge Assigned: To Be Assigned,
Location :

In The Matter of: Back River L L C, et al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	02-159-A
Case Folder ID	C03005849V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
PET	001	Back River L L C Party ID: 0590664		CT DO 02/11/04	06/11/03
Mail		810 Back River Neck Road Baltimore, MD 21221 Serve On. Buck Jones. Pres/Property Owner	06/11/03	06/11/03 JET	06/11/03 JET
Attorney.		0022014 Michal, James R Jackson & Campbell, P.C. 1120 20th Street N W South Tower Washington, DC 20036 (202)457-1600	Appear: 06/11/2003		06/12/03
PET	002	Sprint P C S Party ID: 0590665		CT DO 02/11/04	06/11/03

Attorney: 0022014 Michal, James R
Jackson & Campbell, P C.
1120 20th Street N W
South Tower
Washington, DC 20036
(202)457-1600

Appear: 06/11/2003

06/12/03

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
RES	001	Board Of Appeals Of Baltimore County Maryland The Party ID. 0590666		CT DO 02/11/04	06/11/03

Attorney: 0029075 Zimmerman, Peter M
People's Counsel For Baltimore County
Room 47 Courthouse
400 Washington Ave
Towson, MD 21204
(410)887-2188

Appear: 06/30/2003

06/30/03

0804268 Demilio, Carole S
Deputy Peoples Counsel
Old Courthouse Room 47
400 Washington Ave
Towson, MD 21204
(410)887-2188

Appear: 10/31/2003

10/31/03

CALENDAR EVENTS

Date	Time	Dur	Event Description	Text Rec	SA	Jdg	Day	Of Notice	User ID
Result			ResultDt By Result Judge						
12/04/03	09:30A	04Q	Civil Non-Jury Trial	Y		TBA	01	/01	KLS KLS
Vacate			09/12/03 E						
12/05/03	09:30A	04Q	Civil Non-Jury Trial	Y		TBA	01	/01	KLS AED
Reset			11/03/03 E						
02/02/04	09:30A	01H	Civil Non-Jury Trial	Y		MJF	01	/01	GB
Conclude			02/02/04 E M.Finifter	N					

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	User
02/11/04	DO	Decree or Order	CT	AFTER TRIAL/HEARING	

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	06/11/03	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review Filed by PET002-Sprints P C S, , PET001-Back River L L C.	06/11/03	06/12/03	PET002	TBA		02/11/04	JET MR
0001001	Response To Petition For Judical Review	06/26/03	06/30/03	RES001	TBA		02/11/04	NW MR
0002000	*Amended Certificate of Service	06/16/03	06/17/03	PET002	TBA		02/11/04	CS MR
0003000	Notice of Service of Discovery *	06/30/03	07/01/03	000	TBA		02/11/04	SAP MR
0004000	*Transcript of Record from Adm Agency	08/12/03	08/29/03	000	TBA		02/11/04	MJ MR
0005000	Notice of Transcript of Record Sent	08/29/03	08/29/03	PET001	TBA		08/29/03	MJ MJ
0006000	Notice of Transcript of Record Sent	08/29/03	08/29/03	PET002	TBA		08/29/03	MJ MJ
0007000	Notice of Transcript of Record Sent	08/29/03	08/29/03	RES001	TBA		08/29/03	MJ MJ
0008000	Scheduling Order	09/12/03	09/12/03	000	TBA		09/12/03	KLS KLS
0009000	Memorandum Of Petitioners	10/02/03	10/08/03	000	TBA		10/08/03	NW NW
0010000	People's Counsel's For Baltimore County Memorandum	10/30/03	10/31/03	RES001	TBA		10/31/03	NW NW
0011000	Notice of Postponed Trial Issued	11/03/03	11/03/03	000	TBA		11/03/03	GB GB
0012000	Petitioners Reply Memorandum Filed by PET001-Back River L L C, , PET002-Sprint P C S,	01/13/04	01/15/04	PET001	TBA		01/13/04	CS CS
0013000	Open Court Proceeding February 2, 2004. Hon. Michael J Finifter. Hearing had re. Petition for Judicial Review- held Sub Curia Order to be filed.	02/02/04	02/02/04	000	MJF		02/11/04	KNK MR
0014000	Memorandum and Order of Court Affirming the decision of the Baltimore County Board of appeals.	02/11/04	02/11/04	000	MJF		02/11/04	MR MR
0015000	case history sent to Bd. of Appeals	02/25/04	02/25/04	000	TBA			ATA ATA

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0016000	*Notice of Appeal to COSA or COA (12/281) Filed by PET001-Back River L L C, PET002-Sprint P C S	03/11/04	03/11/04	PET001	TBA			DR DR
0017000	Pre Trial Hearing Letter Issued	03/11/04	03/11/04	000	TBA		03/11/04	ED ED
0018000	Order to proceed w/out prehearing conf.	04/21/04	04/21/04	000	TBA			ED ED
0019000	Original Record sent to COSA sent by certified mail, 1 volume, 1 transcript, brown envelope with transcript of record, sent in one(1) box #7003 3110 0000 3574 9021.	06/16/04	06/16/04	000	TBA			ED ED

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CLOSED	06/26/03	0	no	no	DANS	D	001	001
1YRT	One Year Tickle (Jud	CLOSED	06/10/04	365	no	no	DAAA	D	001	000
EXPU	Exhibit Pickup Notic	CLOSED	04/11/04	30	no	no			000	000
SLTR	Set List For Trial	Done	06/26/03	0	yes	yes	1ANS	T	001	001

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: RES 001 Board Of Appeals Of Baltimore								
000		B	BOX 377/CBA TRANSC		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 09/12/03 Order Date : 09/12/03
Start Date : 09/12/03 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		09/27/03	02/11/04	CLOSED

Milestone	Scheduled	Target	Actual	Status
All Motions (excluding Motions in Limine		10/26/03	02/11/04	CLOSED
TRIAL DATE is	02/02/04	12/11/03	02/11/04	CLOSED

3/12/04

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

IN RE PETITION OF:	*	
	*	
Back River LLC, Buck Jones, President, Property Owner	*	
and	*	
Sprint PCS/APC Realty & Equipment Company, LLC	*	
Contract Purchaser/Lessee	*	CIVIL ACTION
	*	
	*	No. 03-C-03-005849AE
FOR JUDICIAL REVIEW OF THE DECISION OF THE	*	
Board of Appeals of Baltimore County, Maryland	*	
	*	
	*	
IN THE CASE OF	*	
	*	
The Application of Back River, LLC, Buck Jones, President	*	
– Legal Owner; Sprint PCS – C.P. Petitioners for Variance	*	
on Property located on the SW/S Back River Neck Road	*	
33' SE of Pottery Farm Road (810 Back River Neck Road);	*	
15th Election District; 5th Councilmanic District	*	
Board of Appeals Case #02-159-A	*	

LINE

Clerk of the Circuit Court for Baltimore County, Maryland:

Please enter into the record the District of Columbia office address of counsel for Sprint PCS/APC Realty & Equipment Company, LLC, and Back River, LLC, Buck Jones, President/legal owner, as follows:

1120 20th Street, NW
South Tower
Washington, DC 20036.

RECEIVED
MAR 15 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Respectfully submitted,

James R. Michal, Esq.
Syeda B. Raza, Esq.
JACKSON & CAMPBELL, P.C.
1120 20th Street, N.W., South Tower
Washington, D.C. 20036
(202) 457-1600, Fax: (202) 457-1678

Attorneys for Appellants
Sprint PCS/APC Realty & Equipment Company,
LLC, and Back River, LLC

Date: March 12, 2004

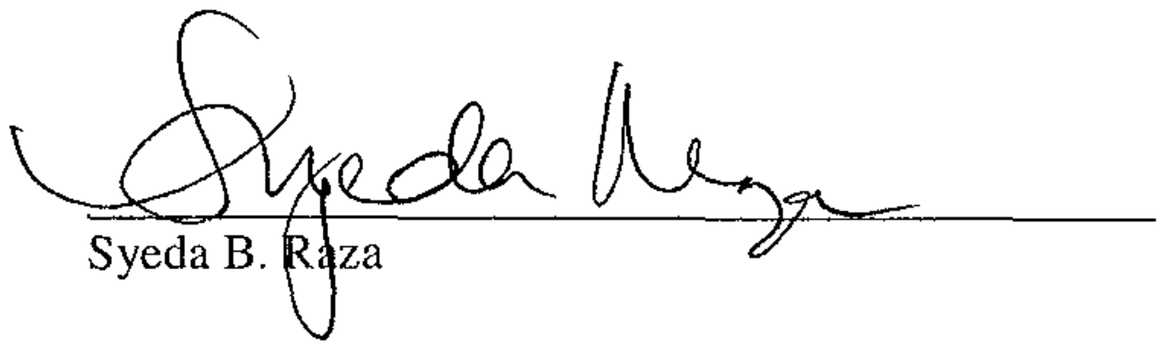
CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of March, 2004, a copy of the foregoing Line was mailed via first class-mail, postage prepaid to:

C. Lynn Barranger
Panel Chair
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Carole S. Demilio
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204



Syeda B. Raza

3/11/04

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

IN RE PETITION OF:	*	
	*	
Back River LLC, Buck Jones, President, Property Owner	*	
and	*	
Sprint PCS/APC Realty & Equipment Company, LLC	*	
Contract Purchaser/Lessee	*	CIVIL ACTION
	*	
	*	No. 03-C-03-005849AE
FOR JUDICIAL REVIEW OF THE DECISION OF THE	*	
Board of Appeals of Baltimore County, Maryland	*	
	*	
	*	
IN THE CASE OF	*	
	*	
The Application of Back River, LLC, Buck Jones, President	*	
– Legal Owner; Sprint PCS – C.P. Petitioners for Variance	*	
on Property located on the SW/S Back River Neck Road	*	
33' SE of Pottery Farm Road (810 Back River Neck Road);	*	
15th Election District; 5th Councilmanic District	*	
Board of Appeals Case #02-159-A	*	

NOTICE OF APPEAL

Clerk of the Circuit Court for Baltimore County, Maryland:

Please enter an appeal to the Court of Special Appeals of Maryland on behalf of Sprint PCS/APC Realty & Equipment Company, LLC, and Back River, LLC, Buck Jones, President/legal owner, by and through the undersigned counsel, from the judgment of this Court

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MAR 22 2004
BALTIMORE COUNTY
BOARD OF APPEALS

in the above-captioned matter issued by The Honorable Michael J. Finifter on February 5, 2004 and entered on February 11, 2004, a copy of which is attached hereto.

Respectfully submitted,

James R. Michal, Esq.
Syeda B. Raza, Esq.
JACKSON & CAMPBELL, P.C.
1120 20th Street, N.W., South Tower
Washington, D.C. 20036
(202) 457-1600, Fax: (202) 457-1678

Attorneys for Appellants
Sprint PCS/APC Realty & Equipment Company, LLC, and Back River, LLC

Date: March 11, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March, 2004, a copy of the foregoing Notice of Appeal was mailed via first class-mail, postage prepaid to:

C. Lynn Barranger
Panel Chair
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Carole S. Demilio
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204

Syeda B. Raza

2/5/04

PETITION OF:	*	IN THE
Back River, LLC, Buck Jones. President, Property owner and Sprint PCS/APC Realty & Equipment Company, LLC, Contract Purchaser/Lessee	*	CIRCUIT COURT
IN THE CASE OF The Application of Back River. LLC Buck Jones, President- Legal Owner: Sprint PCS – C.P. Petitioners for Variance On Property located at 810 Back River Neck Road, SW Back River Neck Road 33' SE Pottery Farm Road 15th Election District, 5th Councilman District CBA NO. CBA-02-159-A	*	FOR BALTIMORE COUNTY Case No.: 03-C-03-008657

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

MEMORANDUM AND ORDER OF COURT

This matter came before this Court regarding the Petition of Back River, LLC and Sprint PCS (Petitioners) for judicial review of the administrative decision of the Baltimore County Board of Appeals ("CBA" "Board"). A hearing was held before this Court on February 2, 2004, at which time arguments were presented by both parties.

Background

This is a zoning appeal from a decision of the Baltimore County Board of Appeals which denied five setback variances to Petitioner. The Board determined that the subject property was not unique so as to justify the variance for Petitioner's wireless telecommunications tower.

Issues Presented for Review

The Petitioner presents two issues for the Court's review:

1. Was the Board's decision to deny Petitioners request for a variance because the property is not unique based upon substantial evidence?

2. Did the Board apply the law correctly to the case at bar?

Scope of Review

The court's scope of review of a final decision of an administrative agency such as a county zoning board is narrow. The Court must affirm the zoning board decision where it is fairly debatable with respect to the agency's findings of facts and inferences drawn therefrom. *Board of Physicians Quality Assurance v Banks*. 354 Md. 59, 67-69 (1999). The scope of review is likewise narrow with respect to the application of the law to the facts and/or to mixed questions of law and fact. *Stover v. Prince George's County*, 132 Md. App. 373, 380-382 (2000). The court reviewing a final decision of an administrative agency determines only the legality of the decision and whether there was "substantial evidence" from the record as a whole to support the decision. *Board of Education, Montgomery County v. Paynter*. 303 Md. 22 (1985). In determining whether an agency decision is supported by the record. substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Caucus Distributors, Inc. v. Maryland Securities Commissioner*. 320 Md. 313. 323-24 (1990).

In applying the substantial evidence test. the court must not substitute its judgment for the expertise of the administrative agency. *Maryland State Police v. Lindsey*. 318 Md. 325. 333 (1990). The reviewing court must view the agency's decision

in the light most favorable to the agency since decisions of administrative agencies are deemed to be *prima facie* correct. *Motor Vehicle Administration v. Lindsay*, 309 Md. 557, 563 (1987).

A decision of an administrative agency must be upheld on judicial review if it is not based upon an erroneous determination of law and if the agency's conclusions reasonably may be based upon the facts proven. *Montgomery County v. Buckman*, 333 Md. 516 (1994). A reviewing court may examine facts found by the agency to determine if there was evidence to support each fact. *Commissioner, Baltimore City Police Department v. Cason*, 34 Md.App. 487, *cert. denied*, 280 Md. 728 (1977). If there was evidence of the fact in the record before the agency, the court has no power to substitute its assessment of the credibility for that made by the agency. *Id.* If the conclusion could be so reached, then it is based upon substantial evidence and the court has no power to reject that conclusion, even if the court could have reached a different conclusion. *Id.* Moreover, the reviewing court should uphold the agency's decision if it is sustainable on the agency's findings and for the reasons stated by the agency. *United Parcel Services, Inc. v. People's Counsel*, 336 Md. 569, 577 (1994); *see also Harford County v. Preston*, 322 Md. 493, 505 (1991).

In reviewing a zoning board's decision, the Circuit Court cannot substitute its judgment for that of the agency in reviewing findings of fact, and must accept the agency's conclusions if they are based on substantial evidence and reasoning minds could reach the same holdings based on the record. *Friends of the Ridge v Baltimore Gas and Electric Co.*, 120 Md. App. 444, 465, 707 A.2d 866 (1998), *vacated in part*, 352 Md. 645, 724 A.2d 34 (1999).

Substantial evidence has also been characterized as more than a "scintilla of evidence" such that a reasonable person could come to more than one conclusion. In such a situation, the issue to be considered is "fairly debatable" and the reviewing court may not substitute its judgment for that of the agency. *Realty Improvement Association v. Sycamore Realty Co., Inc.*, 105 Md. App. 701. 714. 661 A.2d 182 (1995). In administrative proceedings concerning the grant of a variance or special exception, the substantial evidence and fairly debatable standard is applicable. *Schultz v. Pritz*, 291 Md. 1 (1981).

Discussion

The Court must uphold the decision of the Board of Appeals if it is not based upon an erroneous determination of law and if the agency's conclusions reasonably may be based upon the facts proven. In the case at bar. the Board determined that the property in question did not meet the unique characteristics for which a variance would be appropriate. *See* Opinion of Board of Appeals p. 5. The Board premised its decision on BCZR § 307 which states in relevant part:

> ...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship.

The Board heard the testimony of Marianne Kiernan. a civil engineer and witness for the Petitioner. *See* Transcript of September 25. 2002. Kiernan testified that the property was narrow. surrounded by woodland and improved with two existing

structures. *Id.* at p. 132. Lines 1-15. On cross-examination, Kiernan admitted other sites had similar dimensions with respect to the width of the property that are rectangular in shape. *Id.* at p. 146-147. Furthermore, opposing witnesses testified that there was nothing unique about the site with respect to its topography. shape. subsurface conditions, environmental conditions. or other restrictions. *See* Transcript dated January 21. 2003 p. 14-17. The Board also heard the testimony of Jack Dillon, an expert in planning and zoning. *See* Transcript dated September 25, 2002 p.167, Line 6-12. Dillon testified that there was nothing unique about the property that would warrant the setback variances requested by petitioners. *Id.* at 169. Line 8-12.

It appears that the Board considered the testimony of different witnesses in order to come to a reasoned conclusion that the land is not so unique as to justify a variance in this case. Furthermore. the Board correctly applied the factors to be considered for a variance request found in *Cromwell v. Ward*. 102 Md. App. 691 (1995). The Board fully considered the uniqueness requirements established in *North v. St. Marys County*. 99 Md. App. 502, 514 (1994). Thus. this Court finds that reasonable minds could determine that the property in issue was not unique and that there is substantial evidence in the record to support the Board's conclusions.

Lastly, the Board's decision not to grant the variance is not a violation of the Federal Telecommunications Act ("FCA"). The FCA is not intended to usurp the regulatory power of local zoning boards. but to prevent zoning regulations that would have the effect of banning personal wire services. The decision of the CBA does not have the effect of a general ban on services the petitioner wishes to provide. The CBA specifically states that there are other sites in the target vicinity (Holly Neck) that would

be more appropriate and not necessitate the need for the requested variances. The CBA came to this conclusion upon the testimony of Jack Dillon (planning and zoning expert) and other witnesses. *See* Transcript dated January 21. 2003 p. 24-25. The FCA specifically allows for the "Preservation of Local Zoning Authority" to make decisions regarding the placement. construction, and modification of personal wireless services. 47 USC 332(C)(7). Furthermore, the CBA has not violated any of the limitations contained in 47 USC 332(C)(7)(B), and the CBA's determinations are predicated upon substantial evidence in the record.

Conclusion

For the reasons set forth herein. it is this 5 day of February, 2004,

ORDERED that the decision of the Baltimore County Board of Appeals is hereby **AFFIRMED**.

2/5/04
Date

Judge Michael J. Finifter

True Copy Test
SUZANNE MENSH, Clerk
Per
Assistant Clerk

1/13/04

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

PETITION OF: Back River LLC, Buck Jones, President, Property Owner and Sprint PCS/APC Realty & Equipment Company, LLC Contract Purchaser/Lessee	*	CIVIL ACTION No. 03-C-03-005849AE
FOR JUDICIAL REVIEW OF THE DECISION OF THE Board of Appeals of Baltimore County, Maryland	*	
IN THE CASE OF The Application of Back River, LLC, Buck Jones, President – Legal Owner; Sprint PCS – C.P. Petitioners for Variance on Property located on the SW/S Back River Neck Road 33' SE of Pottery Farm Road (810 Back River Neck Road); 15th Election District; 5th Councilmanic District Board of Appeals Case #02-159-A	*	

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JAN 14 2004
BALTIMORE COUNTY
BOARD OF APPEALS

PETITIONERS' REPLY MEMORANDUM

This matter is not a case of a local zoning body's determination based on conflicting evidence or drawing of fairly debatable inferences. Rather, it is a case where the local body simply ignored significant undisputable evidence in the record to arrive at a factually ungrounded and legally flawed opinion. In sum, this is a case that warrants a reversal of the determination made by the Board of Appeals of Baltimore County.

Specifically, the Board of Appeals declined to grant the requested variances because it found the subject property not to be unique. See Opinion of the Board of Appeals of Baltimore County, attached to Petitioners' Memorandum as Exhibit M (hereinafter "Opinion"). The denial of variances by the Board of Appeals is unsupported by substantial evidence – a significant fact which People's Counsel's Memorandum fails to address. Since the applicable standard of review mandates a finding of substantial evidence to support a local zoning body's decision, this

defect is decisively fatal to the Board's determination. Substantial evidence must also be, but is not, found here in order to sustain the Board's determination under Federal law. Specifically, since the Board's decision in this case in effect denies a wireless telecommunications facility, the Telecommunications Act of 1996, 47 U.S.C. § 332, et. seq. (hereinafter "TCA") requires that in order to be sustainable, the denial must be supported by substantial evidence. Thus, under both local and Federal standards the decision of the Board cannot be sustained.

Despite the express mandate of the law, the Board reached its decision by expressly ignoring the evidence most crucial to its determination, i.e., the shape and size of the subject property. Having disregarded this crucial evidence, the Board proceeded to render its determination on inapplicable and irrelevant factors not in evidence. The Board's decision is simply unsupported by substantial evidence and must, therefore, be reversed.

1. As to Questions of Law and Where the Agency's Findings of Fact Are Not Supported by Substantial Evidence, an Agency's Decision is Entitled to no Deference

An agency's findings of fact are undoubtedly entitled to great deference. However, this deference is neither certain nor absolute. Instead, certain significant caveats to this deference are recognized under Maryland law and are applicable here.

First and foremost, a Court may uphold the decision of the agency **only** on the basis of the agency's reasons and findings, and **may not** search the record for evidence to support the agency's decision. Umerley v. People's Counsel for Baltimore County, et al., 108 Md. App. 497, 504 (Ct. Spec. App. 1996) (citations omitted). See also Pollard v. Berman, 137 Md. App. 277, 289 (Md. Ct. Spec. App. 2001) ("a reviewing court's task is to determine **if the agency's final order** is based on substantial evidence in the record") (emphasis added). Thus, this Court's scrutiny is limited to the decision of the Board, as stated in its Opinion dated May 14, 2003 (hereinafter "Opinion"). See Exhibit M to Petitioners' Memorandum. In other words, the

Opinion embodies the Board's findings and reasons and is sustainable only if such reasons and findings constitute substantial evidence.

Second, an agency's stated findings of facts must be "fairly debatable", i.e., supported by "substantial evidence" in the record. Lewis v. Department of Natural Resources, 2003 Md. Lexis 465 (Md. Ct. Spec. App. 2003) (citation omitted). See also Stansbury v. Jones, et al., 372 Md. 172, 184-85 (Md. 2002). This means that in order for the decision of a zoning body to be "fairly debatable" there must exist "'substantial evidence' on the record supporting its decision." Id. See also Alviani, et al. v. Dixon, et al., 365 Md. 95, 108 (Md. 2001) (in order for an agency's conclusion to be fairly debatable, there must be "'substantial evidence' on the record supporting its decision") (citation omitted). Thus, this Court scrutinizes the agency's findings of fact as stated in its Opinion to determine whether such findings can be sustained under the "fairly debatable" standard. Absence of substantial evidence to support the agency's findings of fact warrants a reversal of its opinion.

Third, a local zoning body's decision "is owed no deference when its conclusions are based upon an error of law" and may, therefore, be reversed. Roeser Professional Bldr, Inc. v. Anne Arundel County, 368 Md. 294 (Md. 2002). In other words, "where an administrative agency's conclusions are not supported by competent and substantial evidence, or where the agency draws impermissible or unreasonable inferences and conclusions from undisputed evidence, **such decisions are due no deference.**" Alviani, et al. v. Dixon, et al., 365 Md. 95, 108 (Md. 2001) (citations omitted) (emphasis added). Thus, this Court is called upon to examine the legal conclusions drawn by the Board, as embodied in the Opinion, and reverse the Opinion if such conclusions are erroneous. People's Counsel's argument that a local body's legal conclusions are entitled to deference similar to that allocated to its factual findings is misplaced.

Also misplaced is People's Counsel's citation to Board of Physician Quality Assurance v. Banks, et al., 354 Md. 59, 69 (Md. 1999). See People's Counsel's Memorandum, p. 7. When recognizing that a degree of deference is due legal issues determined by an agency, the Banks court was referring to an administrative agency's interpretation and application of a local statute when the agency has been charged with administrating such a statute. The rationale behind such deference is that the "expertise of the agency in its own field should be respected." Id. (citation omitted). The rulings in Fosler v. Panoramic Design, Ltd., 376 Md. 118 (2003) and Marzullo v. Kahl, 366 Md. 158 (2001) are likewise based on this rationale. In this case, however, it is the interpretation of State law (not a local statute) by a local body at issue before this Court – i.e., the question before this Court is whether the Board correctly found that when examined under Cromwell v. Ward, 102 Md. App. 691 (Ct. Spec. App.1995), the subject property is not "unique." People's Counsel's reliance on the aforementioned cases is misplaced. Deference to an agency's legal conclusions is not warranted under such circumstances.

As discussed herein and in Petitioners' Memorandum, the Opinion of the Board in this case cannot be sustained because its findings of fact are not fairly debatable and its conclusions of law are erroneous. The applicable standards warrant a reversal of the Board's decision.

2. The Board's Opinion is Based on Incomplete and Inapplicable Facts and Erroneous Conclusions of Law

In Cromwell, supra, the court expressly enumerated a non-exhaustive list of characteristics that can render a property "unique." Id. at 711. Among such characteristics, the Cromwell *court expressly noted that uniqueness includes* "**exceptional narrowness, shallowness, or unusual shape**." Id. (emphasis added). Thus, Maryland law expressly requires consideration of a property's unusual shape and size when making a determination pertaining to the uniqueness of a property.

In this case, evidence in the record showed that (a) the subject property is rectangular in shape and so narrow that no matter where the telecommunications facility is placed on the property, the setbacks required under the County Zoning Ordinance cannot be satisfied (See Exhibits B and E to Petitioners' Memorandum. See also testimony of Marianne Kiernan, attached as Exhibit A1 to Petitioners' Memorandum, pp. 113, 146 and testimony of Peter Fastnacht, also attached as Exhibit A1 to Petitioners' Memorandum, pp. 39, 57); and (b) nearby residentially zoned adjacent properties are shaped wider and are large enough to accommodate the required setbacks, *albiet* a special exception would be required if the facility were to be placed on such properties. See Exhibits B and E to Petitioners' Memorandum. The Board, however, completely ignored this evidence. See Opinion, Exhibit M to Petitioners' Memorandum. Indeed, the Opinion does not make a single reference to the shape or size of the property. Id. Instead, it discusses factors such as subsurface conditions, historical significance, environmental factors, access to navigable waters, obstructions or abutting properties – when there is no evidence in the record remotely indicating the presence of such factors in this case. Id. at p. 6. The Opinion in essence picked a few inapplicable factors listed by the Cromwell court and declared that the non-existence of such factors warrants a finding of non-uniqueness of the property. On the other hand, the Cromwell factors that were applicable and regarding which there was substantial evidence in the record, i.e., the shape and size of the property, were simply ignored by the Board. In sum, the Opinion ignores significant applicable facts and is instead grounded on inapplicable criteria. People's Counsel's assertion that "[t]he Board described the property and found its size and shape do not meet the 'uniqueness' standards under Cromwell" is plainly inaccurate. See People's Counsel's Memorandum, p. 8. The Board did no such thing. It simply ignored all evidence of the property's shape and size. In any event, even if the Board had

indeed ruled that the property's size and shape do not meet the 'uniqueness' standards under Cromwell, such a ruling would have been contradictory to the abundance of evidence in the record.

Since the law requires that this Court scrutinize the local body's reasons and findings as stated (Umerely, supra) and the Board's Opinion is devoid of and, indeed, contradictory to the factual evidence in the record, it cannot be based on substantial evidence in the record. In other words, since reasonable persons reviewing the evidence in the record would not so disregard crucial evidence regarding the property's shape and, therefore, would not come to the conclusion arrived upon by the Board, the Board's Opinion cannot be said to be fairly debatable. Lewis v. Department of Natural Resources, 2003 Md. Lexis 465 (Md. Ct. Spec. App. 2003). The factual basis for the Board's Opinion is simply flawed, fails the substantial evidence test and, therefore, is entitled to no deference.

Moreover, the Board's determination that the property is not unique when examined pursuant to the Cromwell criteria constitutes a fatally flawed legal conclusion as well. Cromwell mandated consideration of a property's inherent characteristics, including its shape and size. Id. at 711. In contravention, the Board refused to consider crucial inherent characteristics of the property, *i.e., its unusually narrow shape and limited size.* See Opinion, p. 6. This failure by the Board is in contravention of Cromwell's mandate. Furthermore, the Board's declaration that the property is not unique because other criteria enumerated by Cromwell are not present is also a flawed legal conclusion. See Opinion, p. 6. Cromwell does not require the presence of **all** of the criteria listed therein – it requires, instead, the presence of **any** of the noted criteria such as shape, topography, etc. Id. at 711. The criteria noted in Cromwell are merely illustrative and non-exhaustive. Such a reading is supported by the use of "or" by the Cromwell court when

listing the advisory criteria that may support a finding of uniqueness. Id. at 711. The Board's Opinion is based on an erroneous legal conclusion.

Furthermore, Cromwell also expressly requires consideration of "other similar restrictions" when making a determination regarding the uniqueness of a property. Id. at 711. In contrast, however, the Board here failed to consider characteristics of the subject property in its Opinion such as – (a) that the Property is surrounded by trees on three sides, which would continue to provide screening to the facility. See Exhibit A1, at p.39, 46-47, 57-58, 142;[1] (b) the findings of the Office of Planning that the Property is uniquely suitable for location of wireless telecommunication services facilities is also part of the record. See Exhibit G to Petitioners' Memorandum; or (c) that location of Sprint's facility on the Property also satisfies Sprint's coverage objectives in the area and fulfills a much-needed service in the area is also in the record. See Exhibit A1 to Petitioners' Memorandum, pp 72, 76-77.

The Board's Opinion ignores crucial factual evidence in the record, fails to consider all applicable criteria that render the subject property unique, and may, therefore, be properly reversed.

3. Evidence in the Record Adequately Demonstrates the Unique Inherent Characteristics of the Subject Property and Further Demonstrates That a Denial of the Requested Variances Would Result in Practical Difficulty to Applicants

a. Uniqueness:

Cromwell defined uniqueness as follows:

> "Uniqueness" of a property . . . 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 non-navigable waters, practical restrictions imposed by abutting properties (such as obstructions) **or other similar restrictions**"

---

[1] Notably, while the Board noted that "[t]he fact that there are trees on the property does not make it unique . . ." (See Opinion, p. 6), People's Counsel argues that the site is not wooded. See People's Counsel's Memorandum, p. 2

Id. at 711 (citation omitted) (emphasis added).

Thus, Cromwell recognized that "**exceptional narrowness, shallowness, or unusual shape** . . ." may render a property unique. Id. (citation omitted) (emphasis added). The subject property fully satisfies the uniqueness criteria recited by Cromwell. People's Counsel's argument that the record does not contain evidence of the subject property's unique shape and size (See People's Counsel's Memorandum, pp. 8-12) is inaccurate. As demonstrated by the following, the record is replete with evidence of the subject property's unique shape and size:

i. The area map shows that the subject property is situated among parcels all significantly larger and/or shaped more squarely so that the tower could be placed on any of the subject properties without requiring a setback variance *albeit* placing the tower on such properties would have required a special exception. See Exhibits B and E to Petitioners' Memorandum;

ii. The site drawings corroborate that the subject property is a mere 233' at its widest point. See Exhibit E to Petitioners' Memorandum;

iii. Marianne Kiernan, accepted by the Board as an expert in civil engineering, planning and zoning (See Exhibit A1 to Petitioners' Memorandum, pp. 104, 111) testified that the subject parcel is long and rectangular (Id. at p. 113, 146);[2]

iv. Mr. Peter Fastnacht, accepted by the Board as an expert in the field of wireless the site acquisition also testified that the site is long and narrow. Id. at pp. 37, 39, 57.

Thus, People's Counsel is also mistaken in arguing that Petitioners did not produce a single witness who attributed the Cromwell uniqueness criteria to the site. See People's Counsel's Memorandum, p. 18. Substantial evidence relating to the peculiar shape of the subject property is undisputedly present in the record. It is also undisputed that adjacent parcels are not similarly narrow and could, therefore, accommodate the tower *albiet* by a grant of special exception. See Exhibits B and E to Petitioners' Memorandum. Despite this evidence, the Opinion states that the property is not unique because other criteria noted by Cromwell such as

access to navigable waters, unique subsurface conditions, historical significance or environmental factors are not present. See Opinion at p. 6. The Board's Opinion is fundamentally flawed. Cromwell does not require that **all** of the criteria noted therein be present in order for a property to be considered unique. Instead, Cromwell, by way of example, noted certain inherent characteristics that **may** render a property unique and by using the word "or" left the door wide open for consideration of other pertinent factors. Cromwell, supra at 710. More importantly, People's Counsel's citation to the Board's purported finding that "evidence shows a tower could be permitted on many other sites in the area without requesting five variances" is an acknowledgment of the uniqueness of the subject property. See People's Counsel's Memorandum, p. 12.

People's Counsel also errs by arguing that in making a determination regarding the uniqueness of the subject property, all properties within Baltimore County should be considered. See People's Counsel's Memorandum, p. 10. Such a contention is contrary to Cromwell, which calls only for a consideration of properties within the "area" or "neighborhood" See Cromwell, supra at 707, 710 (citation omitted). If a local body were to examine the characteristics of properties within the entire County whenever a variance is requested, a variance request will most likely never be granted. Thus, People's Counsel's argument in effect calls for the denial of all variance applications in contravention of Cromwell which mandates a grant of a variance when inter alia a property is found to be unique when compared to other properties in the area or neighborhood.

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[2] It warrants reiteration that Ms. Kiernan was accepted by the Board as an expert in civil engineering, planning and zoning and, therefore, her testimony cannot be summarily dismissed as suggested by applicants. See People's Counsel's Memorandum, p. 28.

People's Counsel's reliance on Cromwell to support their assertion that the telecommunications facility is better suited on other properties *albiet* a special exception would be required, is also inapposite. See People's Counsel's Memorandum, pp. 10-11. While Cromwell did distinguish that grant of a special exception allows a property to be used as permitted and that of a variance allows a use not permitted by a local zoning ordinance, the distinction does not necessarily translate into a finding in this case that the telecommunications facility is better suited on residentially zoned properties (where a special exception would be required) and not on the subject property (where variances are needed) – as argued by People's Counsel. See People's Counsel's Memorandum, p. 10. Instead, a closer reading of Cromwell brings to light the applicability and significance of the distinctions between special exceptions and variances – special exceptions are indeed preferable to variances, but only in the context of **use** variances. The distinction has no applicability where, as here, an **area** variance is sought by an applicant. In such cases, and particularly when the local Zoning Ordinance expressly prefers that telecommunications facilities be placed on commercially zoned properties, there is in fact a preference in favor of that property where a special exception is not required. See BCZR, § 426.5.

Finally, People's Counsel's reliance on the ruling in Evans v. Shore Communications, Inc., et al., 112 Md. App. 284 (Md. Ct. Spec. App. 1996) is misplaced. See People's Counsel's Memorandum, pp. 30-34. The facts and circumstances in Evans are entirely distinguishable from those herein and the ruling in Evans is not at all apposite to this case. In Evans, the tower builder proffered, as justification for its variance requests, that a grant of the variance sought would "allow additional competition in the cellular telephone industry" and decrease the need for towers in the area. Id. at 307. The Evans court rejected this argument and noted that the need of

its subscribers is not peculiar to the land. Id. at 309. In the instant case, Petitioners do not make such an argument. Instead, Petitioners point, inter alia, to the peculiar shape and size of the subject property and seek a variance from the setback requirements because strict adherence to such requirements would result in practical difficulty. Evans is not applicable to the facts of this case.

The record demonstrates that the subject property is uniquely shaped and sized. It was incumbent upon the Board to consider this fact in reaching its determination. The Opinion fails to factor this criteria and, therefore, must be reversed.

b. Practical Difficulty:

People's Counsel is also mistaken in arguing that since the subject property can possibly be used for other uses, there can be no practical hardship. See People's Counsel's Memorandum, pp. 18-19; 21-23. Such an argument is in contravention of the law. In White v. North, 356 Md. 31 (1999), the Court of Appeals of Maryland reversed the holding of the lower court, declining to find that a variance applicant be deprived of all reasonable use of the property before a variance can be granted. Thus, White specifically rejected the argument proffered by People's Counsel and whether the property owner in this case may be able to use the property for other uses does not justify a denial of the requested variances.[3] Instead, the proper focus is whether because of inherent unique characteristics of a property, the owner is being deprived of a permissible use on the property. See Umerely, supra, 108 Md. App. at 501 (the test is whether the "peculiarity of the property causes the zoning provision to have a disproportionate effect on the property"). See also Anderson, et al. v. Board of Appeals, 22 Md. App. 28, 39 (Ct. Spec. App. 1974).

As demonstrated by Exhibits B and E to Petitioners' Memorandum, other property owners in the area can, due to the size and shape of their respective properties, locate a telecommunications facility on their properties without the need for a variance. This places the owner of the subject property at a significant disadvantage, precluding the use of the property for a permissible purpose.

As a threshold matter, it bears repetition here that the applicable standard is practical difficulty, not undue hardship. A finding of practical difficulty is made when strict compliance with the zoning regulations unreasonably prevents the applicant from using the property for a permitted purpose, and a grant of the variance requested would do substantial justice to the applicant as well as to other property owners in the district, and is in harmony with the spirit of the ordinance. See Anderson, supra, 22 Md. App. at 39. As demonstrated below and in Petitioners' Memorandum, the facts of this case overwhelming satisfy the criteria for finding of practical hardship.

First, the subject property is zoned M.L., and the County Zoning Ordinance provides that wireless telecommunications facilities are permissible uses in such zones. See BCZR, § 426.5. Thus, strictly adhering to the setback requirements of the zoning ordinance would unreasonably prevent applicants from using the property for a permissible use.

Second, the need for the telecommunications facility is evident from (a) testimony and documentary evidence proffered by Sprint. See Exhibits B, C and D to Petitioners' Memorandum; See also Exhibit A1 to Petitioners' Memorandum, pp. 72, 76-77; and (b) the overwhelming support from the surrounding community for the facility, all of which is present in

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[3] In support of this proposition, People's Counsel cites to 3 Young, Anderson's American Law of Zoning, 4th Ed. Sec 20.02 (1996). The law stated in Anderson is not persuasive here in light of the ruling in White, supra to the contrary.

the record. See Exhibit F to Petitioners' Memorandum. Thus, by improving significantly wireless telecommunications coverage in the area, the allowance of variances would do substantial justice both to the applicants and to the surrounding community.

Third, placement of the telecommunications facility is in harmony with the spirit of the Zoning Ordinance and secures public safety and welfare. For example, evidence in the record shows that the zoning of the subject property has been predetermined by the County to be suitable for placement of such facilities (See BCZR, §426.5), there will be no adverse impact from the placement of the facility (See Exhibit A1 to Petitioners' Memorandum, pp. 59-60), the County has pre-determined that the subject property was a particularly suitable site for such facilities (See Exhibit G to Petitioners' Memorandum), and there exists a significant need for the site in the area (See Exhibits B, C and D to Petitioners' Memorandum; See also Exhibit A1 to Petitioners' Memorandum, pp. 72, 76-77). Thus, not only is Sprint's facility in harmony with the spirit of the County Zoning Ordinance, but it also promotes public safety and welfare.

Furthermore, assuming *arguendo* that disparity in treatment of a lessee v. a property owner when a variance is sought exists as argued by People's Counsel (See People's Counsel's Memorandum, pp. 20-22), it is, nonetheless, fruitless here since both the lessee (Sprint) and the property owner (Back River LLC) are both applicants to the variance application and practical difficulty to both the lessee and to the property owner by a denial of the variance requests is evident.

In sum, Petitioners have more than adequately met their burden of showing practical difficulty if the variance requests are denied. The Board erred in denying the requests.

4. The Board's Determination in This Case Results in a Denial of a Telecommunications Facility and, Contrary to Federal Law, is Without Substantial Evidence

The TCA mandates that a zoning body's denial of wireless telecommunications facility must be supported by substantial evidence in the record. See 47 U.S.C., Section 332 (c)(7)(B)(iii). The Board's denial in this case violates this mandate.

Specifically, the Board's denial of the variance requests results in the denial of a telecommunications facility and, thereby, invokes the TCA. Accordingly, the Board is bound by the Act's mandate that its denial be supported by substantial evidence in the record. Since the Board's decision is not and cannot be supported by substantial evidence, it violates the TCA.

People's Counsel's argument that wireless telecommunications providers expect "approval of a chosen site regardless of adverse impact on the area" (See People's Counsel's Memorandum, p. 14) is unnecessary to this case because there is no evidence whatsoever in the record that the tower on the subject property has an adverse impact on the area. To the contrary, the record shows that the subject property is particularly suitable to the tower because of its location, zoning classification, situation of residential dwellings, overwhelming support of the community and minimal visual impact from the road. See Exhibit A1, at p.39, 46-47, 57-58, 142. See also Exhibit G to Petitioners' Memorandum; Exhibit A1 to Petitioners' Memorandum, pp 72, 76-77.

The language of AT&T Wireless v. Winston-Salem Zoning Board, 172 F.3d 308 (4th Cir. 1999) quoted by People's Counsel (See People's Counsel's Memorandum, p. 14) is not only dicta but also misapplied here. The AT&T court discussed the relative insignificance of "exhibits, experts and evaluations" proffered by the wireless telecommunications provider in that case while there was overwhelming community opposition to the wireless telecommunications

site. Since there is no factual similarity whatsoever here and indeed, to the contrary, overwhelming evidence of community support for the telecommunications facility, AT&T is not applicable here.

Conclusion

In light of the law, facts, and arguments stated herein and in Petitioners' Memorandum, and the entire record before this Court, Petitioners, Sprint PCS/APC Realty & Equipment Company, LLC, and Back River, LLC, respectfully request that this Court reverse the decision of the County Board of Appeals of Baltimore County as unsupportable, factually and legally, and find that the uniqueness of the subject Property, the practical difficulty and, indeed, undue hardship resulting from a denial of the variances, Petitioners compliance with the intent and spirit of the zoning regulations, and the promotion of public welfare, safety and benefit by granting the variances, are all factors that warrant a grant of variances requested by Petitioners.

Respectfully submitted,

James R. Michal, Esq.
Syeda B. Raza, Esq.
JACKSON & CAMPBELL, P.C.
200 A Monroe Street, Suite 225
Rockville, Maryland 20850
(301) 340-0450
(202) 457-1600, Fax: (202) 457-1678

Attorneys for Petitioners

Date: January 13, 2004

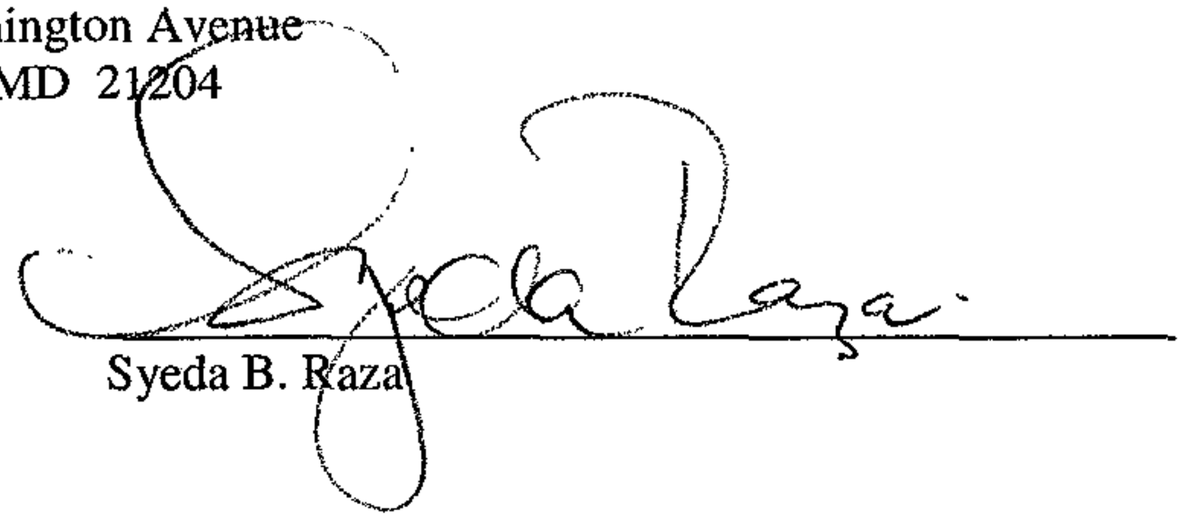
CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 2004, a copy of the foregoing Petitioners' Reply Memorandum was mailed via first class-mail, postage prepaid to:

C. Lynn Barranger
Panel Chair
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Carole S. Demilio
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204



Syeda B. Raza

10/7/03

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

PETITION OF: Back River LLC, Buck Jones, President, Property Owner and Sprint PCS/APC Realty & Equipment Company, LLC Contract Purchaser/Lessee	*	CIVIL ACTION No. 03-C-03-005849AE
FOR JUDICIAL REVIEW OF THE DECISION OF THE Board of Appeals of Baltimore County, Maryland **IN THE CASE OF** The Application of Back River, LLC, Buck Jones, President – Legal Owner; Sprint PCS – C.P. Petitioners for Variance on Property located on the SW/S Back River Neck Road 33' SE of Pottery Farm Road (810 Back River Neck Road); 15th Election District; 5th Councilmanic District Board of Appeals Case #02-159-A	*	RECEIVED OCT - 6 2003 BALTIMORE COUNTY BOARD OF APPEALS

MEMORANDUM OF PETITIONERS

Pursuant to Maryland Rules 7-202, et seq., and the Federal Telecommunications Act of 1996, 47 U.S.C. §332, et seq., (hereinafter "the TCA"), Sprint PCS/APC Realty & Equipment Company, LLC, and Back River, LLC (hereinafter "Petitioners"), by and through the undersigned counsel, hereby file their Memorandum in support of their Petition for Judicial Review of the opinion of the County Board of Appeals of Baltimore County (hereinafter "Board"), dated May 14, 2003. The Board's opinion denied Petitioners' request for certain setback variances, in effect denying a much-needed wireless telecommunications service facility in the subject area. The determinations by the Board that (a) the subject property is not unique and that the "search ring" in the record is an "artificial area established by [Petitioners]", and (b) there is no practical difficulty to Petitioners from a denial of the requested variances, constitute erroneous conclusions of law and warrant reversal of the Board's opinion. Furthermore, the

Board's opinion is not based on substantial evidence in the record, has the effect of prohibiting wireless telecommunications in the area, and encroaches on the license and, thereby, the authority granted Sprint to design its coverage network in the area. As such, the Board's opinion violates the TCA.

In support of their Petition, Petitioners rely on the law and facts set forth herein and in the record before the Court.

Background & Introduction

A. Need for a Telecommunications Site in the Subject Area – The Search Ring

Petitioner, Sprint PCS/APC Realty & Equipment Company, LLC, (hereinafter "Sprint") is a Federally licensed wireless telecommunications services provider. Under authority and mandate granted it generally under Federal law and specifically under its FCC license, Sprint has been and is continuously in the process of establishing reliable wireless telecommunications in this area and seeking to meet the newly imposed FCC obligations regarding emergency network coverage. See 47 C.F.R.§ 20.18. In order to provide reliable coverage to its customers, Sprint needs to install its facilities at certain distances throughout the region, the coverage generated from same oftentimes connecting and overlapping with its other adjacent facilities. Without such intermittent facilities, Sprint is unable to provide reliable and adequate coverage to its customers.

The placement of Sprint's facilities is dictated by numerous factors including inter alia, customer demand, reliability and capacity or coverage, availability of suitable properties, the applicable zoning regulations, willingness of property owners to host such facilities, nature and use of identified properties, etc. See Transcript of hearing before the Board of Appeals on September 25, 2002, attached hereto as **Exhibit A1,** pp. 38-40, 56-59; 70-90.

As part of its aforementioned coverage objectives, and based on complaints received from customers and related studies of Sprint's coverage in the subject area, Sprint's radio frequency engineers generated a "search ring" outlining the area in the vicinity of Back River Neck Road where Sprint needed to locate a wireless telecommunications facility in order to improve its network coverage (hereinafter "Search Ring"). See **Exhibit A1**, pp. 73-78. Search rings generally dictate a telecommunication services provider's network design and the Search Ring here depicts the area sought to be covered by Sprint and shows an oval shaped area that is bounded by Turkey Point Road to the north and Cherry Garden Road to the south, with Back River Neck Road running in a north/south direction through the middle. See Copy of Search Ring attached hereto as **Exhibit B**. See also **Exhibit A1**, p. 38. The area encompassed by the Search Ring extends approximately 1 mile north to south, and approximately 1/4 of a mile east and west of Back River Neck Road. Id. The Search Ring is used to identify properties on which antennae or towers could be placed to meet Sprint's coverage needs in the area. See **Exhibit B**. See also **Exhibit A1**, pp. 38-40, 77-78.

Following identification of the Search Ring, Sprint's search for a location to meet its needs is directed by the regulations and legislative policy enumerated by local zoning ordinances, which in this are the Baltimore County Zoning Regulations (hereinafter "BCZR"). First, Sprint researched whether its need for coverage could be satisfied by locating antennae on any existing towers, buildings and/ or other existing structures in the area, as directed by BCZR § 426.2. See **Exhibit A1**, pp. 37, 39-40. Not only is such collocation encouraged by the BCZR, but it is also a more economically viable option for Sprint and is, therefore, the preferred option when such structures exist within its Search Ring. Finding no existing structures in the subject area, Sprint next researched whether its coverage objectives in the area could be satisfied by

locating a facility on medium or high-intensity zoned property, where such facilities are permitted as a matter of right under BCZR § 426.5. Id. During this research, Sprint located the subject property, which is located at 810 Back Neck Road, is zoned M.L.,(Manufacturing, Light), and, most importantly, is situated within the Search Ring; placement of Sprint's monopole at the subject property would meet Sprint's coverage needs in the area (hereinafter "Property"). See **Exhibit B** hereto. See also **Exhibit A1**, pp. 72, 76-77.

A need for a facility on the Property was satisfactorily demonstrated by Sprint before the County's Tower Review Committee, which stated its agreement that Sprint has a valid need for a wireless telecommunications facility in the area. See Recommendation of the Tower Review Committee, attached hereto as **Exhibit C**. This finding was also noted and acknowledged by the Zoning Commissioner, who found that Sprint had demonstrated a need for location of its facility on the subject Property. See Zoning Commissioner's Findings of Facts and Conclusions of Law, p. 4, attached hereto as **Exhibit D.** There is nothing in the record to contradict this fact.

B. Description of the Subject Property

The Property is located at 810 Back River Neck Road, Baltimore, MD 21221. It measures approximately 4.31 acres in area, is zoned M.L., and is improved with two (2) one-story commercial buildings. See Site Drawings, attached hereto as **Exhibit E**. See also **Exhibit A1**, pp. 102-111. It is located to the west of Back River Neck Road, just south of its intersection with Pottery Farm Road. The Property is one long, rectangular parcel, no more than 233' wide at its widest point. See **Exhibit E** hereto. Other than the two existing structures on the parcel, it is primarily graveled and open. Importantly, it is surrounded by woodland area on three sides – its southern, western and northern boundaries. Id. See also **Exhibit A1**, p. 113.

The zoning of all land adjacent to the subject Property on its southern and western boundaries is R.C. 20 (Resource Conservation – Critical Area). See **Exhibit E** hereto. On the northern boundary the parcel closest to Back River Neck Road is zoned B.L (Business, Local); to the west of that there are two existing dwellings on land zoned D.R. 3.5 (Density, Residential). Id. See also **Exhibit A1**, pp. 114-116. To the south of the Property and across the street is a Medic Station. Id. Directly across Back River Neck Road from the Property is property owned by Baltimore County which has most recently been used as a Community Center. Id. at p. 47.

The subject Property is particularly suitable to the location of a wireless telecommunications facility for numerous reasons. First, it is located within Sprint's Search Ring and will, therefore, provide much-needed wireless telecommunications service in the area. See **Exhibit B**. See also **Exhibit A1**, pp. 72, 76-77. Second, it is zoned M.L., whereon wireless telecommunications are permitted by right under BCZR §426.5. Third, it is already used for commercial operations, with a strip mall, offices, beauty salon, convenience store, and a motor repair shop presently operational on the Property. See **Exhibit A1**, pp. 58-59. Thus, installation of Sprint's facility at the Property will not result in a significant change in the nature and use of the Property. Fourth, it is surrounded on three sides by a grove of trees, which provide excellent screening. Id. at p. 39. Although the trees are located on adjacent, not the subject Property, there is no reasonable likelihood of such trees being removed in the future. See **Exhibit A1**, pp. 46-47, 57-58, 142. Thus, the trees will continue to provide guaranteed tree cover for Sprint's facility. Fifth, the location of Sprint's facility on the Property does not require the cutting of any trees or even any disturbance to any grassy areas, thereby having no negative impact on the existing surrounding woodlands. Id. at p. 133. Sixth, due to its deeply rectangular shape (See **Exhibit E**), the Property allows the location of Sprint's facility at a considerable distance from

Back Neck River Road, thereby reducing any adverse visual impact from the Road. See **Exhibit A**, pp. 59-60. Seventh, the response of the immediately adjacent property owners and the community in general to location of Sprint's facility at the Property has been overwhelmingly favorable. See Letters from property owners and petitions of support signed by adjacent property owners, attached hereto collectively as **Exhibit F**. Finally, and most significantly, the County Office of Planning, years prior to Sprint's proposed use at the Property, determined the Property to be a particularly suitable location of wireless telecommunications facilities in the area, in contrast with adjacent properties. See Memorandum of Ms. Karin Brown, Office of Planning, dated December 16, 1998, attached hereto as **Exhibit G**. See also **Exhibit D**, p.4. In sum, the Property's distinguishing features not only render it unique to the entire Back River Neck Road area, but also make it a particularly suitable site for the location of Sprint's facility.

Mr. Jack Dillon, an expert in zoning and planning proffered on behalf of Respondent testified before the Board of Appeals that in addition to the subject Property, there are three other properties zoned medium to high-intensity (i.e., "by right" zones) within the Search Ring as follows: (a) a B.L. zoned property immediately to the northeast of the Property, approximately 165' deep and 221' wide;[1] (b) an M.L. zoned property located on the east side of Back River Neck Road, south of the Property, which is "very narrow along the frontage, actually looks like its probably less than 50 feet wide along the frontage and extends about 500 feet deep, and widens out in the back to maybe 260 feet;" and (c) a "B.L. further down is only approximately 200 feet wide and roughly 200 feet deep." See **Exhibit A1**, pp 200-201. See also **Exhibit B**. However, Mr. Dillon agreed that, as compared the foregoing properties, the subject Property is the largest one at approximately 850 feet deep and 223 feet wide. See **Exhibit A1**, p. 132.

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[1] While Mr. Dillon approximated that this site was "about 300 feet wide, 250 deep," Petitioner's Exhibit 8A shows more accurate dimensions for this Property.

Furthermore, Mr. Dillon further agreed that of the four properties on which a facility could be located as a matter of right within the Search Ring, none of the properties could accommodate a facility without setback variances. See **Exhibit A1**, pp. 198-201.

The remaining properties within the Search Ring are all zoned R.C. (Resource Conservation), and, therefore, placement of a telecommunications facility on such properties would require a special exception. See **Exhibit B** hereto. Since the policy of the BCZR directs Sprint and other similar users to locate their facilities in areas where they are permitted by right, rather than further searching for a site in a zone which requires a Special Exception (BCZR § 426.2), identification of the subject Property, zoned M.L., and located within Sprint's Search Ring, concluded Sprint's search in the area.

C. Sprint's Facility

On the subject Property, Sprint's facility comprises of a 115' high monopole, at which height are installed up to nine (9) antennae. See Site Drawings, attached hereto as **Exhibit E**. Related equipment cabinets are located near the base of the monopole, within a fenced lease area measuring 50' x 50'. Id. The facility is located to the rear of the Property, in its southwestern corner, centrally situated in an existing gravel area. The existing tree line surrounds the area housing the facility on three sides. See **Exhibit A1**, pp. 116-118. These trees are protected from destruction in that they are located within a habitat protection area (See **Exhibit A1**, pp. 46-47), on property zoned R.C. 20 which can only be developed with one dwelling per every twenty acres. See **Exhibit A1**, pp. 57-58, 142.

The facility's location on the Property was dictated by the features of the subject Property and those of the surrounding properties. See **Exhibit A1**, pp. 14-15. The desire was to place the facility as far away as possible from Back River Neck Road and the existing two dwellings on

the northern side of the Property, not only to best screen the facility but also to ensure that the tower's fall zone would be completely located on site. Id. See also **Exhibit A1**, pp. 131-135.

Despite its particular suitability to Sprint's coverage needs in the area, however, the Property's unique narrow configuration -- only 233' wide -- rendered it impossible for Sprint to place its facility at a spot on the Property such that all of the applicable setback requirements under the BCZR would be satisfied. Id. at pp.134-135. Specifically, §426.6 of the BCZR requires that a tower be at least 200' from an adjoining residentially zoned property. Thus, if the BCZR setbacks are to be satisfied, a property upon which a telecommunications facility is to be placed must be at least 400' wide. Unfortunately, however, while the subject Property is bounded by residentially zoned properties on all sides, it is only 233' wide and, thus, too narrow to allow a tower to meet these setbacks. See **Exhibit A1**, pp. 134-135.

Compelled by the unique shape and size of the subject Property, Petitioners sought variances from the setback requirements in the BCZR. The same are discussed in greater detail below and the denial of which forms the basis for Petitioners' appeal to this Court.

D. The Community's Support For Sprint's Facility

With the exception of two residences on properties owned by Elise Luciano and Mr. and Mrs. Gibson, there are no other residences on properties adjacent to the subject Property, at least for a distance of 150' from the Sprint facility. See **Exhibit E.** The Luciano and Gibson residences are, furthermore, at a considerable distance from Sprint's facility and are located on properties lying across from a private drive (Luciano Drive) adjacent to the subject Property. Id. Furthermore, Elise Luciano and Mr. and Mrs. Gibson expressed their support for Sprint's facility at the subject Property. See **Exhibit F**. Additionally, approximately one hundred and forty eight (148) community members signed a petition of support of Sprint's facility. Id.

Sprint's proposed facility was also unanimously supported by the Holly Neck Conservation Association, Inc. See letter from Mr. Jim Mitchell, President of the Association, dated September 20, 2002, attached hereto as **Exhibit H**. Furthermore, Mr. William Bafatis, a representative of the Holly Neck Conservation Association testified before the Board on behalf the Association and explained that the subject Property is within the boundaries of the Association's area of concern. See **Exhibit A1**, pp. 25-26. Mr. Bafatis also testified that the Holly Neck Conservation Association "voted unanimously to accept whatever variances were needed to construct the pole, and the main reason was safety reasons." See **Exhibit A1,** pp. 28-30. He explained that several storms over the past years have "knocked out roads, communications, power," and that the Association "felt that it was imperative that we had another form of communication for that lower neck area, and this is the solution" and that the Association had no preference for locating a tower on a lot requiring a variance. Id. Mr. Bafatis further testified that wireless telecommunication service in this area is very, very sparse. We hardly get any." Id. at p. 29.

The support from the community and Mr. Bafatis' testimony demonstrates not only the suitability of Sprint's facility on the subject Property, but also corroborates other evidence in the record regarding the compelling need for a wireless telecommunications site in the area.

E. Procedural History & Petitioners' Request for Variances

Years prior to Sprint's interest in the subject Property, on December 16, 1998, Karin Brown, Community Planner with the Baltimore County Office of Planning for the 5th Councilmanic District, issued a Memorandum to Arnold F. "Pat" Keller, the Director of the Office of Planning. See **Exhibit G** attached hereto. In her memorandum, Ms. Brown explained that she was responding to Mr. Keller's request "for an evaluation of possible cell tower sites."

Id. The memorandum identified two potential sites, "My Friends Tavern Site" and "Back River Neck Road Site." Id. Ms. Brown explained that the "My Friends Tavern Site" was "not suitable for cell tower location," due to the fact that a tower would be visible from all sides of that property. Id. With regard to "Back River Neck Road Site," i.e., the subject Property, Ms. Brown's opined that:

> This site would be an excellent location for a wireless communication tower. It is deep enough to minimize the visibility of the tower from the road. Existing tree growth would buffer much of the tower from the view of the residential dwellings that are located north-west from the anticipated tower location.

Id. Thus, the subject Property had been deemed by the County Office of Planning as particularly suitable for telecommunications facility years before Sprint submitted its application for installation of same.

On March 30, 2001, pursuant to BCZR § 426, Sprint submitted an application for recommendation to the Baltimore County Tower Review Committee ("TRC") for the its facility at the Property. *On April 26, 2001, the TRC issued its recommendation, noting that Sprint "has* provided ample documentation that the 115-foot monopole to be located at 810 Back River Neck Road is indeed required for the network." See **Exhibit C** hereto. The TRC recommended approval of Sprint's request, as long as two additional carriers could be accommodated on the tower. Id. See also Zoning Commissioner's Findings of Facts and Conclusions of Law, p. 4, attached hereto as **Exhibit D**. On May 14, 2001, the Baltimore County Development Review Committee ("DRC") also issued a letter providing that Sprint's proposal for the facility at the Property meets the requirements of a limited exemption under Baltimore County Code § 26-171(a)(7).

Due to the unusual shape of the subject Property, however, the site cannot be placed on any location on the subject Property where it could meet the required setbacks. Specifically, the subject Property is 233' wide at its widest point. See **Exhibit E** hereto. Since the BCZR requires a 200' setback of such poles and a 125' setback of related equipment from adjacent residential property lines, on October 19, 2001, Sprint filed a Petition for Variance seeking relief from the setback requirements in BCZR § 426.6.A. Specifically, Sprint requested:

For its monopole:

- Setback of 75' from the south and west property lines in lieu of the required 200';
- Setback of 148' from the north property line in lieu of the required 200';

For its related equipment cabinets:

- Setbacks of 40' to the south and west property lines in lieu of the required 125'.

On December 28, 2001, a public hearing was held on Sprint's variance requests before the Baltimore County Zoning Commissioner in case number 02-159-A. The Zoning Commissioner found that the subject Property was unique, primarily because of its shape, and that the shape rendered the required setbacks of 200' impossible. See **Exhibit D** attached hereto, pp. 4-5. The Commissioner further noted that the subject Property was an appropriate location for the monopole, "given the zoning of the site, the physical character of the area, and the land uses located nearby." Id. at p. 5. Finally, the Zoning Commissioner stated that the location of the monopole toward the rear of the subject Property decreased its visibility. Id. In his Order dated January 4,2002, the Zoning Commissioner granted the variance requests. Id.

Allowed to construct the facility at risk, Sprint proceeded through the building permit process. During the building permit process, on May 7, 2002, Mr. Keith Kelley of the Baltimore County Department of Environmental Protection and Resource Management (hereinafter

"DEPRM") issued a letter advising that the monopole's proposed location would have to be revised due to the location of an existing stream. See Mr. Kelley's letter, attached hereto as **Exhibit I**. In accordance with DEPRM's request, Petitioners revised the site plan to relocate the tower 60 feet in an easterly direction. Subsequently, on August 29, 2002, Mr. Joseph C. Merrey of the Baltimore County Zoning Office issued a Zoning Verification letter stating that the relocation of the proposed tower is within the spirit and intent of the Zoning Commissioner's Order in Case 02-159-A. See Mr. Merrey's letter, attached hereto as **Exhibit J**.

As a result of DEPRM's request, the necessary variance from the rear (western) property line was reduced, one of the two previously approved variances for the equipment cabinets eliminated, and, in light of the revisions to BCZR § 426 pursuant to Bill 17-2002, Sprint's variance requests changed as follows:

For its monopole:

1. A variance from BCZR § 426.6.A.1 to allow a setback of 75-feet to the southern *property line (a side setback) in lieu of the required 200-feet.*

2. A variance from BCZR § 426.6.A.1 to allow a setback of 135-feet to the southern property line (the rear setback) in lieu of the required 200-feet.

3. A variance from BCZR § 426.6.A.1 to allow a setback of 148-feet to the northern property line (a side setback) in lieu of the required 200-feet.

For its related equipment cabinets:

4. A variance from BCZR § 426.6.A.1 to allow a setback of 40-feet to the southern property line in lieu of the required 125-feet for equipment cabinets.[2]

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[2] As pointed out to the Board in Mr. Barite's opening statement, Sprint respectfully submits that the setback variances for the equipment cabinets are not legally necessary since they do not qualify as "structures." The equipment cabinets proposed in this case are only approximately 5' in height and range from 22" – 30" in width and depth. See **Exhibit A1**, p. 127. See also **Exhibit E.** Unlike those existing at various other locations, these equipment cabinets are more akin to air conditioning units and are not shelters. No one can enter them, rather technicians simply open their attached panels in order to work on the equipment. Where tower equipment is housed within "structures," as that term is defined by the BCZR, those structures must meet the zoning subject property's setback requirements. However, these cabinets do not meet that definition and therefore should not be subject to setback requirements.

On January 14, 2002, the People's Counsel for Baltimore County appealed from the Zoning Commissioner's decision to the Baltimore County Board of Appeals (the "Board"). The appeal to the Board was de novo and the Board heard testimony on this matter on September 25, 2002 and January 21, 2003. See Transcript of the September 25, 2002 proceedings attached hereto as **Exhibit A1** and Transcript of the January 21, 2003 proceedings attached hereto as **Exhibit A2** hereto. At the conclusion of the hearing, the Board requested that the parties submit briefs, and same were submitted by both parties. See Memorandum of Petitioner, Sprint PCS and People's Counsel's Memorandum, attached hereto collectively as **Exhibit K** hereto. The Board held a public deliberation session on March 20, 2003 and thereafter issued a memorandum. See Board of Appeals of Baltimore County, Minutes of Deliberation, attached hereto as **Exhibit L**. Subsequently, the Board issued its opinion on May 14, 2003, in which it denied Petitioners' request for variances (*hereinafter* "*Opinion*"). See Opinion of Board of Appeals, attached hereto as **Exhibit M**. Petitioners filed a timely Petition for Judicial Review from the Board's ruling.

F. The Board's Opinion

In its Opinion the Board stated the following findings and opinions:

1. The Property is improved with two buildings housing contracting business and approximately seven other commercial operations. See **Exhibit M** hereto, p. 1.

2. Sprint's facility was supported by the Holly Neck Conservation Association, and determined by the County Planning Office to be an excellent location for wireless telecommunications facility. Id. at p. 3;

3. Prior to locating its facility at the subject Property, Sprint had researched whether its coverage needs could be satisfied by collocating its antennae on existing structures and found no such suitable structures. Id. at p. 4;

4. The subject Property appeared to fulfill Sprint's coverage requirements in the area and while Sprint reviewed three other properties in the area, the subject Property was found to be most suitable. Id. at p. 4;

5. Respondent's expert, Mr. Jack Dillon agreed that while there were three other properties in the area zoned M.L., they would probably all require a variance in order to accommodate the facility. Id. at p. 4;

6. Mr. Dillon opposed the site because he felt that the subject Property was located "at the entrance to the Back River Neck Peninsula and Back Neck Road was a scenic area." Id. at p. 4;

7. Mr. Dillon and certain citizens who opposed Sprint's facility at the subject Property pointed to other sites in the immediate area that would be more suitable for the location of the facility, such as Chesapeake High School property, Baltimore Recreation Park, and other large wooded parcels, although placement of the facility at these sites would probably require grant of a special exception. Id. at pp. 4-5;

8. Cromwell v. Ward, 102 Md. App. 691, 651 A.2d 424 (1995) established the standard for review of variance requests and mandated demonstration by applicant that (a) the land or structure is unique; (b) the uniqueness results in practical difficulty; (c) there is true practical difficulty; and (d) the practical difficulty is not self-created. Id. at p. 5;

9. If uniqueness cannot be demonstrated by an applicant seeking a variance, the Board need not proceed to the issue of practical difficulty. Id.

10. The subject Property is not unique because (a) it is rectangular and flat; (b) there are no unique subsurface conditions, historical significance, or environmental factors; (c) there is no access or non-access to navigable waters and no obstructions or abutting properties. Id. at p. 6

11. The subject Property is not rendered unique by the following facts: (a) there is an existing tree cover for Sprint's facility; (b) it is the only ML zoned property within Sprint's Search Ring; and (c) the facility is permitted as a matter of right under the BCZR on the subject Property. Id.

12. The denial of Petitioners' variance request does not violate the Federal Telecommunications Act of 1996 because the denial does not effect a prohibition of the provision of personal wireless services. Id.

13. Sprint may locate its facility in the Holly Neck area, just not on the subject Property because placement of the facility on the subject Property requires grant of variances. Id.

See **Exhibit M** hereto. Furthermore, in its Minutes of Deliberations, the Board noted that:

1. While four sites were identified in the record, the subject Property is the "only one usable;" See **Exhibit L**, p. 1;

2. Sprint's Search Ring does not create a neighborhood. Id.

3. The Amherst holding is not controlling in this case. Id.

4. There was no evidence in the record that Petitioners had considered special exception sites for the location of the facility. Id. at pp. 1-2;

5. The subject Property is not unique. Id.

6. Having found the subject Property to be not unique, the Board need not address the practical difficulty/unreasonable hardship standard. Id.

7. However, even if the Property were unique, since the property owners can utilize the Property in other ways, there is no practical hardship. Id.

The Opinion of the Board is erroneous, not fairly debatable, is unsupported by competent evidence in the record, draws impermissible and unreasonable inferences from facts in the record and, in any event, is based on numerous errors of law. Furthermore, the Opinion, in effect, denies a wireless telecommunications facility when the need for same has been undisputedly established in the record, unreasonably prevents the Property owner from using the property for a permissible use under the Regulations, does substantial injustice to the owner, Sprint, and to adjacent property owners, is not based on substantial evidence as required by the TCA, and usurps Sprint's authority to design its network. By doing so, the Opinion also violates the TCA. The request for variances is in full compliance with the spirit and intent of the applicable zoning regulations and promote public safety and welfare. For the foregoing reasons, a reversal of the Board's Opinion is warranted.

ARGUMENT

Standard of Review of the Board's Decision

During judicial review of zoning matters, including variances, the test is "whether the issue before the administrative body is 'fairly debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions."

Lewis v. Department of Natural Resources, 2003 Md. Lexis 465 (Md. Ct. Spec. App. 2003) (citation omitted). See also Stansbury v. Jones, et al., 372 Md. 172, 184-85 (Md. 2002). In order for the decision of a zoning body to be "fairly debatable" there must exist "'substantial evidence' on the record supporting its decision." Id. See also Alviani, et al. v. Dixon, et al., 365 Md. 95, 108 (Md. 2001) (in order for an agency's conclusion to be fairly debatable, there must be "'substantial evidence' on the record supporting its decision") (citation omitted).

Nonetheless, "where an administrative agency's conclusions are not supported by competent and substantial evidence, or where the agency draws impermissible or unreasonable inferences and conclusions from undisputed evidence, such decisions are due no deference." Id. (citation omitted). Thus, a decision of a local zoning board "is owed no deference when its conclusions are based upon an error of law" and may, therefore, by reversed. Id. (citation omitted). Accordingly, a reviewing court "is under no constraints in reversing an administrative decision which is premised solely upon an erroneous conclusion of law." Id. (citation omitted). See also Alviani, supra, 365 Md. at 109; Roeser Professional Bldr., Inc. v. Anne Arundel County, 368 Md. 294, 0 1-02 (Md. 2002) (an agency's decision is due little deference when it is "predicated solely on an error of law" and it "may not be upheld unless it is sustainable on the agency's actual findings and for reasons advanced by the agency in support of its decision") (citation omitted)

Furthermore, since zoning regulations are in derogation of the common law right to use private property so as to utilize its full potential, such regulations "should not be extended by implication to cases not clearly within the scope of the purpose and intent manifest in their language" and the "only justification for the [zoning] restrictions . . . is the protection of the

public health, safety, or morals. Stansbury, supra, 372 Md. at 187 (citation omitted). See also White v. North, 365 Md. 31, 48 (1999) (citations omitted).

The Applicable Zoning Regulations

The BCZR provides in pertinent part as follows:

> 1. A tower shall be set back at least 200 feet from any other owner's residential property line.
> 2. A structure housing equipment for a tower shall meet the minimum setback requirements from any other owner's property or zone line.

See BCZR, § 426.6. Furthermore, the minimum setback requirements for the M.L. zone are as follows:[3]

> Proximity of structures to residential zones. No building or other structure shall be closer than 125 feet at any point to the nearest boundary line of a residential zone.

See BZCR, § 243.4

Thus, under the applicable zoning regulations, Sprint's monopole must be located at least 200' and related equipment at least 125' from the nearest adjacent residential property lines. Where these setbacks cannot be met, the Regulations provide for grant of variances by the Zoning Commissioner and the Board of Appeals. Specifically, §307, which pertains to variances, provides in pertinent part as follows:

> The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, . . . are hereby given the power to grant variances from height and area regulations, . . . only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship . . . Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said . . area . . . regulations, and only in such a manner as to grant relief without injury to public health, safety and general welfare . . .

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[3] BCZR, § 255, which states Area Regulations in M.L. zones refers to those in M.R. Zones, as stated in BCZR, §243. The requirements of §243 are, therefore, stated herein.

(Emphasis added).

In sum, the BCZR provides that a variance be granted where an applicant demonstrates (a) circumstances unique and peculiar with respect to the Property; (b) practical hardship if the regulations are strictly enforced;[4] (c) harmony with the intent and spirit of the regulations; and (d) no injury to public health, safety and general welfare. As demonstrated below, Petitioners satisfied each and every aforementioned regulatory criteria and, therefore, a grant of their request for variances is warranted under the BCZR. By denying the variances, the Board acted erroneously and in contravention of the recognized standards applicable to variances. The Board's Opinion is based on numerous errors of law and, therefore, should be reversed.

I. The Subject Property Has Unique & Peculiar Characteristics, Which Warrant a Grant of the Requested Setback Variances

The Board opined that the subject Property is not unique because (a) it is rectangular and flat; (b) there are no unique subsurface conditions, historical significance, or environmental factors; (c) there is no access or non-access to navigable waters and no obstructions or abutting properties. See **Exhibit M**, p. 6. Furthermore, the Board opined that the subject Property is not rendered unique by the facts that: (a) the property is rectangular and flat; (b) there is an existing tree cover for Sprint's facility; (c) it is the only ML zoned property within Sprint's Search Ring; and (d) the facility is permitted as a matter of right under the BCZR on the subject Property. Id.

In finding no uniqueness with regard to the subject Property, the Board acted erroneously in a number of ways. For example, the Board completely failed to address and, in effect, completely ignored the unusual narrowness of the subject Property which rendered compliance with the BCZR setback requirements impossible. There is nothing in the Board's Opinion that

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[4] Because the instant matter involves an area variance (as opposed to a use variance), which is considered less drastic than a use variance, the "practical difficulty" (not the "unreasonable hardship") standard applies. See Richard Roeser Prof. Bldr., Inc., v. Anne Arundel County, 368 Md. 294, 310 (Md. 2002) (citation omitted).

even discusses this fact, which has been undisputedly established in the record. See **Exhibits M and N**. By completely ignoring the unique shape and size of the subject Property as a factor in determining its uniqueness, the Board acted in contravention of the Cromwell ruling, which recognized that:

> " . . . in zoning context, the term 'unique' has a customized meaning: . . . *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, . . . or other similar restrictions." Cromwell, p. 710 (citation omitted) (emphasis added).

The Cromwell court also cited to zoning ordinances of other counties, where uniqueness was specifically defined to include ". . . exceptional narrowness, shallowness, or unusual shape . . ." Id. at p. 711 (citation omitted) (emphasis added). In sharp contrast with the Cromwell ruling, and despite prolific evidence in the record regarding the unique shape and size of the subject Property, the Board here failed to consider this fact as part of its uniqueness analysis. This crucial omission by the Board constitutes an error of law that requires a reversal of its ruling.

The record shows and indeed, Respondent's witness proffered, that the Property is shaped long and narrow and its limited width (233') renders it impossible for Sprint to place its facility anywhere on the Property so as to comply with the BCZR. See **Exhibit A1**, pp. 198-201. The record also shows that the Property is the largest parcel located within the Search Ring, upon which a telecommunications facility is permitted by right under the BCZR. Id. at p. 201. It is also contained in the record that the Property is surrounded by trees on three sides, which would continue to provide screening to the facility. Id. at p.39, 46-47, 57-58, 142. The findings of the Office of Planning that the Property is uniquely suitable for location of wireless telecommunication services facilities is also part of the record. See **Exhibit G** hereto That

location of Sprint's facility on the Property also satisfies Sprint's coverage objectives in the area and fulfills a much-needed service in the area is also in the record. See **Exhibit A1**, pp 72, 76-77. Finally, it is undisputed that the use is a permitted use on the Property (See BCZR, § 426-5) and a denial of the variance would preclude Sprint from installing a much-needed, permissible use on the property. Thus, in light of the innumerable factors that render the Property unique, the Board acted erroneously by concluding that it could find no uniqueness.

Moreover, on numerous occasions the Board incorrectly cited and applied the court's holding in Cromwell. For example, contrary to the Board's ruling, under Cromwell, the presence of trees on a property could be a factor when making a determination as to the uniqueness of a property and could possibly form the basis for grant of a variance. Cromwell, p. 708 (citation omitted). In contrast, the Board here stated that "[t]he fact that there are trees on the property does not make it unique . . ." See **Exhibit M**, p. 6. The Board's statement is utterly in contravention of the law. As quoted above, under Cromwell, a number of factors inherent to the property can render it property unique. Id. at p. 710 (citation omitted) (emphasis added) (the term 'unique' . . . 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, . . . or other similar restrictions"). Thus, the Cromwell court left wide open the door for consideration of "other similar restrictions" inherent to a property that may render it unique; no single inherent factor has been conclusively discarded by Cromwell nor is there is an exclusive list of factors that will or will not render a particular property unique. In contrast, the Board summarily dismissed the presence of trees surrounding the Property or the Property's unique shape and size, each of which factor significantly

contributes to its uniqueness. See **Exhibit M,** p. 6. The Board's ruling is not fairly debatable; it is an erroneous conclusion of law that is entitled no deference by this Court and should be reversed.

Furthermore, the Board's reliance on Cromwell is misplaced because the facts of Cromwell are distinguishable from this case. In Cromwell, the property owner had constructed an accessory building at a height he desired and in violation of the height restrictions and thereafter, sought variances. Id. at p. 697. Indeed, the property owner's contractor had failed to check the height restrictions in the ordinance. Id. at p. 707. Under such circumstances, the Cromwell court noted that the "hardship" cited by the property owner was self-inflicted; there was nothing unique about the property itself that rendered compliance with the Ordinance requirements onerous. Id. Instead, Cromwell held that uniqueness can be found "[w]here property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions . . . hardship arises. The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship . . . The hardship, arising as a result of the act of the owner . . . will be regarded as having been self-created, barring relief . . ." Id. at p. 707 (citation omitted). Since the hardship cited by the property owner could have been entirely avoided by use of proper diligence, the Cromwell court refused to recognize any hardship to the owner. Id.

The facts of this case are not, therefore, analogous to those in Cromwell. Practical difficulty and indeed, undue hardship to the Property owner here is present, not because of the owner's desire, but because of the unique shape and size of the Property. The same is true with regard to the other applicant for the variances, Sprint, whose request for variances here does not stem from its desire, but rather, its need (unlike that of the applicant for a variance in Cromwell).

Sprint demonstrated to the satisfaction of the Tower Committee and the Zoning Commissioner that there was a valid need for a wireless telecommunications facility in the area. See **Exhibits C and D** hereto. There is nothing in the record to contradict this undisputed fact and the Board has not found otherwise. Indeed, the Board acknowledged this fact. See **Exhibits M and N** hereto. In light of the Property's uniqueness and Sprint's demonstrated need for the facility and the lack of feasible alternatives within its Search Ring, application of Cromwell to deny the variances is plainly an error of law that should be overturned.

Furthermore, the Board also acted erroneously by finding that Petitioners should have demonstrated the suitability of residentially zoned properties within the Search Ring (where telecommunications facilities are permitted by special exception only) for installation of the facility. See **Exhibits M and N** hereto. There is no requirement under the law that an applicant seeking an area variance for a use permitted by right on the property demonstrate that its use is more particularly suitable on property where it is not permitted by right, i.e., special exception zones. Most significantly, the Board's aforementioned ad hoc requirement contradicts the express legislative policy of the BCZR, which states that wireless telecommunication services should be "[e]rected in a medium- or high-intensity commercial zone when available." See BCZR, §426.2. Thus, where (a) the applicable zoning regulations direct Petitioners to locate its facilities on medium- or high-intensity commercial zone; (b) Petitioners have, more than adequately, met this directive (the Property is zoned ML); and (c) have further demonstrated that of the four (4) such zoned properties within the Search Ring, the subject Property is the most suitable and, in any event, placement of any on the aforementioned four such properties would require setback variances (See **Exhibit A1**, p. 201), the Board may not, nonetheless, demand that

Sprint demonstrate why the facility cannot be placed on residentially zoned properties in the vicinity. The Board's ruling violates the BCZR and constitutes an erroneous ruling of law.

Moreover, as noted above, zoning regulations are in derogation of the common law right to use private property so as to utilize its full potential, such regulations "should not be extended by implication to cases not clearly within the scope of the purpose and intent manifest in their language" Stansbury, supra, 372 Md. at 187 ("only justification for the [zoning] restrictions . . . is the protection of the public health, safety, or morals) (citation omitted). The Board's statement that Sprint demonstrate suitability of residentially zoned properties for its facility does exactly what the law prohibits – it extends the zoning regulations in contradiction of the expressed legislative intent of the BCZR.

The record clearly establishes the uniqueness of the Property and the Board's finding to the contrary is an erroneous conclusion of law.

II. Strict Compliance with the BCZR Will Result in Practical Difficulty to Petitioners

Petitioners request for variances of the BCZR setbacks requirements constitutes an area variance (as opposed to a use variance), is considered less drastic than a use variance, and to which the "practical difficulty" (not the "unreasonable hardship") standard applies. See Roeser, supra, 368 Md. at 310 (citation omitted). See also Cromwell, p. 695, n. 1, 698 (in jurisdictions where the disjunctive "or" is used to separate the practical difficulty and unreasonable hardship standards, as in BCZR §307, the less onerous standard of practical difficulty applies in cases involving area (not use) variances).

The standards that apply to area variances are more relaxed than those applied to use variances because 'the impact of an area variance is viewed as being much less drastic than that of a use variance.'" Alviani, supra, 365 Md. at 120 (citation omitted). See also Roeser, supra,

368 Md. at 301-02, 309 ("an area variance is primarily concerned with practical difficulty"). Thus, since this case involves an area variance, the practical difficulty, not the unreasonable hardship, standard is applicable.

Where the "practical difficulty" standard applies, an applicant seeking a variance need show only that:

> 1. 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.
> 2. Grant of a variance sought would do substantial justice to the applicant as well as to other property owners in the district.
> 3. Relief can be granted in such a fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

See Anderson, et al. v. Board of Appeals, 22 Md. App. 28, 39 (Ct. Spec. App. 1974) (citation omitted). The record in this case shows that Petitioners have fully satisfied their burden of showing practical difficulty resulting from the Board's denial of the requested variances.

First, the record shows that strict compliance with the BCZR setbacks requirements of 200' for the monopole and 125' for the equipment cabinets, would unreasonably prevent the Property owner from using the ML zoned Property for a permitted purpose under the BCZR, i.e., installation of a wireless telecommunications facility. See BCZR, § 426.5. It is undisputed that wireless telecommunications facilities are permitted by right in ML zones. Id. Thus, a denial of the requested variances would prevent the Property owners here from using the Property for a permitted purpose. Evidence in the record, therefore, more than adequately meets the first prong of the "practical difficulty" determination noted in Anderson, supra. The Board's statement that since the property can be used for other permissible purposes there is no practical difficulty (See **Exhibit L** hereto) is an erroneous legal conclusion, expressly rejected in White v. North, 356

Md 31, 50 (Md. 1999), wherein the Court found that "unwarranted hardship can result from the denial of a reasonable and significant use" and it is not required that the property owner be deprived of all reasonable uses before a variance can be granted. Thus, even if the Property owners in this case are currently using the property for other purposes, under the law a request for variance cannot be declined on this basis alone, Instead, an applicant for a variance is entitled to one so long as it has satisfied all the requisite legal criteria for grant of same.

The unreasonableness of the Board's denial is also evident from the record. Citizens of the County who own ML zoned properties can install a wireless telecommunications facility on their respective properties by right under the BCZR. See BCZR § 426.5. The owners of the subject Property, however, are denied this entitlement because of the unique shape and size of their property. The Board's denial is, therefore, unreasonable. Petitioners have demonstrated satisfaction of all necessary legal criteria for grant of a variance.

The record also demonstrates substantial justice resulting from a grant of the requested variances. See Anderson, supra. The record shows that Sprint demonstrated a crucial need for the facility within its Search Ring. The approximate 148 petitions of community members, letters of support from the owners immediately adjacent to the Property and the Association (See **Exhibit F**), all contained in the record, corroborate this need and desire of the community for improvement of wireless telecommunications in the area. The findings of the Tower Review Committee (See **Exhibit C**) and the Zoning Commissioner (See **Exhibit D**) constitute further evidence of same. Furthermore, the record also shows that there are only four (4) ML zoned properties within the Search Ring and each one of them will require setback variances (See **Exhibit A1**, pp. 200-201). The aforementioned undisputed facts in the record show that a grant of the requested variances will allow (a) the Property owner to use the Property for a permissible

purpose, (b) Sprint to meet its crucial coverage objectives in the area; and (c) the citizens of the County an improved wireless telecommunications network. Substantial justice is, therefore, achieved by grant of the requested variances.

Finally, grant of the requested variances is in harmony with the spirit and intent of the BCZR, and promotes public safety and welfare. The BCZR has expressly indicated a preference for ML, not residential, zoned properties for the location of wireless telecommunications facilities. See BCZR §§ 426.2 and 426.5. Furthermore, the nature of the existing uses on the property (See **Exhibit A1**, pp. 58-59), the surrounding vegetation (Id. at pp. 39, 46-47, 57-58, 142), the minimal visual impact of Sprint's facility (Id. at pp.59-60), the preservation of vegetation (Id. at p. 133), the promotion of wireless telecommunications services in the area (Id. at pp.72, 76-77), and the testimony in the record that the monopole's fall zone lies completely within the boundaries subject Property (Id. at pp.122-125), are all factors that demonstrate how remarkably harmonious Sprint's facility is with the spirit and intent of the BCZR, and how well it promotes public safety and welfare.

The evidence in the record states a compelling case for grant of the requested variances. The practical difficulty and, indeed unreasonable hardship[5] to Petitioners and to the community members, from a denial of same is evident. The Board erred by denying the requested variances to Petitioners.

III. Petitioners' Requests Are in Strict Compliance With the Spirit & Intent of the Regulations and Result in Absolutely No Injury to Public Health, Safety and General Welfare

BCZR, § 426.2 provides that:

> Legislative policy for siting of wireless of wireless telecommunications antennas and towers. It is the intent of Baltimore County that:

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[5] Although the law does not require that applicants seeking an area variance, such as the Petitioners herein, demonstrate undue hardship (See Anderson, supra) is demonstrated in the record, such undue hardship is, nonetheless, shown by the record in this case.

A. Antennas should be placed on existing towers, buildings and structures, including those of public utilities, where feasible; and

B. If a new tower must be built, the tower should be:

1. Constructed to accommodate at least 3 providers;
2. Erected in a medium- or high-intensity commercial zone when available; and
3. Located and designed to minimize its visibility from residential and transitional zones.

The foregoing speaks clearly to the spirit and intent of the County regulations. Furthermore, §§ 253.1, et seq., and 426.5, which permit wireless telecommunications facilities by right in M.L., zones speaks to the spirit and intent of the Regulations. Thus, by placing the facility in an ML zone, Petitioners meet the expressed intent of the applicable zoning regulations.

Furthermore, nature of the existing uses on the property, the description, location and nature of the wireless telecommunications facility, the desire of the adjacent and nearby community members, the significant benefit to the County in general and to the nearby community members in particular from the placement of the facility on the Property, are additional factors that show how well the facility complies with the intent and spirit of the regulations and how remarkably well it promotes public safety and welfare. A grant of the variances is, therefore, warranted under the law.

IV. The Board's Denial of Variances in Effect is a Denial of Sprint's Telecommunications Site and Because Such a Denial is not Supported by Substantial Evidence and in Effect, Prohibits Wireless Telecommunication Services, it Violates the Telecommunications Act of 1996

The TCA mandates that a zoning body's denial of wireless telecommunications facility must be supported by substantial evidence in the record. See 47 U.S.C., Section 332 (c)(7)(B)(iii). See also New Par v. City of Saginaw, 161 F. Supp. 2d 759, 764 (D. Mi. 2001) aff'd New Par v. City of Saginaw, 301 F.3d 390 (6th Cir. 2002). Where there is no evidence in the record that an applicant seeking setbacks variances failed to satisfy the criteria for grant of

variances, a local body's denial of applicant's request is not supported by substantial evidence, as required by the TCA.

Moreover, the TCA's prohibitions are not solely directed to a zoning body's general ban on towers; instead, they "may be violated by a single zoning decision that in effect prohibits a provider from achieving seamless coverage." National Tower, LLC, et al. v. Frey, Jr., et al., 164 F. Supp.2d. 185, 189 (D. Mass. 2001) (citation omitted). Where local zoning decisions result in "significant gaps" in the availability of wireless services, they, in effect prohibit wireless telecommunication services and thereby violated the Act. Omnipoint Communications v. Charlestown Township, et al., 2000 U.S. Dist. Lexis 866 (D. Pa. 2000). In order to determine whether a significant coverage gap exists or whether a local zoning body has effectively banned the placement of such facilities, "a court must look solely to the circumstances of the provider whose efforts to build have been thwarted by a zoning board." National Tower, LLC, et al. v. Frey, Jr., et al., 164 F. Supp.2d. 185, 189 (D. Mass. 2001) (citation omitted). The record in this case shows that Sprint had demonstrated a need for coverage in the area (See **Exhibit B**. See also, **Exhibit A1,** pp. 72, 76-77) and that all ML zoned properties within its Search Ring (where a telecommunications facility is permitted by right under the BCZR), are too small to accommodate the required setbacks under the BCZR. See **Exhibit A1,** pp 198-201. Thus, Sprint has also demonstrated a lack of a feasible alternative for its site. Under such circumstances, the Board must "either show that [an applicant's] evidence was factually insufficient, or . . . come forward with evidence of its own demonstrating a trial worthy dispute." National Tower, LLC, et al. v. Frey, Jr., et al., 164 F. Supp.2d. 185, 189-90 (D. Mass. 2001) (citation omitted). Where a local zoning board does not meet the foregoing burden, its decision must be reversed. Id.

The prohibitions of the TCA are properly invoked here by the Board's denial of the requested variances, since the effect of the Board's denial is a prohibition of seamless coverage by Sprint in the area and results in significant gaps in wireless services in the area. Nat'l Tower, supra, 164 F. Supp. 2d at 189. See also Omnipoint, supra, 2000 U.S. Dist. Lexis 866.

Conclusion

In light of the aforementioned law, facts, and arguments, and the entire record before this Court, Petitioners, Sprint PCS/APC Realty & Equipment Company, LLC, and Back River, LLC, respectfully request that this Court reverse the decision of the County Board of Appeals of Baltimore County, and find that the uniqueness of the subject Property, the practical difficulty and, indeed, undue hardship resulting from a denial of the variances, Petitioners compliance with the intent and spirit of the zoning regulations, and the promotion of public welfare, safety and benefit by granting the variances, are all factors that warrant a grant of variances requested by Petitioners.

Respectfully submitted,

James R. Michal, Esq.
Syeda B. Naqvi, Esq.
JACKSON & CAMPBELL, P.C.
200 A Monroe Street, Suite 225
Rockville, Maryland 20850
(301) 340-0450
(202) 457-1600, Fax: (202) 457-1678

Attorneys for Sprint PCS/APC Realty &
Equipment Company, LLC

Date: October 2, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 2003, a copy of the foregoing Memorandum of Petitioners was mailed via first class-mail, postage prepaid to:

C. Lynn Barranger
Panel Chair
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Syeda B. Naqvi

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

PETITION OF:	*	
	*	
Back River LLC, Buck Jones, President, Property Owner	*	
and	*	
Sprint PCS/APC Realty & Equipment Company, LLC	*	
Contract Purchaser/Lessee	*	CIVIL ACTION
	*	
	*	No. 03-C-03-005849AE
FOR JUDICIAL REVIEW OF THE DECISION OF THE	*	
Board of Appeals of Baltimore County, Maryland	*	
	*	
IN THE CASE OF	*	
The Application of Back River, LLC, Buck Jones, President	*	
– Legal Owner; Sprint PCS – C.P. Petitioners for Variance	*	
on Property located on the SW/S Back River Neck Road	*	
33' SE of Pottery Farm Road (810 Back River Neck Road);	*	
15th Election District; 5th Councilmanic District	*	
Board of Appeals Case #02-159-A	*	

ORDER

Upon consideration of Petitioners, Sprint PCS/APC Realty & Equipment Company, LLC, and Back River, LLC's Petition for Judicial Review, Memorandum in support of same, Opposition thereto and the arguments made in Court, it is this _____ day of _____, hereby

ORDERED, that the Petition for Judicial Review is GRANTED; and it is further

ORDERED, that the opinion of the County Board of Appeals of Baltimore County dated May 14, 2003 is hereby REVERSED; and it is further

ORDERED, that the variances requested by Petitioners are GRANTED.

_____
JUDGE

Copies to:

James R. Michal, Esq.
Syeda B. Naqvi, Esq.
JACKSON & CAMPBELL, P.C.
200 A Monroe Street, Suite 225
Rockville, Maryland 20850

C. Lynn Barranger
Panel Chair
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

8/12/03

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
Back River LLC, Buck Jones, President - *
Legal Owners; Sprint PCS – CP
810 Back River Neck Road *
Baltimore, MD 21221

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS No. 3-C-03-5849
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF
BACK RIVER LLC, BUCK JONES, *
PRESIDENT - LEGAL OWNERS;
SPRINT PCS – CP *
810 BACK RIVER NECK ROAD
BALTIMORE, MD 21221 *

15th ELECTION DISTRICT *
5th COUNCILMANIC DISTRICT

*

CASE NO.: 02-159-A

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

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits 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:

RECEIVED AND FILED
2003 AUG 12 A 10:50
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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

No. 02-159-A

October 19, 2001	Petition for Variance filed by Jennifer R. Busse, Esquire, , G. Scott Barhight Whiteford, Taylor & Preston, on behalf of Back River, LLC/Sprint PCS; to allow a setback of 75 feet to the southern property line ilo of the req'd 200 feet for a wireless telecommunication tower; to allow a setback of 75 feet to the western property line ilo the req'd 200 feet; to allow a setback of 148 feet to the northern property line ilo the req'd 125 feet for equipment cabinet; to allow a setback of 40 feet to the western property line ilo the req'd 125 feet for equipment cabinet; to allow a setback of 40 feet to the western property line ilo the req'd 125 feet for equipment cabinet.
December 7	Certificate of Posting.
December 10	Entry of Appearance filed by People's Counsel for Baltimore County
December 13	Publication in newspaper
December 21	ZAC Comments.
December 28	Hearing held before the Zoning Commissioner
January 4, 2002	Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. Petition for Variance is Granted with restrictions.
January 14	Notice of Appeal filed by People's Counsel for Baltimore County
September 25	Hearing held before the Board of Appeals – Day 1
January 21, 2003	Hearing held before the Board of Appeals – Day 2

Petitioner's Exhibits

1a	Letter dated September 19, 2002 from Willis & Ellen Gibson
1b	Letter dated September 19, 2002 from Elsie Luciano
1c	Signatures of Community Members in favor of the tower – 2 pages

1d	Signatures of Community Members in favor of the tower – 2 pages
1e	Signatures of Community Members in favor of the tower – 2 pages
2a	Letter to the Board of Appeals dated September 20, 2002 from Kathleen Filar, Secretary, Holly Neck Conservation Assoc., Inc., authorization notice
3	Map – Back River Neck – Unmanned Wireless Communication Site
4	Resume – Peter Fastnacht – 1 page
5a	Two photographs – East side of Back River Neck Road
5b	One photograph looking East across Back River Neck Road; one photograph Medic Center
5c	Two photographs looking north on Back River Neck Road
5d	One photograph driving south on Back River Neck Road; one photograph west side of Back River Neck Road
5e	One photograph west side of Back River Neck Road; one photograph looking north on Back River Neck Road
5f	One photograph on Back River Neck Road looking east at B&T Hardware; one photograph on Back River Neck Road looking at south side of B&T Hardware
5g	One photograph of pumping station west side of Back River Neck Road; one photograph Cherry Day Nursery south of pumping station
5h	One photograph east side of Back River Neck Road across street from Cherry Day and pumping station; one photograph driving south on Back River Neck Road – Cherry Day north of picture
5I	One photograph driving south on Back River Neck Road end of 702; One photograph driving north on Back River Neck Road beginning of 702

6a	One Photograph looking east at shopping center; one photograph looking south east
6b	One photograph looking North/West at Medic's Station; one photograph looking South/East at Old Back River School
6c	One photograph of proposed tower site; one photograph of standing approximately 350' west of tower site
6d	One photograph of proposed tower site looking west; One photograph of proposed tower site looking south/west
7a	Photograph of monopole – undated
7b	Photograph of monopole – undated
7c	Photograph of monopole – undated
7d	Photograph of monopole – undated
8a	Site plan – Drawing No.: Z1 – Back River Neck, September 24, 2002
8b	Site plan – Drawing No.: Z2 – Back River Neck, September 24, 2002
9	Photograph – undated – no description
10	Resume – Hassan Khalil – two pages
11a	Propagation Map - Color Site map – study of area – dated December 28, 2001
11b	Color Site map – study of area – dated December 28, 2001
12	Federal Aviation Administration's Determination of No Hazard to Air Navigation dated 10/22/01 – 2 pages
13	Baltimore County Interoffice Correspondence to Donald T. Rascoe, Development Manager from Tower Review Committee dated April 25, 2001 – 2 pages
14	Baltimore County Interoffice Correspondence to Arnold "Pat" Keller, Director, Office of Planning from Karin Browe, Community Planning, Office of Planning dated December 16, 1998 - 2 pages

15	Resume – Marianne Kiernan, PE – one page
16	Letter to Buck Jones, Back River LLC from Keith Kelley, Natural Resource Specialist, Environmental Impact Review, Baltimore County Department of Environmental Protection and Resource Management, dated May 7, 2002 – one page
17	Letter to Baltimore County Department of Planning from Free-State General Contractors, Inc., dated July 15, 2002 – one page
18	Letter from Joseph C. Merrey, Planner II, Zoning Review, Baltimore County Department of Permits and Development Management, dated August 29, 2002 – one page
19	Zoning Advisory Committee comments – 5 pages
20a	Photograph – undated – no description
20b	Photograph – undated – no description
20c	Photograph – undated – no description
21a	Baltimore County Map No. 97
21b	Baltimore County Map No. 98
21c	Baltimore County Map No. 104
21d	Baltimore County Map No. 105
22a	Baltimore County GIS Tile: 097c3
22b	Baltimore County GIS Tile: 098a3
22c	Baltimore County GIS Tile: 104c1
22d	Baltimore County GIS Tile: 105a1

Board of Appeals

1	People's Counsel's Sign In Sheet

Protestant's Exhibit

1	Resume – Jack Dillon – three pages

2	Baltimore County Map – Essex – Middle River –4B
3	Nine photographs on one page – undated – no description
4	Master Plan 2010 – Page 249, Page 250, Page 251, Page 252
5	Photograph – undated – no description – marked in pen
6a	Resolution – Back River Neck Peninsula Community Association Inc. – one page
6b	Resolution with attachment, dated September 19, 2002 – Back River Neck Peninsula Community Association Inc.
6c	Affidavit of Jackie Nickel – Back River Neck Peninsula Community Association Inc. – one page
6d	Affidavit of Leroy W. Sennett – Back River Neck Peninsula Community Association Inc. – one page
7a	Photograph – Back River Recreation Center – undated
7b	Photograph – Back River Recreation Center – different view – undated
8a	Photograph of stores – undated – no description
8b	Close-up photograph of stores – undated – no description
8c	Distant photograph of stores – undated – no description
8d	Photograph of boats/storage – undated – no description
9	Photograph of stores/ flag pole – undated – no description
10	Real Property Search – Pottery Farm Road – one page; and Real Property Search – Back River Neck Road – two pages
11	Real Property Search – 801 Back River Neck Road – two pages
12	Real Property Search – 810 Back River Neck Road – two pages

March 20	Public Deliberation concluded by the Board.
May 14	Opinion and Order issued by the Board of Appeals; Petition for Variance is DENIED.
June 11	Petition for Judicial Review filed in the Circuit Court for Baltimore County by James R. Michal, Esquire and Syeda B. Naqvi, Esquire, JACKSON & CAMPBELL, P.C., 200 A Monroe Street, Suite 225, Rockville, MD 20850, on behalf of Back River LLC, Buck Jones, President, Property Owner and Sprint PCS.
June 26	Copy of Petition for Judicial Review retrieved from the Circuit Court for Baltimore County by the Board of Appeals.
June 30	Certificate of Notice sent to interested parties.
July 2	Notice of Withdrawal of Appearance of Jennifer R. Busse, G. Scott Barhight and Whiteford, Taylor & Preston, LLP on behalf of Petitioner.
August 12	Transcript of testimony filed.
August 12	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.

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49 Basement
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)

c. James R. Michal, Esquire
Syeda B. Naqvi, Esquire
Buck Jones, President
Howard Lyer, Sprint PCS
Peter Max Zimmerman / People's Counsel for Baltimore County

6/30/03

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
Back River LLC, Buck Jones, President - *
Legal Owners; Sprint PCS – CP
810 Back River Neck Road *
Baltimore, MD 21221

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE COUNTY BOARD OF APPEALS No. **3-C-03-5849**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF
BACK RIVER LLC, BUCK JONES, *
PRESIDENT - LEGAL OWNERS;
SPRINT PCS – CP *
810 BACK RIVER NECK ROAD
BALTIMORE, MD 21221 *

15th ELECTION DISTRICT *
5th COUNCILMANIC DISTRICT

*

CASE NO.: 02-159-A

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

RECEIVED AND FILED
'03 JUN 30 A 11:51
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, 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:

James R. Michal, Esquire
Syeda B. Naqvi, Esquire
Jackson & Campbell, P.C., 200 A Monroe Street, Suite 225,
Rockville, MD 20850

Buck Jones, President
Back River, LLC, 810 Back River Neck Road, Baltimore, MD 21221

Howard Lyer
Sprint PCS, 1 International Blvd., Suite 800, Mahwah, NJ 07495

Jackie Nickel, President
Back River Neck Peninsula Community Association, Inc., 721 Rockaway Beach Avenue, Baltimore, MD 21221

Jennifer R Busse Esquire
Whiteford Taylor & Preston LLP, 210 West Pennsylvania Avenue, Towson Md 21204

G Scott Barhight Esquire
Whiteford Taylor & Preston LLP, 210 W Pennsylvania Avenue, Towson Md 21204

Jim Mitchell, Vice President
Holly Neck Conservation Association, 1241 Engleberth Road, Baltimore, MD 21221

Hillorie S. Morrison
VoiceStream Wireless, 12050 Baltimore Avenue, Beltsville, MD 20705

Leroy Sennett
1716 Beachwood Avenue, Baltimore, Md 21221

Peter Max Zimmerman
People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204

Carole S. Demilio
Deputy People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
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 James R. Michal, Esquire, Syeda B. Naqvi, Esquire, Jackson & Campbell, P.C., 200 A Monroe Street, Suite 225, Rockville, MD 20850; Buck Jones, President, Back River, LLC, 810 Back River Neck Road, Baltimore, MD 21221; Howard Lyer, Sprint PCS, 1 International Blvd., Suite 800, Mahwah, NJ 07495; Jackie Nickel, President, Back River Neck Peninsula Community Association, Inc., 721Rockaway Beach Avenue, Baltimore, MD 21221; Jennifer R Busse Esquire, Whiteford Taylor & Preston LLP, 210 West Pennsylvania Avenue, Towson Md 21204; G Scott Barhight Esquire, Whiteford Taylor & Preston LLP, 210 W Pennsylvania Avenue, Towson Md 21204; Jim Mitchell, Vice President, Holly Neck Conservation Association, 1241 Engleberth Road, Baltimore, MD 21221; Hillorie S. Morrison, VoiceStream Wireless, 12050 Baltimore Avenue, Beltsville, MD 20705; Leroy Sennett, 1716 Beachwood Avenue, Baltimore, Md 21221; Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204; Carole S. Demilio, Deputy People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, this 30th day of June, 2003.

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
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
FAX: 410-887-3182

June 30, 2003

James R. Michal, Esquire
Syeda B. Naqvi, Esquire
Jackson & Campbell, P.C.
200 A Monroe Street, Suite 225
Rockville, MD 20850

RE: Circuit Court Civil Action No. 3-C-03-5849
Petition for Judicial Review
Back River LLC, Buck Jones, President
Sprint PCS
810 Back River Neck Road, Baltimore, MD 21221
Case No.: 02-159-A

Dear Mr. Michal and Ms. Naqvi:

In accordance with the Maryland Rules, 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 sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with the Maryland Rules.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton

Theresa R. Shelton
Legal Secretary

/trs
Enclosure
c: Buck Jones, President
Howard Lyer, Sprint PCS
Peter Max Zimmerman / People's Counsel for Baltimore County

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
FAX: 410-887-3182

June 30, 2003

Peter Max Zimmerman
Office of People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-03-5849
Petition for Judicial Review
Back River LLC, Buck Jones, President
Sprint PCS
810 Back River Neck Road, Baltimore, MD 21221
Case No.: 02-159-A

Dear Mr. Zimmerman:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on June 11, 2003, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. **3-C-03-5849.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: James R. Michal, Esquire
Buck Jones
Howard Lyer
Jackie Nickel, Esquire
Jennifer Busse, Esquiire
G. Scott Barhight, Esquire
Jim Mitchell

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on Recycled Paper

Hillorie S. Morrison
Leroy Sennett
Carole S. Demilio
Jack Antwerpen
Pat Keller, Director/Planning
Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director/PDM

6/23/03

PETITION OF **BACK RIVER LLC** AND **SPRINT PCS** FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE
	*	CIRCUIT COURT
IN THE CASE OF **BACK RIVER LLC**, LEGAL OWNER/PETITION FOR VARIANCE ON PROPERTY LOCATED AT 810 BACK RIVER NECK ROAD; SW BACK RIVER NECK ROAD 33' SE POTTERY FARM ROAD	*	FOR
15th Election District, 5th Councilmanic District	*	BALTIMORE COUNTY
Case No. 02-159-A Before the County Board of Appeals	*	Case No. 03-C-03-005849AE

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

RESPONSE TO PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, in accordance with Maryland Rule 7-204, submits this response to the Petition for Judicial Review filed by BACK RIVER LLC and SPRINT PCS, and states that it intends to participate in this action for Judicial Review. The undersigned participated in the proceeding before the County Board of Appeals.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of June, 2003, a copy of the foregoing Response to Petition for Judicial Review was mailed to:

James R. Michal, Esquire
Syeda B. Naqvi, Esquire
JACKSON & CAMPBELL, P.C.
200 A Monroe Street, Suite 225
Rockville, Maryland 20850

Kathleen C. Bianco, Administrator
County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

CAROLE S DEMILIO
Deputy People's Counsel for Baltimore County

6/16/03

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

PETITION OF:	*	
	*	
Back River LLC, Buck Jones, President, Property Owner	*	
810 Back River Neck Road, Baltimore, Maryland 21221	*	
And	*	
Sprint PCS,	*	
1 International Boulevard, Suite 800, Mahwah, NJ 07495	*	
	*	
Contract Purchaser/Lessee	*	Civil Action No. 02-159-A
	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE	*	
Board Of Appeals Of Baltimore County, Maryland	*	
	*	
IN THE CASE OF	*	
The Application of Back River, LLC., Buck Jones, President	*	
– Legal Owner; Sprint PCS – C.P. Petitioners for Variance	*	
on Property located on the SW/S Back River Neck Road	*	
33' SE of Pottery Farm Road (810 Back River Neck Road);	*	
15th Election District; 5th Councilmanic District	*	
Board of Appeals Case #02-159-A	*	

RECEIVED
JUN 16 2003
BALTIMORE COUNTY
BOARD OF APPEALS

AMENDED CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of June, 2003, a copy of the Petition for Judicial Review was mailed via first-class mail, postage prepaid to:

Peter Max Zimmerman
People's Counsel for Baltimore County
Carole S. DeMilio
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, Maryland 21204

C. Lynn Barranger
Panel Chair
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Respectfully submitted,

James R. Michal, Esq.
Syeda B. Naqvi, Esq.
JACKSON & CAMPBELL, P.C.
200 A Monroe Street, Suite 225
Rockville, Maryland
(301) 340-0450
(202) 457-1600, Fax: (202) 457-1678

Attorneys for Sprint PCS

6/1/03

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

PETITION OF:	*	
Back River LLC, Buck Jones, President And 810 Back River Neck Road Baltimore MD 21221 Sprint PCS, Contract Purchaser/Lessee 1 International Blvd. Suite 800 Mahwah, N.J. 07495	*	C-03-5849 CIVIL ACTION No. _____
FOR JUDICIAL REVIEW OF THE DECISION OF THE Board Of Appeals Of Baltimore County, Maryland	*	
IN THE CASE OF The Application of Back River, LLC., Buck Jones, President – Legal Owner; Sprint PCS – C.P. Petitioners for Variance on Property located on the SW/S Back River Neck Road 33' SE of Pottery Farm Road (810 Back River Neck Road); 15th Election District; 5th Councilmanic District Board of Appeals Case #02-159-A	*	RECEIVED JUN 26 2003 BALTIMORE COUNTY BOARD OF APPEALS

PETITION FOR JUDICIAL REVIEW

Pursuant to Maryland Rules 7-202, et seq., Sprint PCS, and Back River, LLC, by and through the undersigned counsel, hereby request judicial review of the decision of the Board of Appeals of Baltimore County in the above-referenced matter. Petitioners were parties to the agency proceedings below.

Respectfully submitted,

James R. Michal

James R. Michal, Esq.
Syeda B. Naqvi, Esq.
JACKSON & CAMPBELL, P.C.
200 A Monroe Street, Suite 225
Rockville, Maryland 20850
(301) 340-0450
(202) 457-1600, Fax: (202) 457-1678

Attorneys for Sprint PCS

RECEIVED AND FILED
2003 JUN 11 P 2:51
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

cc. BOA

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 2003, a copy of the foregoing Petition for Judicial Review was mailed via first class-mail, postage prepaid to:

C. Lynn Barranger
Panel Chair
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Syeda B. Naqvi

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IN THE MATTER OF: BACK RIVER, LLC, BUCK JONES – LEGAL OWNER, SPRINT PCS – PETITIONER and CONTRACT PURCHASER	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
PETITION FOR VARIANCE 810 BACK RIVER NECK RD SWS BACK RIVER NECK RD, 330' SE OF POTTERY FARM RD 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	* * * *	 CASE NO. 02-159-A
* * *	*	* *

MEMORANDUM OF PETITIONER, SPRINT PCS

Petitioner, Sprint PCS, by and through its attorneys, G. Scott Barhight, Jennifer R. Busse, and Whiteford, Taylor & Preston, L.L.P., submits this Memorandum pursuant to the request of the Board of Appeals.

I. Statement Of The Case

At issue in this case is a series of setback variances applied for by the Petitioner, Sprint PCS ("Sprint"), pursuant to Baltimore County Zoning Regulations ("BCZR") § 426.6.A.[1]. These setback variances are necessary for the approval of a 115-feet tall wireless telecommunication tower at 810 Back River Neck Road ("the Property"). Pursuant to BCZR § 426.5, this use is permitted as a matter of right at this location.

On March 30, 2001, pursuant to BCZR § 426, Sprint submitted an application for recommendation from the Baltimore County Tower Review Committee ("TRC") for the

---

[1] Sprint's Petition for Variance was accepted for processing on October 19, 2001. See, Pet. Ex. 19. Subsequently, the Baltimore County Council adopted Bill 17-2002 which revised BCZR § 426 such that the references within BCZR § 426.6.A for setbacks, which are the subject of Sprint's Petition for Variance, have been re-numbered. See, T 1, pp. 16-17.

subject tower at the Property. On April 26, 2001, the TRC issued its recommendation which provides that Sprint "has provided ample documentation that the 115-foot monopole to be located at 810 Back River Neck Road is indeed required for the network." The TRC recommended approval of Sprint's request, as long as two additional carriers could be accommodated on the tower. (Pet. Ex. 2 from the Zoning Commissioner's file.)

On May 14, 2001, the Baltimore County Development Review Committee ("DRC") issued a letter providing that Sprint's proposal for the tower at the Property meets the requirements of a limited exemption under Baltimore County Code § 26-171(a)(7). (Pet. Ex. 1 from the Zoning Commissioner's file.)

On October 19, 2001, Sprint filed a Petition for Variance seeking relief from the setback requirements in BCZR § 426.6.A. On December 28, 2001, a public hearing was held on Sprint's Variance requests before the Baltimore County Zoning Commissioner in case number 02-159-A. In his Order dated January 4, 2002, the Zoning Commissioner granted the Variance requests.

Allowed to construct the tower at risk, Sprint proceeded through the building permit process. On May 7, 2002, Mr. Keith Kelley of the Baltimore County Department of Environmental Protection and Resource Management issued a letter to the Property's owner, Mr. Buck Jones, informing him that the tower's proposed location would have to be revised due to the location of an existing stream. (Pet. Ex. 16.) These additional setback requirements were not identified by DEPRM in their Zoning Advisory Committee comments as part of the Zoning Commissioner's case. (Pet. Ex. 19.)

In accordance with DEPRM's request, Sprint revised the site plan to relocate the tower 60 feet in an easterly direction. (Pet. Ex. 8A and 8B.) On August 29, 2002, Mr. Joseph C. Merrey of the Baltimore County Zoning Office issued a Zoning Verification letter stating that the relocation of the proposed tower is within the spirit and intent of the Zoning Commissioner's Order in Case 02-159-A. (Pet. Ex. 18.)

People's Counsel for Baltimore County appealed the Zoning Commissioner's decision to the Baltimore County Board of Appeals (the "Board") on January 14, 2002. The appeal to the Board was *de novo* and the Board heard testimony on this matter on two separate days, September 25, 2002 and January 21, 2003. At the conclusion of the hearing, the Board requested the parties submit Briefs and the Board's public deliberation is scheduled for March 20, 2003.

II. Sprint's Variance Requests

As a result of DEPRM's request, the necessary variance from the rear (western) property line has been reduced and one of the two previously approved variances for the equipment cabinets has been eliminated. (Pet. Ex. 8A.)

Therefore, in light of the revisions to BCZR § 426 pursuant to Bill 17-2002, Sprint's variance requests now are as follows:

1. A variance from BCZR § 426.6.A.1 to allow a setback of 75-feet to the southern property line (a side setback) in lieu of the required 200-feet for a wireless telecommunications tower.

2. A variance from BCZR § 426.6.A.1 to allow a setback of 135-feet to the western property line (the rear setback) in lieu of the required 200-feet for a wireless telecommunications tower.

3. A variance from BCZR § 426.6.A.1 to allow a setback of 148-feet to the northern property line (a side setback) in lieu of the required 200-feet for a wireless telecommunications tower.

4. A variance from BCZR §426.6.A.2 to allow a setback of 40-feet to the southern property line in lieu of the required 125-feet for equipment cabinets for a wireless telecommunications tower.[2]

III. Statement Of Material Facts

A. *Evaluation of the Property by the Office of Planning*

On December 16, 1998, Karin Brown, the Baltimore County Office of Planning Community Planner for the 5th Councilmanic District, issued a Memorandum to Arnold F. "Pat" Keller, the Director of the Office of Planning. (Pet. Ex. 14.)

In the first paragraph, Ms. Brown explains the purpose for the memorandum, which was to respond to Mr. Keller's request "for an evaluation of possible cell tower sites." The memorandum identified two potential sites, "My Friends Tavern Site" and "Back River Neck Road Site". Ms. Brown explained that the "My Friends Tavern Site" was "not suitable for cell tower location", due to the fact that a tower would be visible from all sides of that property.

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[2] As pointed out to the Board in Mr. Barhight's opening statement, Sprint respectfully submits that the setback variances for the equipment cabinets are not legally necessary since they do not qualify as "structures". The equipment cabinets proposed in this case are only approximately 5' in height and range from 22" - 30" in width and depth. *See*, T 1, p. 127, and Pet. Ex. 8B. Unlike those existing at various other locations, these equipment cabinets are more akin to air conditioning units and are not shelters. No one can enter them, rather technicians simply open their attached panels in order to work on the equipment. Where tower equipment is housed within "structures", as that term is defined by the BCZR, those structures must meet the zoning subject property's setback requirements. However, these cabinets do not meet that definition and therefore should not be subject to setback requirements.

As to the "Back River Neck Road Site", the same property as the subject Property in this matter, Ms. Brown's memorandum provides:

> This site would be an excellent location for a wireless communication tower. It is deep enough to minimize the visibility of the tower from the road. Existing tree growth would buffer much of the tower from the view of the residential dwellings that are located north-west from the anticipated tower location.

(Pet. Exhibit 14.)

B. *The Search Ring*

Based on complaints received from customers and related studies of Sprint's coverage in the area, Sprint generated a Search Ring outlining the area in which Sprint needed to locate a wireless telecommunications facility to improve its service by increasing its network coverage. *See*, Transcript from the September 25, 2001 hearing, hereinafter referred to as "T 1", pp. 73-78.[3]

Submitted as Pet. Exhibit 3, this Search Ring shows an oval shaped area that is bounded by Turkey Point Road to the north and Cherry Garden Road to the south, with Back River Neck Road running in a north/south direction through the middle. The area encompassed by the Search Ring extends approximately 1 mile north to south, and approximately ¼ of a mile east and west of Back River Neck Road. *See*, T 1, p. 38.

Both Mr. Khalil, who was accepted as an expert in the field of radio frequency engineering, and Mr. Fastnacht, who was accepted as an expert in wireless site acqui-

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[3] Similarly, the transcript from the January 21, 2003 hearing will herein be referred to as "T 2". Copies of both of these transcripts are attached to this Memorandum.

sition, testified that this Search Ring was used to identify properties on which antenna or towers could be placed to meet Sprint's coverage needs. *See*, T 1, pp. 38-40, 77-78.

C. *The Search*

After identifying the Search Ring, Sprint's search for a location to meet its needs was directed by the regulations and legislative policy within BCZR § 426.2. First, Sprint had to research whether its needs for coverage could be satisfied by locating antennas on any existing towers, buildings and/or other existing structures. The answer to this question was "No", as testified to by Mr. Fastnacht, who was accepted as an expert in wireless site acquisition. *See*, T 1, pp. 37, 39-40. Pursuant to the legislative policy, Sprint next researched whether its needs could be satisfied by locating a tower in a medium or high-intensity zone. It is only on properties with medium or high-intensity zoning that a tower can be located as a matter of right. *See*, BCZR § 426.5 The subject Property provides an affirmative finding to this analysis, as testified to by Mr. Khalil, who was accepted as an expert in the field of radio frequency engineering. *See*, T 1, pp. 72, 76-77. A tower at 810 Back River Neck Road, which is zoned M.L. (high-intensity), allows Sprint to meet its coverage needs. *Id.* at pp. 76-77.

In all, there are a total of four properties within the Search Ring which are zoned medium to high-intensity, and therefore theoretically could accommodate a tower as a matter of right. *See*, T 1, pp. 200-201. As to comparing these other sites with the 810 Back River Neck Road Property, the testimony of both Mr. Khalil and Mr. Dillon clearly supports the fact that the subject Property is the most appropriate location for a tower within the Search Ring.

Mr. Dillon testified that there are four properties on which a tower could be located as a matter of right within the Search Ring, but that none of those properties could accommodate a tower without setback variances. *See*, T 1, pp. 198-201.

The first property identified by Mr. Dillon is the B.L. zoned property immediately to the northeast of the Property. *Id.* at 201. This property is only approximately 165' deep and 221' wide.[4] (Pet. Ex. 8A) The second property identified by Mr. Dillon is actually the subject Property.[5] *Id.* The third property identified by Mr. Dillon is an M.L. zoned property located on the east side of Back River Neck Road, south of the subject Property. With regard to this property's dimensions, Mr. Dillon testified: "The M.L. down further, it's very narrow along the frontage, actually looks like it's probably less than 50 feet wide along the frontage, and extends about 500 feet deep, and widens out in the back to maybe 260 feet." *Id.* Finally, Mr. Dillon described the fourth property as: "the B.L. further down is only approximately 200 feet wide and roughly 200 feet deep." *Id.*

It is instructive to compare the subject Property to these other three properties. First, the subject Property is the largest one at approximately 850 feet deep and 223 feet wide. *See*, T 1, p. 132. (Pet. Ex. 8A) This size difference not only renders the site unique, but also allows greater distances between the tower and adjacent uses. Further,

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[4] While Mr. Dillon approximated that this site was "about 300 feet wide, 250 deep", Petitioner's Exhibit 8A shows more accurate dimensions for this property.

[5] Mr. Dillon's testimony as to the dimensions of the Property were inaccurate as he approximated the Property to be "200 feet wide and 600 feet deep." *See*, T 1, p. 201. As demonstrated on Pet. Ex. 8A and testified to by Ms. Kiernan, the Property is approximately 850 feet deep and 223 feet wide. *See*, T 1, p. 132 and Pet. Ex. 8A.

the subject site is virtually surrounded by mature trees which successfully shield the view of the tower from all except those directly in front of the site. The setting clearly distinguishes the subject Property from the three alternatives zoned M.L. or B.L. within the Search Ring.

Furthermore, Ms. Demilio questioned Mr. Khalil as to whether a tower at the Eastern Yacht Club, which is zoned B.L., would cover the same area as a tower at 810 Back River Neck Road, the subject Property. Mr. Khalil explained that such a proposal would not sufficiently cover the Search Ring and would require Sprint pursue the construction of a second tower in the area in order to meet its needs. *See*, T 1, pp. 95-96.

Lastly, the Property is the only site that has been identified by the Office of Planning as an appropriate tower location in the entire area. (Pet. Ex. 14) This distinguishing feature is unique to the entire Back River Neck Road area.

Once a site is found in a medium or high-intensity zone, the search is over. The policy of the BCZR directs Sprint and other similar users to locate their towers in these areas, rather than further searching for a site in a zone which requires a Special Exception.

D. The Property Description

The Property, which is known as 810 Back River Neck Road, contains approximately 4.31 acres in area, is zoned M.L., and is improved with two (2) one-story commercial buildings. (Pet. Ex. 8A) Both Mr. Fastnacht and Ms. Kiernan, who was accepted as an expert in the fields of civil engineering, planning and zoning, testified to the Property's description. See, T 1, pp. 102-111.

It is located to the west of Back River Neck Road, just south of its intersection with Pottery Farm Road. The Property is comprised of one long, rectangular parcel. Other than the two existing structures on the parcel, it is primarily graveled and open. Importantly, it is surrounded by woodland area on three sides – its southern, western and northern boundaries. *Id.* at p. 113.

When asked why he opines that the Property is an ideal site for the location of a wireless telecommunications tower, Mr. Fastnacht responded:

> Well, for one thing, it's a long, narrow piece of property. It's surrounded on three sides, kind of surrounded in a grove of trees, which provide excellent screening. The front of the property has buildings which also provide some screening from the road. The fact that it's a deep, a long, narrow, deep property, it allowed us to take advantage of the natural screening that was provided without having to take down or cut trees. It just made sense.

Id. at p. 39.

Both Ms. Kiernan and Mr. Fastnacht also testified to the surrounding area, its zoning, natural features and improvements. The zoning of all the land adjacent to the Property on its southern and western boundaries is R.C. 20. On the northern boundary the parcel closest to Back River Neck Road is zoned B.L. and to the west of that there are two existing dwellings on land zoned D.R. 3.5. *Id.* at pp. 114-116. South of the Property and across the street is a Medic Station. Directly across Back River Neck Road from the Property is property owned by Baltimore County which has most recently been used as a Community Center. *Id.* at p. 47.

With regard to the description of the specific area on which the tower is located, Ms. Kiernan testified that the tower is located at the rear of the Property, in its south-

western corner. The tower is centrally located in an existing gravel area. The existing tree line surrounds the area housing the tower on three sides. *See*, T 1, pp. 116-118. These trees are protected from destruction in that they are located within a habitat protection area (*See*, T 2, pp. 46-47), on property zoned R.C. 20 which can only be developed with one dwelling per every twenty acres. *See*, T 1, pp. 57-58, 142.

The tower's location was determined by the features of the Property and the features of the surrounding properties. The desire was to place the tower as far away as possible from Back River Neck Road and the existing two dwellings on the northern side of the Property, not only to best screen the tower but also to ensure that the tower's fall zone would be completely located on site. Yet, Sprint was also forced to accommodate the demand by DEPRM that the tower be 100' from what DEPRM has identified as an existing stream. *Id.* at pp. 39, 130-131. Additionally, the tower's location does not require the cutting of any trees or even any disturbance to any grassed areas, thereby having no negative impact on the existing surrounding woodlands. *Id.* at p. 133.

Due to the Property's narrow configuration – it is only 233' wide, there is nowhere on the Property where a tower could be placed and meet all of the applicable setback requirements. *Id.* at pp. 134-135. Even if there were no existing structures on the Property, it would be impossible to meet all of the required setbacks. The BCZR requires that a tower be at least 200' from an adjoining residentially zoned property. This Property is bounded by residentially zoned properties on all sides. Thus, this Property is too narrow to allow a tower to meet these setbacks. *Id.*

E. *Support For The Tower By The Community*

As noted above, there are only two residences that are in close proximity to the Property and to the tower's location. Both of these property owners, Elise Luciano and Mr. and Mrs. Gibson, executed letters of support for the tower and the requested variances even though the tower's location was moved in response to DEPRM's request. (Pet. Ex. 1A and 1B) Additionally, various community members also signed a petition of support. (Pet. Ex. 1C, D and E)

Mr. William Bafatis testified at the hearing on behalf of the Holly Neck Conservation Association. He explained that the Property is within the boundaries of the Association's area of concern. *See* T 1, pp. 25-26. Mr. Bafatis provided the Board with a letter of support from the Holly Neck Conservation Association. (Pet. Ex. 2A and 2B) As testified to by Mr. Bafatis, the Holly Neck Conservation Association "voted unanimously to accept whatever variances were needed to construct the pole, and the main reason was safety, safety reasons." *See*, T 1, pp. 28-29. He explained that several storms over the past years have "knocked out roads, communications, power", and that the Association "felt that it was imperative that we had another form of communication for that lower neck area, and this is the solution." *Id.* He testified that wireless telecommunication service in this area is "very, very sparse. We hardly get any." *Id.* at 29.

IV. The Federal Telecommunications Act of 1996

The Telecommunications Act preserves the authority of state and local governments to regulate the placement and construction of wireless telecommunications towers. Nevertheless, it limits the manner in which they may exercise that authority.

For example, any denial of an application to construct a tower must be in writing and must be supported by substantial evidence contained in the written record. See, 47 U.S.C. § 322(c)(7)(B)(iii).

Federal law mandates that local jurisdictions accommodate wireless telecommunications carriers' coverage needs as long as those carriers clearly demonstrate their need. See, 47 U.S.C. § 322(c)(7)(B)(i)(II). See e.g., 360 Degrees Communications Co. of Charlottesville v. The Board of Supervisors of Albemarle County, 211 F.3d 79 (4th Cir. 2000). In this instant matter, the TRC made an affirmative finding that Sprint demonstrated its need for coverage within the Search Ring. (Pet. Ex. 2 from the Zoning Commissioner's file.) The TRC's recommendation explained that Sprint "has provided ample documentation that the 115-foot monopole to be located at 810 Back River Neck Road is indeed required for the network." Id.

Furthermore, Mr. Hassan Khalil, who was accepted as an expert in Radio Frequency Engineering and who testified on behalf of Sprint, explained that based on the complaints Sprint had received and the studies they had performed, Sprint has been aware of its need for additional coverage in this area for over two and a half years. Using the coverage maps submitted as Petitioner's Exhibits 11A and 11B, Mr. Khalil explained the level of coverage in the area.

In addition, the Telecommunications Act restricts local jurisdictions from denying wireless telecommunications carrier's permit applications where the effect is a prohibition of the provision of personal wireless services. *47 U.S.C. § 332(c)(7)(B)(i)(II)* See e.g., 360 Degrees, 211 F.3d at 86. Therefore, where a carrier's needs can only be

provided from one site, a denial of an application for providing coverage from that site "could amount to a prohibition of wireless services, in violation of (B)(i)(II)." *Id.* at 86-87, *citing*, *Town of Amherst v. Omnipoint Communications Enterprises, Inc.*, 173 F.3d 9,14 (1st Cir. 1999).

V. The Variance Standard

A. The Variance Standard Pursuant To The BCZR

BCZR § 426 pertains to the regulations applicable to wireless telecommunications towers. While it provides for setback requirements, it also provides for the availability of variances from these setback requirements. Specifically, BCZR § 426.11 allows the Board of Appeals to grant variances to setback requirements for towers and equipment cabinets in accordance with BCZR § 307. BCZR § 307 sets forth a three prong standard under which both the Zoning Commissioner and Board of Appeals may grant variances from the BCZR's area regulations. In relevant part, § 307 provides that variances may be granted:

> only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship.
> ...
> Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said ... regulations, and only in a manner as to grant relief without injury to public health, safety and general welfare.

BCZR § 307.

B. *The Variance Standard As Explained By Maryland Case Law*

The Court of Appeals' decision in *Cromwell v. Ward*, 102 Md.App. 691, 651 A.2d 424 (1995) explains the appropriate analysis of the standard of review for variances. As to the first prong of the test, the *Cromwell* court explained:

> [T]he initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of *that* piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist.

Id. at 698-99.

Once the uniqueness prong is satisfied, the reviewer moves on to the second prong, "whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance caused by the property's uniqueness, exists." *Id.* at 695. *See also, Friends of the Ridge v. BG&E*, 120 Md.App. 444, 477, 707 A.2d 866 (1998) (holding that "[t]he second test under 307.1, assuming the first one has been met, is that strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship.").

Finally, the third prong of the variance standard set forth in BCZR § 307 demands the reviewer determine whether the grant of the variance will fall within the spirit and intent of the regulations, and whether the variance can be granted without injury to public health, safety and general welfare.

C. *The Relevant Neighborhood*

The *Cromwell v. Ward* case provides that when analyzing a property for uniqueness, the reviewer determines whether the "restriction's impact upon the subject

property would be different than the restriction's impact upon neighboring properties." 102 Md.App. at 726. At issue therefore, are the boundaries of the relevant "neighboring properties".

In variance cases involving wireless telecommunication towers, the Search Ring logically defines the relevant neighboring properties. This is so since the carrier's needs can only be met by locating antennas or a tower on the properties within that Search Ring. The Search Ring in this matter includes the properties located within the oval shaped area surrounding Back River Neck Road, bounded by Turkey Point Road to the north and Cherry Garden Road to the south. (Pet. Ex. 3.)

Protestant's expert in planning and zoning, Mr. Jack Dillon, provided a similar definition of the relevant neighborhood. He opined that the relevant neighborhood is bounded by the beginning of Back River Neck Road to the north and Holly Neck Road to the south. *See*, T 1, pp. 196-201.

VI. Sprint's Variance Requests Satisfy The Variance Standard And As A Result Must Be Granted.

There is clearly more than "a scintilla of evidence" in the record to support Sprint's requested variances. *See*, *Friends of the Ridge*, 120 Md.App. at 466. Therefore, the requested Variances should be granted.

A. The Property Satisfies The Uniqueness Criteria

As testified to by Ms. Kiernan, the Property is unique with regard to its configuration and setting. *See*, T 1, pp. 131-132. The Property is quite narrow, and its shape is

that of a long, rectangular parcel. It is approximately 850′ deep, yet is only 223′ wide. Its setting is unique in that it is bounded by woodland on three sides, and is simultaneously surrounded by residentially zoned property. *Id.* *See also*, Pet. Ex. 3.

The testimony of Mr. Jack Dillon, who testified as an expert in zoning and planning on behalf of People's Counsel, is consistent with that of Ms. Kiernan. With regard to medium and/or high-intensity zoned properties within the relevant neighborhood, Mr. Dillon testified that there are only two M.L. zoned properties and only two B.L. zoned properties. *See*, T 1, pp. 198-201.

Q: So of the sites permitted as a matter of right in the neighborhood, we have identified four?

A: Yes.

Id. at 200-201.

Out of those four properties, Mr. Dillon confirmed that none of those properties could accommodate a tower without needing setback variances.

Q: So in places where you could put it as a matter of right in the neighborhood, nothing would meet the 200 foot setback requirement in every direction?

A: That's correct.

See, T 1, p. 201.

Furthermore, Mr. Dillon's testimony supports the uniqueness of the Property.

Q: But those four sites are various shapes and configurations?

A: That's true.

Id.

In sum, the Property's uniqueness results from its size, shape, location and zoning. The fact that it is one of only four properties along a mile long stretch of a community's major road corridor on which a tower can be located as a matter of right is unique in and of itself. For example, a Search Ring that would surround a portion of York Road in Timonium would more than likely contain a multitude of qualifying properties.

Additionally, the most glaring indication of this Property's uniqueness is its long and narrow shape which results in the need for a setback variance no matter where on the Property a tower is located. The fact that it is one of only two M.L. zoned properties within the surrounding area is also unique. Rarely is an M.L. zoned property virtually surrounded by residentially zoned property, and even rarer is the existence of such large amounts of virtually undevelopable land surrounding a relatively small parcel of M.L. zoned property. Fortunately, the depth of the Property and its setting allow the tower to be shielded from the view of most of the properties and roadways in the area.

All of these unique facts make this Property extremely suitable for the siting of a wireless telecommunications tower.

In his January 4, 2002 Order in this case, the Zoning Commissioner found:

> [T]he subject site is a unique property. The uniqueness is driven by the narrowness of the lot. Although the property contains in excess of 4.0 acres in area, it is but 223 feet wide. Section 426.6 of the BCZR requires a 200-foot setback from the nearest property line to the tower. In view of the width of the property, this setback cannot be maintained. That is, any site must be a minimum of 400 feet in width to provide appropriate set-backs on all sides.
> .....

I am persuaded that this is an appropriate location for the tower, given the zoning of the site, the physical character of the area, and the land uses located nearby. Additionally, I concur with the decision to locate the tower in the rear of the property, further from Back River Neck Road. This will decrease the tower's visibility, given the woods located on the subject site and neighboring parcels. This factor further justifies the variance relief requested from the property line.

See, ZC Order, pp. 4-5.

B. Practical Difficulty Results From Strict Compliance With The Regulations

The practical difficulty that results from strict compliance with BCZR § 426.6 in this matter is the simple fact that there is no where on this Property on which a tower could be located without needing setback variances. The site is rectangular in shape and is only 223 feet wide. (Pet. Ex. 8A) The minimum applicable setback for a tower at this Property, pursuant to BCZR § 426.6, is 200 feet from all four of its sides since it is encompassed by residentially zoned land. Thus, it is simply impossible to locate a tower on this Property without setback variances.

Furthermore, the impact of strict compliance with the regulations is most severe on the subject Property because it is the most suitable site for a tower within the Search Ring. The record is clear that this Property is the most appropriate location for a tower in the area. The Office of Planning has set forth this opinion as well. (Pet. Ex. 14)

Additionally, constructing a tower at the subject Property in order to meet Sprint's coverage needs in this area simply makes the most sense. The record is clear that a tower at this location affords for the best mitigation of a tower's visual impact on

the community. None of the other three properties in the search ring that are medium or high-intensity zoned could better accommodate a tower.

Petitioner's Exhibit 3, which overlays the Search Ring onto the Baltimore County zoning map clearly demonstrates that the subject Property is the most appropriate location for the siting of a tower. The two properties that are zoned B.M. and B.L., respectively, are very small in size and are extremely shallow in shape. Therefore, an attempt to place a tower on these sites would not allow for a mitigation of the tower's visual impact at all. The other M.L. zoned property located further south on Back River Neck Road does not have a clear area that could accommodate a tower. The only portion of this property that is not improved provides access to a residentially zoned property to its east. (Pet. Ex. 3)

C. *Unreasonable Hardship Results From Strict Compliance With The Regulations*

The use at issue – the location of a wireless communications tower at the Property – is allowed as a matter of right. Nevertheless, a denial of these variances will burden the Property owner and Sprint with an unreasonable hardship. The result will be "unusual [unwarranted] hardship where the land cannot yield a reasonable return without [these] variances." *Friends of the Ridge*, *supra*, at Ftnt. 6.

BCZR § 426.5 provides that towers can be located on M.L. zoned property as a matter of right. BCZR § 426.11 allows for variances to the relevant setbacks. Where the variance standard has been satisfied, as it has in this matter, a denial of a reasonable use

to the owner exists. BCZR § 426.1 defines "owner" for the purposes of § 426 as including a lessee. Sprint is a lessee of this Property.

In sum, a strict application of the setback regulations to this Property with its unique features would create both a practical difficulty and an unreasonable hardship which would deprive Sprint a reasonable use of the Property. A denial of the variances will deny Sprint from utilizing a site which is the only location permitted by right and which will provide adequate screening to protect the community.

D. *The Variance Can Be Granted Within The Spirit And Intent Of The BCZR And Without Injury to Public Health, Safety, And General Welfare*

Ms. Kiernan testified that if granted, these requested variances will be consistent with the spirit and intent of the zoning regulations. In support of her opinion, she stressed three major points. First, that the tower is designed to accommodate a minimum of three carriers, second that the tower is located on a high-intensity zone as designed by BCZR § 426.5, and third that "the tower will not have an adverse impact to environmentally sensitive areas." *See*, T 1, p. 135.

Additionally, Ms. Kiernan testified that the variances can be granted without any adverse impact on the health, safety, or general welfare of the community because the tower will not result in increased traffic, has no adverse effect on light or air, water, sewer, or any other of the public utilities in the area. *Id.* at 136. She explained that the tower's visual impact is very limited due to its location on the Property.

> As you drive down Back River Neck Road, that northern tree canopy shields the tower itself to the north. It does the same to the south of the property. As you're driving north on Back River Neck Road, there is an

existing tree canopy there that shields the tower as well. If you were on the eastern side of Back River Neck Road across the street from the subject parcel, looking straight at the existing buildings on the parcel, you will see the top half of the structure.

Id.

The Memorandum from Karin Brown to Pat Keller provides further evidence on this issue. Mr. Brown opines that the subject site "would be an excellent location for a wireless communications tower. Existing tree growth would buffer much of the tower from the view of the residential dwellings." (Pet. Ex. 14.)

Mr. Leroy Sennett expressed a concern that the grant of these variances would set a precedent thereby making it easier for others to obtain variances. *See*, T 2, pp. 48-49. Any such concern is unfounded since each petition for variance case is reviewed on its own merits without any weight being given to previous variances granted in the area.

Importantly, the owners of the two adjacent residential dwellings are completely in support of the tower and the necessary variances. (Pet. Ex. 1A and 1B) The Holly Neck Conservation Association is also in support of both the tower and the necessary variances (Pet. Ex. 2A and 2B), and welcome the security of the wireless coverage the tower will afford. *See*, T 1, pp. 28-29.

During her cross examination of Ms. Kiernan, Ms. Demilio questioned whether Sprint could eliminate one of the requested setback variances by moving the tower's location closer to Back River Neck Road and away from the tree canopy that screens it. As explained by Ms. Kiernan, while it is possible to eliminate this one variance by so

moving the tower's location, the other variances for the tower would still remain. *See*, T 1, pp. 153-154. Additionally, as explained by Ms. Kiernan, moving the tower closer to the front of the Property along Back River Neck Road would in fact be detrimental to the area since it "would place the tower closer to the existing residences ..., place it closer to the road and, ... increase the visibility of the tower itself." *See* T 1, pp. 134-135.

It is important to note that granting a variance to best allow an area to accommodate development is not unprecedented. In *McLean v. Soley*, 270 Md. 208, 310 A.2d 783 (1973), the Court of Appeals affirmed the grant of a variance necessary to allow the applicant to preserve some existing vegetation on the site. Similarly, in this matter, the tower's location lessens its visual impact on the residences to the north. If forced to comply with the required setback from the western property line, the tower's visual impact on the community will be greater.

VII. The Tower Meets The Legislative Intent Of BCZR § 426

In deciding this case, the Board of Appeals is bound by the policies and standards provided in the BCZR. With regard to Wireless Telecommunication Towers, the Baltimore County Council has stated their intention regarding the siting of towers. BCZR § 426.2 specifically provides the criteria and circumstances under which the Council has deemed the construction of a new tower appropriate.

Preliminarily, these regulations provide that when feasible, a wireless telecommunications carrier's needs should be met by placing antennas on existing towers, buildings or other structures. *See*, BCZR § 426.2.A. In this instant matter, the

Search Ring contains no existing towers or other structures on which Sprint could locate antennas and meet its wireless network coverage needs. *See*, T 1, pp. 39-40.

Next, through the language in § 426.2.B.2, the regulations clearly state a preference for locating new towers in medium or high-intensity commercial zones. BCZR § 426.5 lists which zones qualify as medium and high-intensity commercial zones. The underlying zone of the Property, M.L., qualifies as a medium-intensity commercial zone, one of the best suited zones for such a use.

This legislative policy actually directs that when the construction of a new tower is necessary, it first be considered for location on a medium or high-intensity zoned property since it is on properties so zoned that towers are allowed as a matter of right. Although BCZR § 426.5 provides that towers are allowed in other zones via Special Exception, this legislative policy makes it clear that such locations are not preferred. The legislative policy further provides that towers should be located and designed to minimize visibility from residential and transitional zones. *See*, BCZR § 426.2.B.3.

Whether variances from the area and/or height regulations are necessary for a tower located in a medium or high-intensity zone is not a factor to be weighed, pursuant to the legislative policy, in supporting the tower's location in the medium or high-intensity commercial zone. The BCZR does not direct potential users away from the medium or high-intensity commercial zones into the residential areas merely because variances may be necessary. To the contrary, Special Exceptions are intended to be the last resort.

Analyzing whether Sprint's location of a tower at the Property meets the legislative policy of BCZR § 426 involves answering a series of questions. Can Sprint's need for coverage be satisfied by locating antennas on any existing towers? Can Sprint's need for coverage be satisfied by locating antennas on any existing buildings? The answer to both those questions is "No", as testified to by Mr. Fastnacht, who was accepted as an expert in wireless site acquisition. *See*, T 1, pp. 37, 39-40. The next question, pursuant to the legislative policy, is can Sprint's need for coverage be satisfied by locating a tower in a medium or high-intensity zone? The answer to this question is "Yes", as testified to by Mr. Khalil, who was accepted as an expert in the field of radio frequency engineering. *See*, T 1, pp. 72, 76-77.

A comparison of the subject Property with other sites within the Search Ring zoned so as to allow a tower as a matter or right further supports the decision to approve the variances. The testimony of both Mr. Khalil and Mr. Dillon clearly supports the fact that the subject Property is the most appropriate location for a tower within the Search Ring. Mr. Dillon testified that there are four properties on which a tower could be located as a matter of right within the Search Ring, but that none of those properties could accommodate a tower without setback variances. *See*, T 1, pp. 198-201. Nevertheless, the subject Property is the largest one at approximately 850 feet deep and 223 feet wide. *See*, T 1, p. 132. (Pet. Ex. 8A) Additionally, as supported by Ms. Brown's analysis, the subject Property offers a unique opportunity to screen the tower from view. (Pet. Ex. 14)

Therefore, the testimony in the record is clear that the tower at 810 Back River Neck Road is the most appropriate location. This site allows Sprint to meet its needs while best mitigating the impacts on the community. As it is the deepest site of all four properties which are zoned to allow a tower as a matter of right, the tower at this Property can be set back farther from the road than the other three alternatives. The existing tree canopy best screens the tower. It is the only site that has been identified by the Office of Planning as an appropriate tower location in the entire area. (Pet. Ex. 14)

Since the construction of a tower at the Property will satisfy Sprint's needs, a decision to disregard the Property and instead construct a tower on a residential or transitional zoned property would be inconsistent with the legislative policy of BCZR § 426. Special Exception approval is required for a tower on a residential or transitional zoned property. *See*, BCZR § 426.5. Therefore, if Sprint were to seek Special Exception approval for a tower in an effort to satisfy its need for coverage within this Search Ring, its Petition for Special Exception would necessarily be denied based on the fact that a tower can be constructed on the Property. As a result, whether Sprint's needs could be met by constructing a tower on a residential or transitional zoned property within the Search Ring, pursuant to a Special Exception, is irrelevant and need not be analyzed.

Similarly, whether Sprint's needs for coverage within this Search Ring could be met by constructing two shorter towers within the search ring instead of the one 115-feet tower is also irrelevant since it is clearly in opposition to the Council's intentions for the siting of towers. The purpose of the tower regulations is to minimize the proliferation of towers. In any event, the only Radio Frequency Expert who testified in this

matter, Mr. Khalil, explained that siting two shorter towers within the area covered by this Search Ring would not meet Sprint's coverage needs. "[I]n this area, due to the trees and the high density of the trees, we have to clear the treeline." *See*, T 1, p. 87.

The legislative policy, which expresses the Council's intent, serves the goal of limiting the number of towers in Baltimore County. Nowhere within the legislative policy is there a provision demonstrating a preference for meeting a carrier's need by constructing multiple, shorter towers. In fact, the construction of multiple, shorter towers that could not each accommodate at least three carriers would be in direct violation of this legislative policy.

Similarly, a proposal involving the camouflaging of a tower in such a manner as to restrict the number of carriers the tower could accommodate to less than three would also be in direct violation of the legislative policy which intends for co-location by carriers where possible. BCZR § 426.2.B.1 mandates that new towers "accommodate at least three providers." Mr. Khalil testified that towers camouflaged as flagpoles may not provide the needed flexibility to accommodate multiple carriers. *See*, T 1, p. 93.

Additionally, as Ms. Kiernan testified, a camouflaged tower would impose a greater visual impact on the surrounding area. *See*, T 1, p. 141. Specifically, Ms. Kiernan explained that she has designed several towers utilizing the camouflaging technique where attempts are made to disguise towers as trees. She opined that a "tree pole" tower at this Property would "be more obtrusive than a streamline set of antennas." *Id.*

When one reviews possible locations within the Search Ring, the inescapable conclusion is that the subject Property is the best location for a tower. Although being the best site is not the test, it is a happy coincidence of circumstances that the policy of the BCZR and the intention of the County Council can be fulfilled at the very best location in the area.

VIII. Conclusion

For the reasons outlined above, Petitioner respectfully requests that the Board approve its requested Petition for Variance.

G. Scott Barhight, Esq.
Jennifer R. Busse, Esq.
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Suite 400
Towson, Maryland 21204
410-832-2000

Attorneys for Petitioner and
Contract Purchaser, Sprint PCS

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Green Party calls for a major jurisprudential leap—a leap having major implications not only for Maine but for many other states. In such circumstances, I think that courts of appeals should indulge the presumption of constitutionality to which state statutes and constitutional provisions are entitled, leaving to the Supreme Court, should it so desire, the creation of the innovative constitutional jurisprudence needed to warrant such a radical initiative. I accordingly concur in affirming the judgment of the district court, but on the merits rather than on the waiver ground put forward by my colleagues.

TOWN OF AMHERST, NEW HAMPSHIRE, Defendant, Appellant,

v.

OMNIPOINT COMMUNICATIONS ENTERPRISES, INC., Plaintiff, Appellee.

No. 98–2061.

United States Court of Appeals, First Circuit.

Heard March 1, 1999.

Decided March 30, 1999.

Provider of wireless telephone service brought action against town, alleging that town's delay in acting on provider's request for special exceptions and variances required to build antenna towers, and its ultimate denial of permits, violated the Telecommunications Act. The United States District Court for the District of New Hampshire, Joseph A. DiClerico, Jr., J., granted injunction directing town to grant permits to provider, and town appealed. The Court of Appeals, Boudin, Circuit Judge, held that town's denial of requested permits for building of wireless communications facilities did not amount to effective ban on provision of personal wireless services.

Vacated and remanded.

1. Zoning and Planning ⇐461

Town's denial of permits required for building of wireless communications facilities did not amount to effective ban on provision of personal wireless services, in violation of Telecommunications Act, absent showing of such fixed hostility by town zoning board as to indicate that further applications would be useless, or presentation of alternatives by applicant. Communications Act of 1934, § 332(c)(7)(B)(i)(II), 47 U.S.C.A. § 332(c)(7)(B)(i)(II).

2. Zoning and Planning ⇐461

Town's individual decision on wireless telephone service provider's request for permits to build wireless service towers may have "effect of prohibiting" provision of wireless services, in violation of Telecommunications Act. Communications Act of 1934, § 332(c)(7)(B)(i)(II), 47 U.S.C.A. § 332(c)(7)(B)(i)(II).

3. Zoning and Planning ⇐384.1

If town's criteria for granting permit to build wireless telephone service facilities or administration of those criteria effectively preclude towers no matter what the carrier does, they may amount to an effective ban on provision of personal wireless services, in violation of Telecommunications Act, even though substantial evidence will almost certainly exist for the denial, but carrier has heavy burden for establishing effective ban and must show from language or circumstances not just that particular application at issue has been rejected but that further reasonable efforts are so likely to be fruitless that it is a waste of time even to try. Communications Act of 1934, § 332(c)(7)(B)(i)(II), 47 U.S.C.A. § 332(c)(7)(B)(i)(II)

4. Zoning and Planning ⇐489

Under New Hampshire law, a variance may be denied absent a showing of unnecessary hardship, and hardship is sometimes equated with a showing that applying the zoning ordinance would prevent the applicant from making any reasonable use of the property as zoned. N.H.RSA 674:33.

5. States ⇐18.81

Zoning and Planning ⇐61

Strictures of state and local law on placement of wireless telephone service facilities are preempted, under the Supremacy Clause, if they are read and applied so as effectively to preclude personal wireless service. U.S.C.A. Const. Art. 6, cl. 2; Communications Act of 1934, § 332(c)(7)(B)(i)(II), 47 U.S.C.A. § 332(c)(7)(B)(i)(II).

6. Zoning and Planning ⇐563.1

In considering whether substantial evidence supports agency's decision to deny wireless telephone service provider's request to build facilities, district court is acting primarily in a familiar review capacity ordinarily based on the existing record, but question of whether the town has discriminated among carriers or created a general ban on such service involves federal limitations on state authority, presenting issues that the district court would resolve de novo and for which outside evidence may be essential. Communications Act of 1934, § 1 et seq., 47 U.S.C.A. § 151 et seq.

Robert D. Ciandella with whom Philip L. Pettis and Donahue, Tucker & Ciandella were on brief for appellant.

Steven E. Grill with whom Daniel E. Will and Devine, Millimet & Branch, P.C. were on brief for appellee.

Before BOUDIN, Circuit Judge, BOWNES, Senior Circuit Judge, and LYNCH, Circuit Judge.

BOUDIN, Circuit Judge.

This is an appeal by the Town of Amherst, New Hampshire, from an injunction granted by the district court. The injunction, granted on cross-motions for summary judgment, directed the town to grant permits to Omnipoint Communications Enterprises, Inc. ("Omnipoint"), to build facilities to provide wireless telephone services. The case presents difficult issues under the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.* The background events are generally undisputed.

Omnipoint is a major provider of wireless telephone service to the public. In March 1997 or thereabouts, Omnipoint began designing a wireless digital system for southern New Hampshire.[1] In that same month, the Town of Amherst adopted at the town meeting an ordinance governing the placement of wireless communications facilities in the town. *See* Amherst, N.H., Ordinance (Mar. 11, 1997) ("the March 1997 ordinance"). The town meeting also authorized the town Board of Selectmen ("the Selectmen") to make agreements with carriers to site towers on town properties. Under New Hampshire law, the town meeting legislates for the town and the Selectmen are the principal executive body. *See* N.H.Rev.Stat. Ann. § 672 *et seq.*

For zoning purposes, Amherst is divided into 13 districts. The March 1997 ordinance prohibits siting of the towers in four of the districts, although those prohibitions may be overcome if a variance is obtained. In four other districts, towers are allowed only through the grant of a "special exception"; the conditions for such a special

1. Although often called "cellular" telephone service, several different technologies compete. Omnipoint uses a high frequency, digital system called personal communication service, or "PCS." Almost all systems employ hand-held telephone sets communicating by radio with antennas strategically located on towers or buildings; each antenna is connected eventually to the land-line telephone network.

exception are set out in the ordinance.[2] The ordinance also imposes setback requirements for towers in the "allowed" districts, requiring towers to be set back at least 500 feet from Route 101, set back twice the tower height from residential property lines, and set back a distance equivalent to the tower height from all other roads and certain other prescribed areas. *See* March 1997 ordinance.

In April 1997, the Amherst Selectmen began negotiating with Omnipoint and also advertised to solicit interest from other carriers who might wish to locate a system in Amherst. Omnipoint then designed a system comprising four 190–foot towers—tall enough to allow co-location of antennas by up to four other providers who might compete with Omnipoint. Towers are very expensive, often costing $500,000 or so each; co-location increases tower height but reduces the number of towers and greatly reduces overall costs because fewer towers are needed and because a tower's cost does not increase proportionately with height.

In late April 1997, the Federal Communications Commission granted Omnipoint a non-exclusive license to provide wireless digital telephone service in New England, including southern New Hampshire. Under the license, Omnipoint must make service available to 25 percent of the population in the region within five years and 50 percent within ten years. Omnipoint wants to provide service not only within the town of Amherst but also for transients who are using Route 101, an important travel route in southern New Hampshire that traverses Amherst, running roughly from northeast to southwest.

Omnipoint and the Selectmen reached agreement in August 1997 and signed leases for three town-owned sites along Route 101; on each, Omnipoint proposed to construct a 190–foot tower. It was also agreed that the town would receive a portion of revenue from Omnipoint and any other providers co-locating on the towers constructed on town-owned land. The Selectmen wrote a letter endorsing the proposed towers to the Amherst Zoning Board of Adjustment ("the Board"), a separate local body that regulates zoning matters. *See* N.H.Rev.Stat. Ann. § 674:33. The leases made clear that the responsibility to procure Board approval rested on Omnipoint's shoulders.

Starting in the northeast, the first tower was to be sited near the northern entrance to the town on the so-called Bragdon Farm site owned by the town. Construction of this tower required a special exception under the Amherst ordinance and two variances from the setback restrictions from the Board; no use variance was required. This was also true of the second site on which a town-owned recycling center was located. Under state law, variances require a showing of hardship. *See* note 6, below.

The third tower site agreed to by the Selectmen—clearly the most controversial—was a town-owned "public safety" complex where a somewhat shorter tower already exists for wireless communication by the police and fire department. Omnipoint proposed to construct a 190–foot tower that could also be used by the police and fire department. However, this area is denominated a historic district and siting towers in such a district is prohibited under the town's March 1997 zoning ordinance absent a use variance. Thus, Omnipoint required a use variance, a setback variance, and a separate permit from the Historic District Commission, another local body.

Omnipoint also reached agreement with a church to locate a fourth tower on church

2. Under state law, the terms of the ordinance and its self-described purposes establish the test for special exceptions. *See* N.H.Rev.Stat. Ann. § 674:33. The specific purpose of the Amherst ordinance is "[t]o prevent the development of a proposed facility in areas that are unsatisfactory and will interfere with the view from any public land, natural scenic vista, historic building or district or major view corridor." March 1997 ordinance.

land near Route 101. The fourth site was in a district where a tower could be constructed with a special exception and, in this case, with one setback variance. This area, located to the south of the other proposed sites, lay just north of the main population center in Amherst. Omnipoint also applied for and secured a single site in the southern area of the town—where neither special exception nor variance was required and neither, therefore, was Board approval. There is no indication that service for Amherst can be provided using this single tower.

In early September 1997, Omnipoint applied to the Board for the required special exceptions and variances on all four sites. It also applied to the Historic District Commission for approval to construct on the site located at the safety complex. On September 16, 1997, Omnipoint made a presentation before the Board, which received public comment and then deferred matters until October. The Board's minutes summarize such oral presentations but no transcript exists. Two days later, the Historic District Commission met in public session and denied Omnipoint's application, apparently in Omnipoint's absence.

Omnipoint immediately appealed the Commission's decision to the Zoning Board of Adjustment, which can override the Historic District Commission. On October 21, 1997, the Zoning Board met again. Omnipoint provided additional information and answered more questions from the Board, and public comments were again taken. The hearing was continued until November 1997, when the same process was repeated. The Board then deferred decision until December 1997, saying that there would be no more presentations or public testimony. At all of these meetings, a number of residents questioned or opposed the project, citing primarily concerns about visual blight and impairment of property values.

On December 8, 1997, Omnipoint filed the present lawsuit against the town asserting that Amherst's delay violated the Telecommunications Act of 1996. Under this statute, the FCC licenses carriers to provide wireless telephone service on a competitive basis. 47 U.S.C. § 332(c). Rate regulation by states is precluded, unless special circumstances are shown. *See id.* § 332(c)(3). However, the statute preserves state and local authority over the placement and construction of facilities, *id.* § 332(c)(7)(A), subject to five limitations, *id.* § 332(c)(7)(B).

The first limitation, contained in subsection (i) and central to this case, includes two substantive constraints:

> (i) the regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—
>
> (I) shall not unreasonably discriminate among providers of functionally equivalent services; and
>
> (II) shall not prohibit *or have the effect of prohibiting* the provision of personal wireless services.

47 U.S.C. § 332(c)(7)(B)(i) (emphasis added). Amherst does not dispute that Omnipoint's service is a "personal wireless service." *Id.* § 332(7)(c).

Three of the four remaining limitations are pertinent here: the local government must act on placement or construction applications "within a reasonable period of time"; the denial of a request "shall be in writing and supported by substantial evidence contained in a written record"; and anyone adversely affected by any final action "or failure to act" by local government that is inconsistent with the limitations may seek review in "any court of competent jurisdiction" and "[t]he court shall hear and decide such action on an expedited basis." 47 U.S.C. §§ 332(c)(7)(B)(ii), (iii), (v).

On December 16, 1997, eight days after the lawsuit was filed, the Zoning Board of Adjustment met and unanimously denied all of Omnipoint's applications for special

exceptions and variances and also denied its appeal from the decision of Historic District Commission. In early January 1998, Omnipoint amended its district court complaint to challenge the denials and also requested the Board to reconsider its decisions. Shortly thereafter, Omnipoint moved for summary judgment in the district court.

In response to Omnipoint's request for reconsideration, the Board held a new hearing in February 1998. Omnipoint offered no new evidence, but the Board heard additional public comment. On March 16, 1998, the Board issued a further decision, denying Omnipoint's request for reconsideration and issuing a more extensive decision. The Board expressed general concerns about tower height and the impact on town character and property values, and then explained one by one—albeit in boilerplate language—why the individual variances or special exceptions sought did not meet specific requirements of state law or the March 1997 ordinance. For example, in rejecting Omnipoint's request for a setback variance at the Bragdon Farm site, the Board stated in its "findings of fact" simply that "[t]he proposed tower does not meet the spirit and intent of the Amherst Master Plan to maintain the rural character of the northern entrance to the Town."

Later, after Omnipoint further amended its complaint, Amherst cross-moved for summary judgment. In July 1998, a hearing was held in the district court on the cross-motions. Within six weeks, the district court issued a 47–page memorandum opinion analyzing the issues in detail and concluding that the town had violated the requirement that the local regulation "shall not prohibit or have the effect of prohibiting the provision of personal wireless services." 47 U.S.C. § 332(7)(B)(i)(II); *see Omnipoint Communications Enters., Inc. v. Town of Amherst*, No. 97–614–JD (D.N.H. filed Aug. 21, 1998). The district court rejected Omnipoint's claim that the Board had unreasonably delayed decision, and it did not resolve the question of whether the denial was based on substantial evidence. *Id.*

In finding an effective prohibition, the district court stressed that the Board's denial rested on very general standards and did not give any indication as to how the plaintiffs could overcome the "amorphous concerns" expressed or offer any guidance as to where towers could be located to construct a functioning system. The court concluded that a mandatory injunction would issue directing the town to issue the necessary permits within 45 days. We stayed the district court's injunction pending an expedited appeal. On this appeal, we review the grant of summary judgment in favor of Omnipoint *de novo*, drawing inferences in favor of the town. *See Woods v. Friction Materials, Inc.*, 30 F.3d 255, 259 (1st Cir.1994).

[1] The statutory provision before us, 47 U.S.C. § 332(c)(7), is a deliberate compromise between two competing aims—to facilitate nationally the growth of wireless telephone service and to maintain substantial local control over siting of towers.[3] There are already two circuit decisions and several dozen district court decisions addressed to one or more of the half-dozen recurring issues under the statute. One of those issues, and the ground for the district court's injunction in this case, is Congress' mandate that no "regulation" of siting is permitted that has "the effect of prohibiting" service. 47 U.S.C. § 332(c)(7)(B)(i)(II).

3. An initial House version of this provision required the formation of an FCC rulemaking committee charged with developing a uniform national policy for the deployment of wireless communication towers. The bill as it emerged from conference committee rejected such a blanket preemption of local land use authority, but retained specific limitations on local authority now reflected in the statute itself. *See* H.R. Conf. Rep. No. 104–458, at 207–09 (1996).

[2] On appeal, the town argues that this "effect" provision was never intended to constrain individual town-permitting decisions but was directed only against "general" bans, whether explicit or implicit. There is some nominal conflict in the case law on this point,[4] but the quarrel is more one of language than substance. Obviously, an individual denial is not automatically a forbidden prohibition violating the "effects" provision. But neither can we rule out the possibility that—based on language or circumstances—some individual decisions could be shown to reflect, or represent, an effective prohibition on personal wireless service.

Suppose, for example, that in denying an individual permit, the town zoning authority announces that no towers will ever be allowed or sets out criteria that no one could meet. The fact that the ban is embodied in an individual decision does not immunize it. It is no answer to point to the requirement that individual decisions be based on "substantial evidence," for this surely refers to the need for substantial evidence *under the criteria laid down by the zoning law itself* (*e.g.*, for setbacks, conditions for variances, special exception requirements). *See, e.g., Cellular Tel. Co. v. Town of Oyster Bay*, 166 F.3d 490, 494–97 (2d Cir.1999).

[3] If the criteria or their administration effectively preclude towers no matter what the carrier does, they may amount to a ban "in effect" even though substantial evidence will almost certainly exist for the denial. *See Virginia Metronet, Inc. v. Board of Supervisors*, 984 F.Supp. 966, 970 (E.D.Va.1998). In that event, the regulation is unlawful under the statute's "effect" provision. But the burden for the carrier invoking this provision is a heavy one: to show from language or circumstances not just that *this* application has been rejected but that further reasonable efforts are so likely to be fruitless that it is a waste of time even to try.

In this case, Amherst has not formally banned towers, *compare Sprint Spectrum, L.P. v. City of Medina*, 924 F.Supp. 1036, 1038–39 (W.D.Wash.1996), but rather required prior permission case by case. And on this record, there is no showing of such fixed hostility by the Board that one can conclude that further applications would be useless. While some of the Amherst citizens who testified evidently oppose any system in the town, several board members stressed that their concern was primarily with the 190–foot size and that negotiations with Omnipoint would be welcome. If these statements were mere camouflage, this has yet to be shown.

Were Omnipoint's existing proposal the only feasible plan, then prohibiting its plan might amount to prohibiting personal wireless service. However, what the record shows on this point, and we have read it end to end, can be summarized as follows. It appears that Omnipoint has proposed a traditional efficient system that uses standard height towers at optimal locations, minimizing both the total number of towers needed for service and the overall cost for itself and for other carriers that may wish to co-locate. Three of the sites have the added advantage of generating revenue for the town and upgrading fire and police communications.

But it also appears that lower towers could be used (and possibly resited) if co-location were sacrificed and more (perhaps many more) towers were added.[5] At this

4. *Compare AT & T Wireless PCS, Inc. v. City Council of Virginia Beach*, 155 F.3d 423, 428–29 (4th Cir.1998), *and National Telecomm. Advisors, LLC v. Board of Selectmen of West Stockbridge*, 27 F.Supp.2d 284, 287–88 (D.Mass.1998), *with PrimeCo Personal Communications, L.P. v. Village of Fox Lake*, 26 F.Supp.2d 1052, 1062–66 (N.D.Ill.1998), *and OPM–USA–Inc. v. Board of County Comm'rs*, 7 F.Supp.2d 1316, 1327 (M.D. Fla.1997).

5. If lower towers were used, quite possibly more towers could be needed for Omnipoint alone but unquestionably shorter towers would lessen or eliminate the possibility of co-location for other carriers who, absent co-

point, certainty dissolves. At the town meeting, opponents offered some "evidence" that a feasible system could be constructed of very short towers, possibly disguised as trees. Omnipoint strongly disputed such claims—which may well be fantasy—but it practically admitted that *somewhat* lower towers were technically feasible. Nor is it clear that locating a tower within the historic district is technically essential.

Ultimately, we are in the realm of trade-offs: on one side are the opportunity for the carrier to save costs, pay more to the town, and reduce the number of towers; on the other are more costs, more towers, but possibly less offensive sites and somewhat shorter towers. Omnipoint may think that even from an aesthetic standpoint, its solution is best. But subject to an outer limit, such choices are just what Congress has reserved to the town. *See AT & T Wireless PCS, Inc.*, 155 F.3d at 428–29. We need not decide now whether and to what extent legitimate zoning requirements could require a carrier to accept a wireless system that is functional but offers less than perfect performance.

Omnipoint did not present serious alternatives to the town. As it explained to the Board, it bowed to the Selectmen's wishes to use town sites and to maximize the opportunities for co-location. Further, detailed site planning is quite expensive, leases or options take time to procure, and even one set of variance and special exception requests is costly and time consuming. This one-proposal strategy may have been a sound business gamble, but it does not prove that the town has in effect banned personal wireless communication.

[4] Omnipoint's stronger claim under the "effect" provision is that even if it might propose other solutions, none has any real prospect of success before the Board because no applicant can satisfy local requirements. In a nutshell, the Amherst ordinance seemingly requires some form of permission (special exception, variance or otherwise) for any system; the requirements for a variance under state law can be made very severe by insisting that no alternative reasonable use for the land exist;[6] and special exceptions under the Amherst ordinance have conditions so broad and general that a hostile Board might be able to find substantial evidence for every negative ruling. *See* note 2, above.

The concern should not be overstated, since special exceptions are a matter of right where the conditions are met, and the state courts are available to review the denial of any special exception or variance. Still, Omnipoint's claim is not frivolous. Possibly it would have a difficult time showing conclusively that there is no other use for the sites (allegedly the requirement for a use variance) or that the towers are completely compatible with the rural image that the town seeks to foster (allegedly an element in the special exception regime). The rather mechanical application of these concepts by the Board in its March 1998 decision lends support to this concern, and the district court's own decision rested largely on the view that the Board could and likely would reject alternative proposals.

[5] Our own appraisal, which is *de novo* on summary judgment, is more ag-

location, might all need to build their own towers. According to Omnipoint, about 80 feet of the 190 feet represent height added to co-locate up to four more carriers.

6. Under New Hampshire law, a variance may be denied absent a showing of "unnecessary hardship," N.H.Rev.Stat. Ann. § 674:33, and hardship is sometimes equated with a showing that applying the zoning ordinance would prevent the applicant from making "any reasonable use" of the property as zoned. *Olszak v. Town of New Hampton*, 139 N.H. 723, 661 A.2d 768, 771 (1995). Yet, the "reasonable use" is itself a matter of degree, and New Hampshire case law suggests that the determination depends heavily on the particular facts. *See* P. Loughlin, 15 New Hampshire Practice: Land Use Planning and Zoning §§ 24.13–24.16, at 275–88 (2d ed.1993) (summarizing cases).

nostic. The very breadth and vagueness of the criteria that permit the Board to deny requests also give the Board some flexibility in deciding whether to grant them. Equally important, the strictures of New Hampshire and Amherst law are preempted, under the Supremacy Clause of the Constitution, if they are read and applied so as effectively to preclude personal wireless service. *See* H.R. Conf. Rep. No. 104–458, *supra*, at 207–08 (affirming "preemption" in the "limited circumstances" described in the provision). The minutes reflect that the Board more or less understands this, and so would the New Hampshire state courts. *Wenners v. Great State Beverages, Inc.*, 140 N.H. 100, 663 A.2d 623, 625–26 (1995), *cert. denied*, 516 U.S. 1119, 116 S.Ct. 926, 133 L.Ed.2d 854 (1996).

In all events, at least on the summary judgment record, it has not been shown that the Board will inevitably reject an alternative Omnipoint proposal with lower towers. Indeed, conceivably Omnipoint could offer such an alternative with lower towers and yet persuade the Board that, given the consequences (more towers) and perhaps modest height reduction, the Board is best off approving Omnipoint's original proposal or some close variant (*e.g.*, shifting one tower outside the historic district). It is too early to give up on the Board.

[6] Below, Omnipoint pressed an alternative ground that the district court did not reach, namely, a claim that the Board's actions were unsupported by substantial evidence. 47 U.S.C. § 332(c)(7)(B)(iii). Something should be said about this claim in the interests of expedition since Omnipoint remains free on remand to renew its request for summary judgment on this issue. The substantial evidence question would ordinarily be resolved (one way or the other) on the record before the district court and require no trial.[7]

As already noted, the substantial evidence requirement is centrally directed to those rulings that the Board is expected to make under state law and local ordinance in deciding on variances, special exceptions and the like. In a number of cases, courts have overturned denials of permits, finding (for example) that safety concerns and aesthetic objections rested upon hollow generalities and empty records. *See, e.g., Iowa Wireless Servs., L.P. v. City of Moline*, 29 F.Supp.2d 915, 921–23 (C.D.Ill. 1998); *AT&T Wireless PCS, Inc. v. City of Chamblee*, 10 F.Supp.2d 1326, 1331–33 (N.D.Ga.1997). The substantial evidence test, which we have recently described in some detail, involves some deference but also has some bite. *See Penobscot Air Servs., Ltd. v. FAA*, 164 F.3d 713, 718 (1st Cir.1999).

Still, in *this* case Omnipoint's prospects of success on this ground may be limited. The substantial evidence test applies to the locality's own zoning requirements, and Amherst has framed those requirements so they may be hard to fulfill unless the Board exercises its judgment favorably to the applicant. But this in turn makes Amherst more vulnerable to a claim, based on experience, that its regime is an effective ban. Thus, the two federal limitations—one dealing with bans and the other with substantial evidence—complement one another by ensuring that local law is both fair and is fairly administered.

Before any further litigation, Omnipoint might find it prudent to discuss with the Board an amicable resolution or an agreed upon procedure to achieve one. The Board must also face reality. If the Board's position is that it can just sit back and deny all applications, that position in

7. In considering whether substantial evidence supports the agency decision, the court is acting primarily in a familiar "review" capacity ordinarily based on the existing record. *See* H.R. Conf. Rep. No. 104–458, *supra*, at 208. By contrast, whether the town has discriminated among carriers or created a general ban involves federal limitations on state authority, presenting issues that the district court would resolve *de novo* and for which outside evidence may be essential. *See AT & T Wireless PCS*, 155 F.3d at 426–28.

the end could, if maintained, prove fatal to the Board rather than Omnipoint. Under federal law, the town can control the siting of facilities but—as several Board members admitted—it cannot preclude wireless service altogether. Nor, in the face of a vigilant district court, can the town exhaust applicants by requiring successive applications without giving any clue of what will do the trick.[8] Thus, it is in the common interest of the Board and Omnipoint to find ways to permit the siting of towers in a way most congenial to local zoning.

The statute's balance of local autonomy subject to federal limitations does not offer a single "cookie cutter" solution for diverse local situations, and it imposes an unusual burden on the courts. But Congress conceived that this course would produce (albeit at some cost and delay for the carriers) individual solutions best adapted to the needs and desires of particular communities. If this refreshing experiment in federalism does not work, Congress can always alter the law.

The district court's judgment is *vacated* and the matter *remanded* for further proceedings consistent with this opinion. Each side shall bear its own costs on this appeal.

It is so ordered.

Arnold H. LICHTENSTEIN,
Plaintiff, Appellant,

v.

CONSOLIDATED SERVICES GROUP, INC. et al., **Defendants, Appellees.**

Nos. 98–1994, 98–2086.

United States Court of Appeals,
First Circuit.

Heard March 3, 1999.

Decided April 1, 1999.

Former employee, who was also minority shareholder, brought individual and shareholder derivative actions against purported corporate employer, employer's president and majority shareholder, and attorney who drafted incorporation documents and served as voting trustee, asserting claims for, inter alia, breach of contract, breach of fiduciary duty, and dissolution of corporation. Defendants moved for summary judgment, and attorney sought Rule 11 sanctions. After consolidating actions, the United States District Court for the District of Maine, Gene Carter, J., granted motion as to all claims against attorney and certain other claims, resolved remaining claims following trial, 978 F.Supp. 1, and denied sanctions motion. Former employee and attorney cross-appealed. The Court of Appeals, Bownes, Senior Circuit Judge, held that: (1) attorney could not be treated as "controlling shareholder" with broad fiduciary duties to company and minority shareholders under Maine law; (2) presumptive validity of voting trust under Maine law was established by voting trust agreement; (3) district court properly waited until conclusion of bench trial to rule on motion for sanctions; (4) claims against attorney were not so patently frivolous as to mandate imposi-



8. While prepared to tolerate some delay, Congress made clear in two different provisions that it expected expeditious resolution both by the local authorities and by courts called upon to enforce the federal limitations. *See* 47 U.S.C. §§ 332(c)(7)(B)(ii), 332(c)(7)(B)(V); *see also* H.R. Conf. Rep. No. 104–458, *supra*, at 209.

IN RE: PETITION FOR VARIANCE
SW/S Back River Neck Road,
330' SE of c/l Pottery Farm Road
(810 Back River Neck Road)
15th Election District
5th Council District

Back River LLC
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 02-159-A
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Back River LLC, by Buck Jones, President, and the Contract Lessee, Sprint PCS, by Howard Leger, through their attorney, Jennifer R. Busse, Esquire. A series of variances are requested to accommodate the construction of a 115-foot tall wireless telecommunications tower. Specifically, the Petitioners seek relief from Section 426.6.A.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit setbacks of 75 feet each from the south and west property lines, and 148 feet from the north property line in lieu of the required 200 feet each for the proposed tower. In addition, the Petitioners seek relief from Section 426.6.A.4 to permit setbacks of 40 feet each to the south and west property lines, in lieu of the required 125 feet each, for proposed equipment cabinets to support the proposed tower. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 14.

Appearing at the requisite public hearing on behalf of the Petition were Buck Jones, President of Back River LLC, property owners; and, Peter Fastnacht, President of Integrated Wireless Analysis, and Hassan Khalil, a Radio Frequency Design Engineer, consultants hired by the Petitioners. Also appearing in support of the requests were Richard L. Smith and Marianne Kiernan, engineers from KCI Technologies, Inc., the consultants who prepared the site plan for this property; and Jennifer R. Busse, Esquire and G. Scott Barhight, Esquire, attorneys for the

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Date 1/4/02
By

Petitioners. Appearing as a Protestant in the matter, individually and on behalf of the Back River Neck Peninsula Community Association, was Leroy Sennett, a nearby resident of the area.

In support of the Petition, testimony was received from Marianne Kiernan, an associate with KCI Technologies, Inc. Ms. Kiernan is a civil engineer and was accepted as an expert witness in that field. Her resume (Petitioner's Exhibit 10) discloses significant experience in site development, including a number of projects proposing the construction of a wireless telecommunications tower. The property under consideration is shown on the site plan as roughly rectangular in shape with frontage on Back River Neck Road, not far from Pottery Farm Road in eastern Baltimore County. The property contains approximately 4.31 acres in area, zoned M.L. and is improved with a one-story commercial building, which houses a number of commercial/ retail business tenants, and a macadam parking area towards the front of the site. To the rear of that building is a second, one-story masonry structure used for storage. Additionally, a large part of the site has crusher run surface and is used for the storage of construction vehicles, boats, etc. A series of photographs which depict the site and the surrounding locale were submitted into evidence as Petitioner's Exhibits 7A through 7I and 8A through 8D, and are a part of the record of the case.

As noted above, the subject property is zoned M.L.; however, there are diverse zoning classifications in the area, including B.L., D.R.3.5, and R.C.20. In fact, the property is located opposite the former Back River Elementary School site, and there are two residential structures immediately north of the property. Obviously, these homes would be the most impacted by the construction of the tower. Letters in support of the proposal from both of those residents, Willis and Ellen Gibson, and Elsie Luciano, were received as Petitioners' Exhibits 12 and 13, respectively. In addition to these residences, and the commercial uses on the site, there are a variety of other uses in the area, including the Back River Community Center across the street, and a series of commercial uses along Back River Neck Road.

Also testifying and accepted as an expert witness was Hassan Khalil, an R.F. Engineer. Mr. Khalil's qualifications are contained on his resume, which was accepted into evidence as Petitioner's Exhibit 3. Mr. Khalil testified extensively about efforts to locate an acceptable site for

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Date 12/12/12
By

the construction of a wireless telecommunications tower in this vicinity to eliminate a hole in Sprint's communications system in this area of Baltimore County. He noted that Sprint is licensed by the Federal Communications Commission (FCC). Under the terms of that license, the FCC requires that Sprint provide adequate coverage and service within its licensed area. In this regard, a colorized map showing existing coverage and the location of that "hole" was submitted into evidence as Petitioner's Exhibit 6A. Mr. Khalil indicated that generally a user of Sprint's system would lose a call and would be unable to place calls within this hole. In order to cure this deficiency, Mr. Khalil was retained by Sprint to determine the appropriate location for a new tower. In accordance with his study, a ring area was developed in which a tower could be located. That is, placement of a tower within the designated ring area would insure adequate telecommunications coverage in this area of the County.

Also testifying in this regard was Peter Fastnacht, President of Integrated Wireless Analysis, Inc. Mr. Fastnacht was retained by Sprint to find acceptable locations within the ring area which had been defined by Mr. Khalil. Mr. Fastnacht testified that he has approximately 26 years of experience in this field. He further indicated that he generally looks for existing towers, or tall buildings which could accommodate Sprint's antenna. In this regard, he indicated that there are no existing towers or buildings of sufficient height in this area to accommodate Sprint's need. After a thorough search, the subject property was identified as a suitable site and he believes it is an appropriate location for the proposed tower. His conclusions in this regard are based on the fact that the property is wooded, of sufficient size, and is the appropriate zoning (M.L.). In this regard, it is to be noted that the zoning regulations permit wireless communication towers by right in the M.L. zone. Thus, special exception relief is not necessary in order to accommodate the tower – it is a permitted use at this location. Only the grant of the requested variances is necessary in order for a construction permit to be issued.

It is also to be noted that there was a balloon test conducted to determine the visibility of the tower from surrounding properties. That test is described more fully in Petitioners' Exhibits

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Date 1/11/12
By

11A, 11B and 11C, which show that the existing vegetation in the area will largely screen the tower from a number of adjacent and nearby properties.

Appearing as the sole Protestant in this matter was Leroy Sennett, individually and on behalf of the Back River Peninsula Community Association. Mr. Sennett raised a number of objections to the proposed tower construction, chief of which was the tower itself, in that he believes that same is inconsistent with the character of the area. Although appreciative of his concerns, it bears emphasis that the zoning of the subject site permits the proposed use as a matter of right. As noted above, this is not a special exception case.

In addition to the supporting testimony noted above, several other documents were submitted at the hearing which are persuasive. First is the report from the Tower Review Committee, which is comprised of members from the Office of Planning, the Office of Budget and Finance and the affected community. That report, from the Committee's meeting of April 25, 2001, indicates that Sprint "...has provided ample documentation that the 115-foot monopole to be located at 810 Back River Neck Road is indeed required for the network." That Committee recommended approval of Sprint's request for this construction, for so long as the applicant agreed that two additional carriers could be accommodated on the tower. The Committee also suggested that appropriate landscaping be installed to buffer the tower and supporting equipment buildings.

This conclusion is similar to a recommendation that resulted from a study by the Office of Planning in 1998. A copy of that study was submitted into evidence as Petitioner's Exhibit 9. Therein, Karin Brown from the Office of Planning opined that "This site would be an excellent location for a wireless communication tower. It is deep enough to minimize the visibility of the tower from the road. Existing tree growth would buffer much of the tower from the view of the residential dwellings that are located northwest from the anticipated tower location." It was further suggested that significant landscaping be installed to improve the overall visibility of the site. I agree with her conclusions and recommendations.

As to the specific requirements for variance relief, it is clear that the subject site is a unique property. The uniqueness is driven by the narrowness of the lot. Although the property

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Date 01/04/02
By

contains in excess of 4.0 acres in area, it is but 223 feet wide. Section 426.6 of the B.C.Z.R. requires a 200-foot setback from the nearest property line to the tower. In view of the width of the property, this setback cannot be maintained. That is, any site must be a minimum of 400 feet in width to provide appropriate setbacks on all sides.

I am persuaded that this is an appropriate location for the tower, given the zoning the site, the physical character of the area, and the land uses located nearby. Additionally, I concur with the decision to locate the tower in the rear of the property, further from Back River Neck Road. This will decrease the tower's visibility, given the woods located on the subject site and neighboring parcels. This factor further justifies the variance relief requested from the rear property line.

Based upon the testimony and evidence offered, I am persuaded to grant the variance. In my judgment, the Petitioners have met the requirements of Section 307 of the B.C.Z.R. as construed by the Court of Special Appeals in Cromwell v. Ward, 102 Md. App. 691 (1995). Thus, relief should be granted, subject to the Petitioner submitting a landscape plan to provide reasonable screening for the proposed tower and supporting buildings. Additionally, it is to be noted that the property is located within the Chesapeake Bay Critical Areas and as such, the proposed construction must be in compliance with those regulations. Thus, the Petitioners shall comply with the recommendations made by the Department of Environmental Protection and Resource Management (DEPRM) in their Zoning Advisory Committee comment, dated December 26, 2001.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and fort he reasons set forth herein, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 4th day of January, 2002 that the Petition for Variance seeking relief from Section 426.6.A.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit setbacks of 75 feet each from the south and west property lines, and 148 feet from the north property line, in lieu of the required 200 feet each for the proposed wireless telecommunications tower, and, from Section 426.6.A.4 to permit setbacks of 40 feet each to the south and west property lines, in lieu of the

ORDER RECEIVED FOR FILING
Date 1/4/02
By

required 125 feet each, for the supporting equipment cabinets, in accordance with Petitioner's Exhibit 14, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) Pursuant to the recommendations made by the Tower Review Committee, the Petitioners shall accommodate two additional carriers on the subject tower.

3) Prior to the issuance of any permits, the Petitioners shall submit a landscape plan for review and approval by the Office of Planning. Said plan shall provide landscaping sufficient to screen the proposed tower and supporting buildings from adjacent properties.

4) Compliance with Chesapeake Bay Critical Areas regulations as set forth in the Zoning Advisory Committee comment submitted by the Department of Environmental Protection and Resource Management (DEPRM), dated December 26, 2001, a copy of which is attached hereto and made a part hereof.

5) When applying for a building permit, the site plan and landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 1/7/02
By BJS

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 810 Back River Neck Road

which is presently zoned ML

This Petition shall be filed with the Department of Permits and 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)

PLEASE SEE ATTACHED

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

To be presented at the hearing

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded 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:

SPRINT PCS
Name - Type or Print

Howard Leger /jb
Signature

1 International Blvd., Suite 800
Address — Telephone No.

Mahwah NJ 07495
City — State — Zip Code

Attorney For Petitioner:

Jennifer R. Busse
Name - Type or Print

Signature

Whiteford, Taylor & Preston
Company

210 W. Pennsylvania Ave. (410)832-2077
Address — Telephone No.

Towson MD 21204
City — State — Zip Code

Legal Owner(s):

BACK RIVER LLC
Name - Type or Print

Buck Jones
Signature

Buck Jones, President
Name - Type or Print

Signature

810 Back River Neck Road 410 83 2077
Address — Telephone No.

Baltimore, MD 21221
City — State — Zip Code

Representative to be Contacted:

Jennifer R. Busse
Name

210 W. Pennsylvania Ave. (410)8322077
Address — Telephone No.

Towson MD 21204
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____
Reviewed By JNP Date 10/19/01

Case No. 02-159-A

REV 9/15/98

ATTACHMENT TO PETITION FOR VARIANCE

Sprint PCS
810 Back River Neck Road

Zoning Relief Requested:

1a. Petition for Variance from BCZR Subsection 426.6.A.3 to allow a setback of 75′ to the southern property line in lieu of the required 200′ for a wireless telecommunication tower.

1b. Petition for Variance from BCZR Subsection 426.6.A.3 to allow a setback of 75′ to the western property line in lieu of the required 200′ for a wireless telecommunication tower.

1c. Petition for Variance from BCZR Subsection 426.6.A.3 to allow a setback of ~~75′~~ 148′ to the northern property line in lieu of the required 200′ for a wireless telecommunication tower.

2a. Petition for Variance from BCZR Subsection 426.6.A.4 to allow a setback of 40′ to the southern property line in lieu of the required 125′ for equipment cabinets for a wireless telecommunication tower.

2b. Petition for Variance from BCZR Subsection 426.6.A.4 to allow a setback of 40′ to the western property line in lieu of the required 125′ for equipment cabinets for a wireless telecommunication tower.

02-159-A

KCI TECHNOLOGIES

DESCRIPTION OF LANDS OF BACK RIVER, LLC
A MARYLAND LIMITED LIABILITY COMPANY
4.316 ACRES ON BACK RIVER NECK ROAD
ELECTION DISTRICT NO. 15, BALTIMORE COUNTY, MARYLAND

July 12, 2001

All that tract or parcel of land lying and being in Election District No. 15, Baltimore County, Maryland, and being more particularly described as follows:

Commencing at the point of intersection of the centerlines of the paved road beds of Back River Neck Road and Pottery Farm Road, and running thence along the centerline of the paved roadbed of Back River Neck road, in a southeasterly direction, 252 feet, more or less, to a point where said centerline is intersected by a northeasterly projection of a northwesterly line of the property being herein described; thence running southwesterly along said projection South 74 degrees 15 minutes 00 seconds West, 37.5 feet, more or less, to a point marked by an iron pipe now found, said point being the most northerly point of the property being herein described, said point also being the point of intersection of the westerly right of way line of Back River Neck Road and the southeasterly right of way of an unimproved, private road known as Luciano Drive; thence running with, and binding on, said southeasterly right of way line of Luciano Drive, the following three courses and distances:

(1) South 74 degrees 15 minutes 00 seconds West, 211.90 feet, to a point; thence

(2) North 15 degrees 45 minutes 00 seconds West, 10.00 feet, to a point; thence

(3) South 74 degrees 15 minutes 00 seconds west, 650.00 feet, to a point, said point being at the end of Luciano Drive, said point also being in a northeasterly line of property now or formerly belonging to Robert B. Simms and Brenda J. Scruggs, per Liber 7071, Folio 302, as recorded among the Land Records of Baltimore County; thence running with, and binding on, a part of said northeasterly line of Simms and Scruggs

(4) South 15 degrees 45 minutes 00 seconds East, 223.00 feet, to a point, said point being at the southwesterly end of a northwesterly line of property now or formerly belonging to Theodore and Ann Julio, per Liber 5361, Folio 664, as recorded among the aforementioned Land Records; thence leaving the aforementioned northesterly line of Simms and Scruggs, and running with, and binding on, said northwesterly line of the Julios

(5) North 74 degrees 15 minutes 00 seconds East, 822.00 feet, to a point, said point being on the aforementioned westerly right of way line of Back River Neck Road; thence running with, and binding on, said right of way line

(6) 217.42 feet along a curve to the left having a radius of 775.00 feet (chord bearing and distance: North 05 degrees 08 minutes 34 seconds West, 216.71 feet) to the point of beginning.

Containing 4.316 acres of land, more or less.

Being all of the lands which by deed dated 2 February, 1999, and recorded among the Land Records of Baltimore County, Maryland, in Liber 13577 at Folio 535, was conveyed by Anthony D. Luciano, et.ux., Grantors, to Back River, LLC, Grantee.

STATE OF MARYLAND
JOSEPH JACQUE LEVASSEUR
No. 448
REGISTERED
PROPERTY LINE SURVEYOR

JJLevasseur

02-159-A

NOTICE OF ZONING 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: #02-159-A
810 Back River Neck Road
SW/S Back River Neck Road, 330' SE of Pottery Farm Road
15th Election District – 5th Councilmanic District
Legal Owner(s): Buck Jones
Contract Purchaser: Howard Lyer, Sprint PCS

Variance: to allow a setback of 75 feet to the southern property line in lieu of the required 200 feet for a wireless telecommunication tower. To allow a setback of 75 feet to the western property line in lieu of the required 200 feet. To allow a setback of 148 feet to the northern property line in lieu of the required 200 feet. To allow a setback of 40 feet to the southern property line in lieu of the required 125 feet for equipment cabinet. To allow a setback of 40 feet to the western property line in lieu of the required 125 feet for equipment cabinet. To allow a setback of 40 feet to the western property line in lieu of the required 125 feet for equipment cabinet.

Hearing: Friday, December 28, 2001 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

12/058 Dec. 13 C610893

CERTIFICATE OF PUBLICATION

12/14/, 2001

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12/13/,2001.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilkinson

LEGAL ADVERTISING

APPEAL SIGN POSTING REQUEST

CASE NO.: 02-159-A

Back River LLC, Buck Jones, President - LEGAL OWNER

810 Back River Neck Road

15th ELECTION DISTRICT APPEALED: 1/14/02

ATTACHMENT – (Plan to accompnay Petition – Petitioner's Exhibit No. 14)

**********COMPLETE AND RETURN BELOW INFORMATION*****

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Attention: Kathleen Bianco
Administrator

RE: Case No.: 02-159-A

Petitioner/Developer:

BACK RIVER LLC

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

810 BACK RIVER NECK RD.

The sign was posted on 2/28, 2002

By: Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Printed Name)

CERTIFICATE OF POSTING

RE: Case No.: 02-159-A

Petitioner/Developer: Buck Jones

(Howard Lyer, Sprint PCS)

Date of Hearing/Closing: 12-28-01

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 810 Back River Neck Rd. Baltimore, MD 21221

The sign(s) were posted on December 7, 2001
(Month, Day, Year)

Sincerely,

Stacy Gardner 12/7/01
(Signature of Sign Poster and Date)

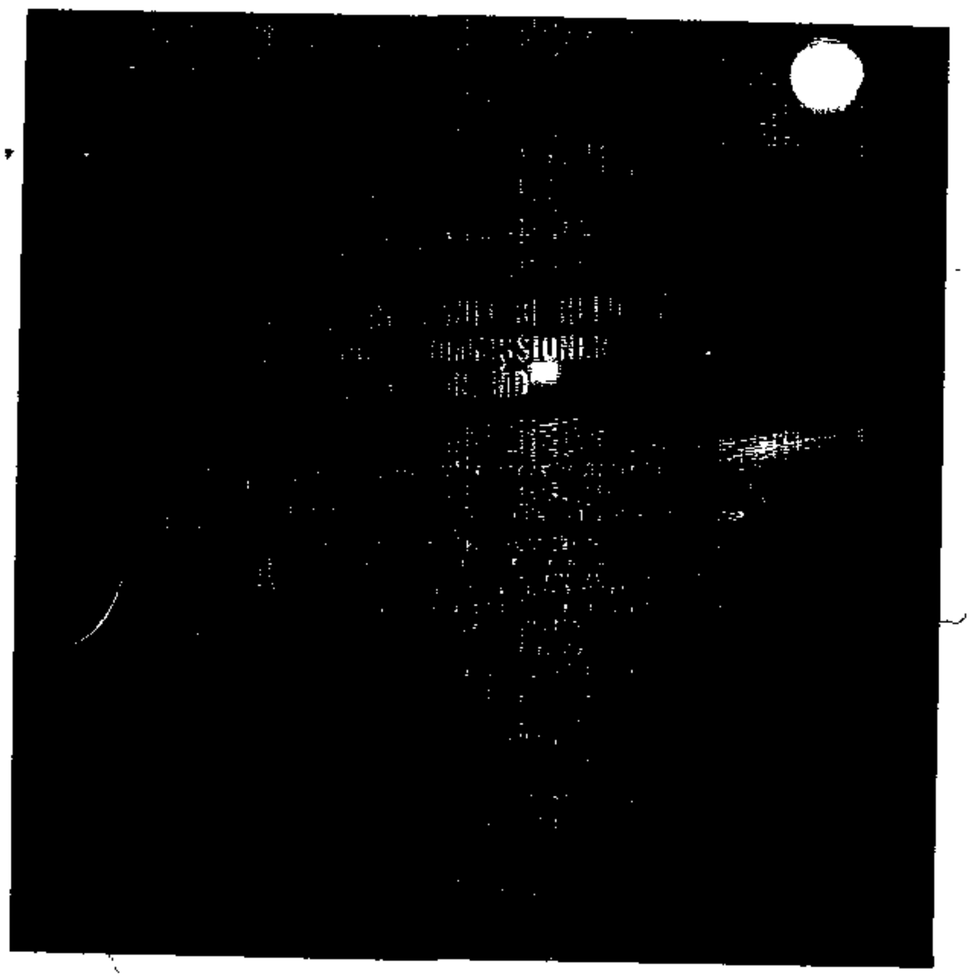
Stacy Gardner
(Printed Name)

SHANNON-BAUM SIGNS INC.
105 COMPETITIVE GOALS DR.
ELDERSBURG, MD. 21784
(City, State, Zip Code)

410-781-4600
(Telephone Number)

SHANNON-BAUM SIGNS INC.
105 COMPETITIVE GOALS DR.
ELDERSBURG, MD. 21784

9/96
cert.doc



Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

November 30, 2001

NOTICE OF ZONING 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:02-159-A
810 Back River Neck Road
SW/S Back River Neck Road, 330' SE of Pottery Farm Road
15th Election District – 5th Councilmanic District
Legal Owner: Buck Jones
Contract Purchaser: Howard Lyer, Sprint PCS

Variance to allow a setback of 75 feet to the southern property line in lieu of the required 200 feet for a wireless telecommunication tower. To allow a setback of 75 feet to the western property line in lieu of the required 200 feet. To allow a setback of 148 feet the northern property line in lieu of the required 200 feet. To allow a setback of 40 feet to the southern property line in lieu of the required 125 feet for equipment cabinet. To allow a setback of 40 feet to the western property line in lieu of the required 125 feet for equipment cabinet. To allow a setback of 40 feet to the western property line in lieu of the required 125 feet for equipment cabinet.

HEARING: Friday, December 28, 2001 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon GDZ
Director

C: Jennifer R Busse, Whiteford Taylor & Preston, 210 W Pennsylvania Avenue, Towson 21204
Buck Jones, President, Back River LLC, 810 Back River Neck Road, Baltimore 21221
Howard Lyer, Sprint PCS, 1 International Blvd, Ste 800, Mahwah NJ 07495

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, DECEMBER 13, 2001**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

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
FAX: 410-887-3182

January 28, 2003

NOTICE OF DELIBERATION

IN THE MATTER OF:

BACK RIVER LLC – LEGAL OWNER;
SPRINT PCS – C.P.
Case No. 02-159-A

Having heard this matter in two days of hearing (9/25/02 and 1/21/03), public deliberation has been scheduled for the following date /time:

DATE AND TIME : THURSDAY, MARCH 20, 2003 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Memos are due from counsel on Monday, February 24, 2003 (Original and three [3] copies).

Kathleen C. Bianco
Administrator

c: Appellant : Office of People's Counsel
Peter M. Zimmerman, People's Counsel
Carole Demilio, Deputy People's Counsel

Appellant /Protestant : Back River Neck Peninsula Community Assn., Inc.

Counsel for Petitioner : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire

Legal Owner : Buck Jones, President
Back River LLC

Contract Purchaser : Howard Lyer /Sprint PCS
Hillorie S. Morrison /VoiceStream Wireless
Leroy Sennett
Jim Mitchell, VP /Holly Neck Conservation Assn.

Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

fyi: B.S.M.

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

September 26, 2002

NOTICE OF ASSIGNMENT /Day #2

CASE #: 02-159-A

IN THE MATTER OF: *Back River LLC, Buck Jones, President* – Legal Owner; *Sprint PCS* – Contract Purchaser
810 Back River Neck Road
15th Election District; 5th Councilmanic District

Day #2 from 9/25/02

1/04/2002 – D.Z.C.'s Order in which variance request was GRANTED with restrictions

ASSIGNED FOR: **TUESDAY, JANUARY 21, 2003 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).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

---

c: Appellant : Office of People's Counsel
Peter M. Zimmerman, People's Counsel
Carole Demilio, Deputy People's Counsel

Appellant /Protestant : Back River Neck Peninsula Community Assn., Inc.

Counsel for Petitioner : G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire

Legal Owner : Buck Jones, President
Back River LLC

Contract Purchaser : Howard Lyer /Sprint PCS

Hillorie S. Morrison /VoiceStream Wireless
Leroy Sennett
Jim Mitchell, VP /Holly Neck Conservation Assn.

Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

June 7, 2002

NOTICE OF ASSIGNMENT

CASE #: 02-159-A

IN THE MATTER OF: ***Back River LLC, Buck Jones, President* – Legal Owner**; *Sprint PCS* – **Contract Purchaser**
810 Back River Neck Road
15th Election District; 5th Councilmanic District

1/04/2002 – D.Z.C.'s Order in which variance request was GRANTED with restrictions

ASSIGNED FOR: **WEDNESDAY, SEPTEMBER 25, 2002 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).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

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Jim Mitchell, VP /Holly Neck Conservation Assn.

Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

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IN THE MATTER OF:	* BEFORE THE
BACK RIVER, LLC,	* COUNTY BOARD OF APPEALS
BUCK JONES, President-	* OF
Legal Owner; Sprint PCS -	* BALTIMORE COUNTY
Contract Purchaser	* Case No. 02-159-A
810 Back River Neck Road	* September 25, 2002

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 a.m., September 25, 2002.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

BOARD MEMBERS:

LYNN BARRANGER, Acting Chairman
MELISSA MOYER ADAMS
LAWRENCE WESCOTT

APPEARANCES:

G. SCOTT BARHIGHT, Esquire
JENNIFER R. BUSSE, Esquire
On behalf of Petitioner

CAROLE S DEMILIO, Esquire
Deputy People's Counsel
PETER MAX ZIMMERMAN, Esquire
People's Counsel
On behalf of Baltimore County

PROCEEDINGS

* * * * *

THE CHAIRMAN: Good morning. We are here in the matter of Back River Neck LLC, Buck Jones, president, legal owner, Sprint PCS, contract purchaser of 18 Back River Neck Road, in the 15th Election District, 5th Councilmanic District, Case No. 02-159-A, and it's based on a Deputy Zoning Commissioner's order in which the variance request was granted with restrictions.

Are there any preliminary matters first, counsel, that would you address yourself to?

MR. BARHIGHT: Thank you. Good morning. Scott Barhight and Jennifer Bussey, Whiteford, Taylor and Preston, on behalf of your petitioner/appellee here today, with offices in Towson at 210 West Pennsylvania Avenue.

THE CHAIRMAN: Thank you.

MS. DEMILIO: Good morning. Carole Demilio, Deputy People's Counsel for Baltimore County.

MR. ZIMMERMAN: Peter Max Zimmerman, People's Counsel for Baltimore County.

MS. DEMILIO: I would also like to point out the Back River Neck Community Association also filed an appeal in this case, and they are are also present.

THE CHAIRMAN: Is there any preliminary matter we need to discuss?

MR. BARHIGHT: I have nothing preliminary, but I'd like to make a very brief opening comment, if that would be appropriate.

MS. DEMILIO: I have nothing preliminary.

THE CHAIRMAN: All right. Just so we have the record straight, the appellant is People's Counsel. Normally, the appellant goes first. Are you planning on going first to lay the foundation?

MR. BARHIGHT: We'd be happy to bear the burden of going forward.

THE CHAIRMAN: Any comment?

MS. DEMILIO: We think, because it's a de novo case, it's generally the petitioner's burden in these matters to go forward, and I agree with Mr. Barhight.

MR. BARHIGHT: We're happy to do that. Very briefly, in opening, thank you for giving me a moment to explain a little bit more quickly what we're here about

today.

We are here to seek approval for several setback variances for a 115 foot monopole in an M.L. zone in the Back River Neck area of Baltimore County.

You will hear testimony later in more detail about the actual site. The revised site plan on the board shows the property located off of Back River Neck Road, a long narrow strip that's surrounded on three sides by woods. The vicinity map shows that it's south of the intersection of Turkey Point Road and Back River Neck Road and relatively close to the intersection of Back River Neck Road and Pottery Farm Road.

The first thing I'd like to do is direct your attention to a series of statutes that I think apply here today, just to make sure that the Board is aware of the various sections of the Baltimore County zoning regulations that apply.

Baltimore County zoning regulations, Section 426, is entitled, Wireless Telecommuncation Facilities, and there are a variety of sections within Section 426 we want to point out to you.

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The first is a legislative policy under 426.2 which basically sets up the policy of the County Council with regard to the placement of these towers. Under A, it indicates antenna shall be placed on existing towers, buildings and structures where feasible, and then, B, if the new tower must be built, they want to make sure that its co-location, they want to make sure that it's erected in a medium or high intensity commercial zone where available, and located and designed to minimize visibility from residential and transition zones.

So they set up basically a thought process that they are asking the different users to go through where they first look for existing buildings and existing towers, and finding none, to try and focus on the business and industrial zoned areas of the county, and then from there, to keep an eye on minimizing what is the real potential negative impact, which is the visual impact.

The next thing to point out to you is there's a Section 426.4 regarding the establishement of a Tower Review Committee. We did go through the Tower Review Committee process -- you will see the evidence is already

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in the record below with regard to that -- and obtained the necessary recommendations from the Tower Review Committee.

426.5 indicates whether you need a special exception or whether this particular use is permitted as a matter of right in the M.L. zone. Here, 426.5 makes it clear that in the M.L. zone, this particular use, a 115 foot tall tower, is permitted as a matter of right. We do not have to seek a special exception.

The next section to point out is 426.6. This is where I want to make sure I take a moment to walk you through this, because the way you get to understand the setbacks is complicated by some intervening legislation, which I think all parties will agree doesn't alter the substance in any way, but it alters the section references that were identified in the original petitions in the order from the Zoning Commissioner dated January of this year.

Subsequent to that order, and subsequent to our filing, there was a Bill that was introduced -- and I'll get back to that in a moment -- but first, under 426.6, I

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want to point out in subsection (a) relates to setbacks and (a)1 indicates a tower shall be set back at least 200 feet from any other owners' residential property line, and that is the subject matter of several of our requests which we'll point out to you during the testimony, but basically we are asking for two different side yard setbacks from the tower itself; in the case of the monopole, 148 feet to the northern property line, and 75 to the southern property line in lieu of the required 200.

For reasons that I'll get to in just a moment, we have decreased the request for a variance in the rear to 135 feet in lieu of the required 200.

It's also important to point out that Section 426.6.2 indicates that a structure housing equipment for a tower shall meet the minimum setbacks requirements from any other owners' property or zone lines.

We are in the M.L. zone, which takes you to Section 255, and under Section 255, the M.L. zone area regulations, you are, in turn, referred to Section 243, which is the area regulations for the M.R. zone.

So you pop from 426 to 255 to 243 to find out

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what the setback requirements are. Under those requirements, it says that no building or other structure shall be closer than 125 feet to any point to the nearest property line of a residential zone. So the last two variances relates to that 125 foot requirement, and they relate to the equipment cabinets located on the property.

In lieu of that 125 feet, we are requesting forty feet -- and to make sure I don't misspeak -- and 100 feet in liew of the required 125.

Now, as I mentioned to Deputy People's Counsel prior to the hearing, I wanted to point out to you a legal issue that's created by the definition of "building," which is in the Baltimore County zoning regulations under Section 101.

If you look at that section, and look at the definition of "building," it says, A structure enclosed within exterior walls or fire walls for the shelter, support or enclosure of persons, animals or property of any kind.

I think there is a valid legal question with regard to whether we even need to file the petition for

variances from the equipment cabinets. I pointed this issue out to the Zoning Commissioner below and, as you will see from his order, he decided to go ahead and grant the variances, and did not really address that issue in great detail, but I would be remiss if I did not point that out to this Board for you to make that legal determination independently since this is a de novo hearing.

You may or may not determine that the equipment cabinets are not buildings. If you determine based upon the evidence that they are not buildings, those two variance would not be required.

In any event, this hearing would be required, however, for the variances requested for the monopole, so there's no way for this applicant to avoid the necessity for some variances.

The other sections to point out to you, obviously you're very familiar with Section 307 which governs variance laws in Baltimore County, and then one piece of Federal legislation -- and it's unusual for me to point out to the Board the Federal law -- but Federal law does

apply to some minor degree in this case, and I want to point out to you the Telecommunications Act of 1996, specifically 47USC, Section 332 of that Act, which governs mobile services and state preemption issues and preservation of local zoning authority.

And the specific reference that I want to give to you is 47USC, Section 332C.7.B(iv), because that section indicates as follows: 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.

I point that out to you only for the very narrow purpose of indicating that the Federal laws says that you may not regulate the placement of this tower, in other words, regulate this variance, on this very narrow basis.

The Federal law is basically saying to you the environmental effects of RF emissions are off limits as long as we can show that we meet the Federal requirements

for those emissions.

During the testimony, you will see that there was a 1998 Office of Planning Study, which is documented in the file, 1998, where the Planning Office studied the area and specifically this site and identified this site as a site for the appropriate location of these facilities.

You will hear testimony that subsequent to that, and actually unbeknownst to our site acquisition specialist, he did not know that that study had been done, he did his search and came to the same site and to the same conclusion.

You will see evidence in the record, as I mentioned before, the Tower Review Committee approving the site in April of 2001. We filed the necessary petitions. The Zoning Commissioner's order occurred in January of 2002.

You will hear evidence introduced from our civil engineer Marianne Kierman that subsequent to the order, as we proceeded through the building permit approval process, the Department of Environemenal Protection and Resource Management applied some additional setback requirements

that were not identified in their original zoning advisory comment, we were not aware of them.

Subsequent to the order, the result of that is that we have moved from the original site plan location identified before the Zoning Commissioner, we have moved the tower an additional sixty feet inwards into the property.

We have actually lessened the variance request by sixty feet as a result of the DEPRM requirements that were environmentally driven.

We also filed a spirit and intent letter request with the Permits and Development Office to determine whether they thought that that movement of the tower was within the spirit and intent of the zoning order. They granted that spirit and intent request.

And we also submitted a request to the Planning Office in compliance with the Zoning Commissioner's order to determine whether landscape requirements would be necessary, and Lynn Lanham of the Planning Office waived any landscaping requirements, indicating that the trees that surround the site as well as the buildings are

adequate, and no additional landscaping would be required.

That brings you up to speed to today's date, and what you will hear today is a series of four witnesses which we'll try to move through quickly.

The first is Hassan Khalil, our RF engineer, who will indicate to you the need for this particulr location relative to the Sprint system.

You will hear from Peter Fastnacht, who's our site acquisition specialist, who will describe the area, how we got to this site. You will hear from Marianne Kierman, who's our our civil engineer, who will describe the site plan and confirm some of the facts I have related to you about what occurred subsequent to the order from the Zoning Commissioner and address the Section 307 requirements.

Specifically, the unique issue that you're going to hear relating to the long and narrow configuration of the property, simply stated, it is impossible to place a monopole on this property with the 200 foot setback requirement, given the width of the property, and she will testify about that in further detail.

The other unique characteristic she will testify about is aesthetics. This is a long property that sits back in the rear, sits back into the R.C. 20 zoned areas of the property, encircled by trees. One of the reasons that the planning office liked this location was because of the way that the property was long zoned M.L. and dove back into the woods, providing opportunities for mitigation of any visual impact of any kind of facility back there.

So the setting is really an important characteristic of the unique characteristics of the site. You will also hear testimony that there are two existing dwellings just immediately adjacent. One of the things that drove us to the request for the variance from the rear, a 200 foot setback, was to try to keep the monopole as far as away from the road and the neighbors and these particular properties as possible.

Both of these property owners, there's letters in the file indicating support for the original location of the tower, and subsequent to that we have letters that we can provide to you indicating their support for the tower,

even though it's been forced by DEPRM's requirements to move an additional sixty feet closer to their homes.

We will also call Mr. Bill Bafatis with the Holly Neck Preservation Association, I believe his Rule 8 papers are in the file, and he'll indicate their support for the variance request.

Preliminarily, I guess I need to specifically amend several of the petition requests. You will note that the first three variances relate to Section 426.6.A.3. That was accurate under the previous innerations of the statute, but since Bill 17-2002 was passed, those section references have changed.

I have already provided a copy of that Bill to Deputy People's Counsel. Let me provide the Board -- does the Board want three copies? I don't know their need to be introduced as an exhibit. I'm asking you to take judicial notice of Bill 17-2002.

THE CHAIRMAN: Submitted.

MR. BARHIGHT: That requires us, in order to comply with the way the sections have been re-numbered, that we re-word the petition as it relates to A3 to say

A1. It doesn't change the substantive requirement. It's still a 200 foot setback. But the A3 reference should be A1.

The other re-numbering is the last two variances originally stated as 426.6.A.4. Again, there's no substantive change in our requirements in terms of setbacks required, but the letter reference changes from A4 to A2.

So, preliminarily, I would respectfully request that the petition be amended to comply with the numerical requirements of Bill 17-2002.

The other preliminary item, I always like to ask the Board to confirm that all the exhibits from below are a part of the Board's file and a part of the record of the proceedings. Some of the exhibits, we will, in effect, re-introduce and re-number, but I want to make sure that was confirmed on the record, that all of the Board's file are a part of the record in these proceedings including the exhibits that were introduced before the Zoning Commissioner below.

I have put on your table the protestants'

exhibit. There was one. I have already gone through this with Deputy People's Counsel. The exhibits from the petitioner as well, I have those in my hand.

THE CHAIRMAN: Mr. Barhight, I have one question for you.

MR. BARHIGHT: Yes.

THE CHAIRMAN: You made a comment about Holly Neck Conservation?

MR. BARHIGHT: Yes.

THE CHAIRMAN: I just want to make certain. What we have in the file here is a letter dated September 20, stating -- signed by Kathleen Filar, the secretary -- stating their position. Another letter of September 20 as well, authorizing Bill Bafatis, the zoning chairman, to present a position.

MR. BARHIGHT: We will address those issues when Mr. Bafatis takes the stand.

THE CHAIRMAN: I just want to let you know what we have in our file.

MR. BARHIGHT: Okay. In terms of additional exhibits that would be preliminary in nature, I have

discussed this briefly with Deputy People's Counsel, Ms. Demilio, the first thing is when we were requested to move the tower sixty feet closer to the residents, we went back to them and asked them whether they were still in agreement with the variances, noting the sixty foot difference, and I wanted to introduce those letters into the record as letters to the Board indicating, first, Elsie Luciano, by letter dated September 19, 2002, indicating she does not oppose the tower even though it's been moved sixty feet closer, as well as a similar --

THE CHAIRMAN: This is from Elsie Luciano, and these are --

MR. BARHIGHT: This is the one from the Gibsons. The other ones are already in the file.

THE CHAIRMAN: We will take these as I.D. only. Any comment?

MR. BARHIGHT: We were going to ask you to accept them as you normally accept letters into the record.

MS. DEMILIO: That would be my only concern. We object, for the record, and ask the Board to give the letters received from individuals who are not here to

testify the appropriate weight, since I don't have the opportunity to cross examine them.

THE CHAIRMAN: I understand. So we'll put these in as Petitioner's No. 1A and 1B for ID. only. Excuse me. We'll just take them as a Board exhibit.

MR. BARHIGHT: The other thing, I expect the same comment, because I would make the same comment in response, it is usual that I find the opposition has petitions to file. We actually in this case have petitions to file that are signed by various community members that we want to provide to the Board that are actually in support. It's typical for the Board to accept these for the weight you might deem appropriate.

MS. DEMILIO: My objection would be the same. As I recall, maybe Mr. Barhight has made similar objection in previous cases, I understand. My hope would be that the Board would give them the weight they --

THE CHAIRMAN: We will give them the weight we feel appropriate.

MS. DEMILIO: -- feel appropriate, given the fact these people are not present.

THE CHAIRMAN: They will be accepted as Board exhibits.

MR. BARHIGHT: The shoes on the other foot. I always make the same comment, and the Board always accepts them.

THE CHAIRMAN: We'll give them the weight they deserve.

MS. DEMILIO: You're calling them Board exhibits?

THE CHAIRMAN: Yes. Do you want us to actually number these as exhibits for you, or just take them in as a Board exhibit?

MR. BARHIGHT: Since they are being introduced by the petitioner, perhaps we should make them petitioner exhibits?

MS. DEMILIO: They haven't really ruled on it yet.

THE CHAIRMAN: We'll put them in as a group. Petitioner's 1A, B, C and D, and E.

MR. BARHIGHT: There's five different documents.

MS. DEMILIO: A and B are the letters, and C, D, and E are the petitions?

THE CHAIRMAN: Correct.

MS. DEMILIO: I will maintain any earlier comment regarding how the Board treats them.

MR. BARHIGHT: I would do the same thing, and have always done the same thing. No problems with that.

Those are the only preliminary items I had, and we would be prepared, if the Board so chose, to begin our case and put our first witness on the stand.

THE CHAIRMAN: Ms. Demilio?

MS. DEMILIO: A couple comments. I think Mr. Barhight was basically correct in the statute he pointed out that would apply to the case.

Let me just say that I would disagree that the equipment building is not a building under the definition of the Baltimore County zoning regulations in 101. I believe that definition applies.

But, if I understand Mr. Barhight, he's almost pleading in the alternate, that is, if the building that he's asking for variances, if it's not deemed to be a building, then the variance wouldn't apply, and I have no objection to him presenting his case that way.

If the Board wants us to give legal argument at the end of the case, we can go through that, but it's sort of alternative pleading, and that's fine.

Also, Mr. Barhight has in a way amended his variance request for ask for a lesser variance for the setback from the tower, one of the setback requirements from the tower, and he's amending at this stage, but because it's a lesser variance, we don't have any objection to him amending that single variance request to a lesser variance than was asked for in his pleadings, so I just want to make that clear that I am not objecting to that.

The 1998 planning study, we would dispute the weight given to that, because the circumstances on the site have changed, so I would be remiss if I didn't at least mention the 1998 planning study done by the planning office.

And while it may be in evidence, we dispute it may be irrelevant at this time or the weight given to it, and we would have evidence to that effect, factual evidence from the citizens in the area. I just want to point that out to the Board.

And, naturally, we are not going to agree with Mr. Barhight's position on the variances or any comment he made about the uniqueness of the property.

That's the crux of the dispute in the case. I just want to point that out for the record. But other than that, his objective comment with regard to the application of the statute or issues in this case I believe were correct. Thank you.

THE CHAIRMAN: Mr. Barhight, it's your case.

MR. BARHIGHT: Thank you very much. We will go ahead and call Mr. Peter Fastnacht.

(Witness not present.)

MR. BARHIGHT: Excuse me for a moment. I apologize. I ask the Board for a very, very brief recess.

(A recess was taken.)

MR. BARHIGHT: We will call Mr. Bafatis to the stand. Thank you very much for that recess. We have located Mr. Fastnacht. He's a little bit late, but he'll be here in time for the hearing.

WILLIAM BAFATIS,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

BVY MR. BARHIGHT:

Q. Mr. Bafatis, can you please state your full name and address, for the record?

A. Yes. My name is William Bafatis. I reside at 1249 Ingleburth Road, Baltimore, Maryland 21221.

MR. BARHIGHT: I don't think this microphone works.

THE CHAIRMAN: I was just about to say it does not work, so please speak up clearly so we can all hear.

Q. Mr. Bafatis, are you here today in any kind of representative capacity?

A. I am representing the Holly Neck Conservation Association.

Q. Could you please describe the Holly Neck Conservation Association to the Board?

A. It's an association that was formed basically to look out for the environment in the area and the well-being of the neighbors along Holly Neck Road.

Q. Is the subject property within the boundaries of the area that the association concerns itself with?
A. Yes.
Q. I believe that there were some documents that the Chair has referenced previously in the file. If I could ask you to take those out, I will ask him to identify it.
Mr. Bafatis, I'm showing you two different documents. Could you identify those for the record, for the Board, please?
A. The one that was from the Holly Neck Conservation Association, Inc., it's dated September 20, 2002. It's the support letter that was sent by Jim Mitchell, who's the president of the association.
Q. What's the second document?
A. The second document is from the Holly Neck Conservation Association. It's also dated the 20th, and it's to the Board of Appeals. That's from the secretary and Jim Mitchell.
Q. What is the purpose of that second document?
A. This is to acknowledge the organization and my authorization to speak on behalf of the president.

MR. BARHIGHT: I'd like to introduce these next two documents as the next petitioner's exhibit to show compliance with Rule 8 of the Board of Appeals.
MS. DEMILIO: Well, I'm not sure these documents comply exactly with the Rule 8 requirement. I think they are attempting to meet the spirit and intent, so we are not objecting, although I will caution him.
THE CHAIRMAN: Ms. Demilio, I'm having a hard time hearing you.
MS. DEMILIO: I'm not sure that the documents submitted were, as I understand previously faxed to the Board, comply exactly with the Rule 8 requirement, that I think the intent was to comply with the spirit and intent of those Rule 8 requirements, and for that reason we are not going to object to Mr. Bafatis speaking on behalf of the association, although I will have some questions for him about the association and how familiar he is with that.
THE CHAIRMAN: We will accept these as Petitioner's 2A and 2B.
MR. BARHIGHT: Thank you very much.

Q. Mr. Bafatis, are you familiar with the subject of today's hearing?
A. Yes.
Q. Are you familiar with the proposal of the monopole by Sprint at the specific location involved?
A. Yes.
Q. And did the association review this request and take a position?
A. Yes, they did.
Q. Could you please relate to the Board the position taken by the Holly Neck Conservation Association? And, again, speak up. I know the fans are loud in here and we all tend to be a little soft spoken, so if you could speak up.
A. Basically, the organization took a vote on the pole that is the subject of this hearing. They voted unimously to accept whatever variances were needed to construct the pole, and the main reason was safety, safety reasons.
Q. Could you please explain to the Board what you meant or what the group meant by "safety reasons?" Why is

it that they're supporting the variance?
A. Several storms have hit in the past years, have knocked out roads, communication, power. They felt that it was imperative that we had another form of communication for that lower neck area, and this is the solution, this tower, so basically that's the safety issue that they are concerned about.
Q. Are you aware of problems with cellular service in this area today?
A. It's very, very sparse. We hardly get any.
MR. BARHIGHT: I have no other questions of this witness at this time.
THE CHAIRMAN: Ms. Demilio?
CROSS EXAMINATION
BY MS. DEMILIO:
Q. Mr. Bafatis, I notice in the September 20 letter, which is Petitioner's Exhibit 2A, that the Holly Neck Conservation Association states that specific variances should set no precedence, and future variance requests should be reviewed on a case-by-case basis with zoning?
A. That's correct.

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Q. You understand that?
A. Yes.
Q. You're familiar with that language?
A. Yes.
Q. If a cell tower could be erected on the site which did not require any variances at all, would that be more preferable to your organization than the present request?
A. I would think it's the cell tower itself is the most important issue. I don't think the variance is really, at this point, because of the safety issue being a paramount concern, is the issue.
Q. Does that mean you'd just as soon see it at a site that didn't require a variance if they could put up a tower to satisfy your safety concern?
A. No, it wouldn't matter.
Q. It wouldn't matter to you at all?
A. No, it would not matter. The issue is the safety issue. It would not matter if you need variances or not. The issue is the safety.
Q. Do you have a preferance for locating a tower

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that would satisfy your safety concern on a lot that did not require variance?
A. We don't have a preferance.
Q. You have no preferance, so the Holly Neck Conservation Association will support variances if there's others reasons, is that what you are saying?
A. If there's other reasons for what?
Q. To support a variance?
A. No. We are talking about a case-by-case basis. And issue-by-issue basis.
Q. Well, what are the boundaries of the Holly Neck Conservation Association. Do you know the geographic boundaries?
A. Basically, Holly Neck Road is the geographic boundary, from Back River Neck Road down. So I guess Breezy Point, that area.
Q. Does that include the subject site, those boundaries?
A. The subject site is just, I guess, north of that.
Q. So the subject site is really outside of your organization's boundaries?

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A. No. The coverage is -- the coverage of the tower cell is in our area.
Q. No. I know that. But the subject site, the property --
A. The property is outside.
Q. -- is not within your conservation organization boundaries, is that right?
A. That's correct.
Q. Do you know the owner of this property?
A. Yes, I do.
Q. Who is that?
A. Buck Jones.
Q. Is he here today?
A. Yes, he is.
Q. Have you ever had any other dealings with Mr. Jones?
A. Yes.
Q. Have you had business dealings with him?
A. I am a professional engineer, and I have dealings with a lot of people, yes, and Buck Jones.
Q. So you have done work for Mr. Jones which he's

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paid you in the past for?
A. Absolutely.
Q. For which you've been paid for services?
A. Absolutely.
Q. That would include his construction company? I assume you mean Freestate? When you say Mr. Jones, you're talking about his construction company?
A. Yes.
MS. DEMILIO: I have no other questions.
MR. BARHIGHT: Nothing further. Mr. Bafatis can leave?
THE CHAIRMAN: Yes.
MR. BARHIGHT: Thank you very much. Call Mr. Peter Fastnacht.

PETER FASTNACHT,

having been called as witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. BARHIGHT:
Q. Could you please state your full name and business address, for the record, and the spelling of your

last name for the Board.
A. Peter Fastnacht. F-a-s-t-n-a-c-h-t. My business address is 169 Conostoga Trail, Sparta, New Jersey.
MR. BARHIGHT: Just a brief comment. Mr. Khalil would have been the first witness, the FR engineer, who would have indicated, and will hopefully arrive, and indicate the coverage needs for Sprint to confirm what you heard from Mr. Bafatis about the need in the area, and that there was basically a search map, if you will, created, that Mr. Fastnacht can also testify about, and that would basically begin his testimony, and that's where we'll begin the story here at the moment.
We may have to take Mr. Khalil somewhat out order, maybe even last, to confirm some of the facts upon which are basic portions of our case. I apologize for that.
MS. DEMILIO: I have no objection. I appreciate that Mr. Barhight is ready to move the case along.
Q. Mr. Fastnacht, I show you on the board the document that was indicated below as Developer Exhibit No. 4 from the Zoning Commissioner.

MR. BARHIGHT: I think we should re-number that because we are going to be referencing it in this case as well. I know it's already a part of the record, but it was marked below as Developer's Exhibit No. 4, and I'd like to mark it as the next petitioner's exhibit.
THE CHAIRMAN: No. 3. Is this the site plan?
MR. BARHIGHT: This is the search ring, search area map.
THE CHAIRMAN: I'm not seeing a date. Do you mind if we use this SAR number?
MR. BARHIGHT: That would probably be the best thing to do, yes,
THE CHAIRMAN: Project No. SAR No. WA54XC461, the search ring, would be accepted as Petitioner's No. 3.
Q. Mr. Fastnacht, referencing Petitioner's No. 3 which is on the board here before you, would you please identify this exhibit, for the Board?
A. Yes. That is a search area that I am given to work from in locating proposed sites.
Q. Where are you employed, sir?
A. I am the president of Integrated Wireless

Alliance, and we are a site acquisition firm contracted by Sprint to do site acquitision work and zoning work in the Baltimore, Maryland area.
Q. Could you please briefly describe your experience in that capacity?
A. From 1984 through 1995, I was with 9X Mobile, which was one of the original wireless communication companies. From 1995 through the present time, I am with -- we started Integrated Wireless Alliance -- and have been doing work for numerous carriers, Sprint, Verizon, Voice Stream.
Q. What is the nature of the work that you perform for the carriers?
A. Site acquisition. And what that entails, we go out, we locate sites, we negotiate leases with the owners.
Q. So as part of that process, are you given the site area maps, search area maps, if you will, and then you go out and try to find suitable locations within those areas?
A. Yes. This is similar -- we're given a map, which this is a blow-up of the map we're given and this is what

we work from.
Q. I'd like to show you a document which I believe is your resume. Can you confirm that, please?
A. Yes.
MR. BARHIGHT: I'd like to introduce Mr. Fastnacht's resume as the next petitioner's exhibit.
MS. DEMILIO: No objection.
THE CHAIRMAN: We will accept this as Petitioner's No. 4.
MR. BARHIGHT: I'd like to, based upon his resume and experience in the area, offer Mr. Fastnacht as an expert in the field of wireless site acquisition.
MS. DEMILIO: No objection.
THE CHAIRMAN: He's so accepted.
MR. BARHIGHT: Thank you.
Q. During my opening comment, Mr. Fastnacht, I referenced a document which is already in the record in these proceedings which is a memorandum from the Office of Planning, dated December 16, 1998, from Karin Brown of the Office of Planning, to Mr. Keller, who's the director of the Office of Planning. Are you familiar with that

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document?
A. Yes.
Q. Before you started your search, were you aware of that study done by the Office of Planning?
A. No.
Q. Tell us how you proceeded with your search and how you came to meet Mr. Jones and how you became aware of the study from the Office of Planning?
A. Okay. When I am given a search area, I do a little bit of research. I look at what zones are in the search area, also what roads cover the area.
Then I go out into the area and actually drive the given area. What I look for is existing structures, commercial properties, industrial property.
If you look at the search ring, it's roughly from Turkey Point Road down to Cherry Garden Road. It's approximately a mile long north to south, and it extends about a quarter of a mile each direction.
The area is predominantly R.C. rural conservation and residential 3.5. There was two M.L. sites on the property, one of which was Mr. Jones property.

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I've been doing this business for eighteen years. I pretty much know when I see a good site. And when I came upon this site, it just struck me that this was an ideal site.
Q. Why would you suggest to the Board that this is an ideal site for the location of a cellular tower?
A. Well, for one thing, it's a long, narrow piece of property. It's surrounded on three sides, kind of surrounded in a grove of trees, which provide excellent screening. The front of the property has buildings which also provides some screening from the road.
The fact that it's a deep, a long, narrow deep property, it allowed us to place the tower towards the rear, which would allow us to take advantage of the natural screening that was provided without having to take down or cut trees. It just made sense.
Q. In doing your search, were you able to identify the location of any existing towers in this vicinity that would serve the needs of Sprint?
A. No.
Q. In doing your search, were you able to identify

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any buildings that were tall enough in height to meet the needs of Sprint?
A. No.
Q. I believe there were some photographs that were introduced below that we discussed in the hearing below. I ask you to identify the two sets of exhibits. Below, they were identified as 7A through I and 8A through D.
Why don't we take what was below identified as 7A through I, and if you could just generally describe the photographs? I know there's photographs with descriptions underneath of the area.
A. Yes. 7A, this is --
Q. Well, just generally what the package describes. The Board doesn't have the photographs right in front of them.
A. These are just photographs of various sites in the area.
THE CHAIRMAN: Mr. Barhight, can we mark those as your exhibit, Petitioner's 5A through I?
MR. BARHIGHT: Yes, that would be fine.
THE CHAIRMAN: You will be laying a foundation

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before we go further?
MR. BARHIGHT: Yes. Thank you very much.
Q. I'm showing you what's been now labeled as Petitioner's Exhibit 5A through I, and ask you whether you're familiar with the areas that are depicted in each of those photographs?
A. Yes.
Q. In each of the cases, is there a description underneath the photograph that identifies the specific location from where the photograph was taken and what's depicted?
A. Yes.
Q. Are these photographs of the basic Back River Neck Road and the vicinity, looking at different properties in the general area?
A. That's correct.
Q. They are all labeled clearly with typewritten information at the bottom?
A. Yes.
MR. BARHIGHT: I'm not sure it would benefit the administration of the hearing to actually make you go

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through every single one of the photographs.
If it's okay with Deputy People's Counsel, because they are all labeled and speak for themselves, I like to go ahead and introduce these.
Q. One last question. Do each of these photographs fairly and accurately depict the areas as identified by the text underneath the photographs?
A. Yes.
MS. DEMILIO: I would like the witness to identify when they were taken.
Q. Do you know when these photographs were taken, approximately?
A. (No response.)
Q. Let me ask you, were they taken before or after the last Zoning Commissioner's hearing?
A. Before the first Commissioner's hearing, so that would have been sometime last spring, I believe.
MS. DEMILIO: Spring of 2002?
THE WITNESS: Two.
MR. BARHIGHT: One, because the order was in January.

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MS. DEMILIO: 2001. Can I just look?
MR. BARHIGHT: Absolutely.
MS. DEMILIO: I just wanted to glance and be sure there's not editorializing on the written part.
MR. BARHIGHT: I think it's just description.
MS. DEMILIO: If it's just description, then I have no objection.
MR. BARHIGHT: I think Ms. Demilio and I probably don't think we need to go through every single photograph.
MS. DEMILIO: Some of the things I would take exception to are words like "heavy forest area on both sides." I think that's subjective.
MR. BARHIGHT: Anything with a note like that, we offer be stricken from the notation. I think there's at least one of those.
THE CHAIRMAN: So noted.
MS. DEMILIO: I question when they say what the word "forest" means, but I would have no objection as long as what is stricken is anything that notes certain identification features.
But if the directions are left in, that's fine,

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in terms of identifying where the picture is looking into and where the photographer is standing.
THE CHAIRMAN: They are all for identification as far as direction, and any notations, we'll note any other comments as far as "heavily forested," et cetera, we'll give our own opinion.
MR. BARHIGHT: By example, the bottom photograph, Petitioner's Exhibit 5C, contains such a note which we would like to strike in compliance with the request, and also the bottom of photograph on Petitioner's 5H, and the top photograph on 5I, and if I'm missing any, the same would apply to strike those.
THE CHAIRMAN: You took these, correct?
THE WITNESS: Yes.
MR. BARHIGHT: Now, turning our attention to the next group of photographs, why don't we go head and have these marked for identification purposes as the next set of petitioner's exhibits, please.
THE CHAIRMAN: Petitioner's 6A through 6D.
Q. Those are, Mr. Fastnacht, generally of the site in question?

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A. Yes.
Q. The immediate area around the site in question?
A. Yes.
MR. BARHIGHT: After they are marked, we'll probably spend an extra moment or two on those, if that's okay.
Q. Mr. Fastnacht, I'm showing you what's been identified as Petitioner's Exhibits 6A through D, and I ask you to generally describe those photographs.
A. The first photograph --
Q. Not each one individually. Just generally, what are those four sets of pages of photographs of?
A. Okay. These are various photographs of the subject site from various angles, plus there's one photo of the community center and the emergency medic station which is directly across the street from the subject site.
Q. Did you take these photographs?
A. Yes.
Q. Were they taken the same time as the previous set of photographs?
A. No. They were taken before, I believe. These

were taken for the original submission to Sprint.
Q. Would that have been earlier the same year 2001?
A. Yes.
Q. And do these photographs all fairly and accurately depict the areas indicated by the typed submissions underneath the photographs?
A. Yes.
Q. I'd like to walk through these, if we can, with the Board. Mr. Fastnacht, could you please step down from the witness stand, and you will now have your back turned to the court reporter, so you need to speak up.
If you could, walk the Board through -- don't make any editorial comments about what they show in terms of heavy forest -- but just identify for the Board what each of those photographs are.
A. This is standing across the street from the site, looking directly at it. This is the set of buildings in front of the property.
THE CHAIRMAN: The top picture?
MR. WESTCOTT: 6A?
THE WITNESS: Yes.

Q. Go ahead.
A. This is basically from the same location and I just stand and look to the right of the property.
Q. The next exhibit?
A. The next exhibit --
THE CHAIRMAN: 6B?
THE WITNESS: Yes.
A. That's standing -- that's standing in front of the strip mall, the buildings at the site, looking south at the Medic Station. This is standing on the site looking directly across the street at the now demolished community center.
THE CHAIRMAN: That's 6B.
A. Referring now to 6C, this is standing where the tower was to be placed, looking towards the rear of the -- looking towards the property next door.
THE CHAIRMAN: When you say "next door?"
THE WITNESS: To the right.
THE CHAIRMAN: Which would be?
Q. Would that be to the north, Mr. Fastnacht? The top is north on the site plan.

A. Correct.
THE CHAIRMAN 6C, the bottom?
THE WITNESS: That's, again, looking at the tower location which shows the open area where the tower is to be constructed.
THE CHAIRMAN: Now we are at 6D, the top?
THE WITNESS: Yes. This is standing back where the tower would be constructed, looking towards the front of the property, or the back of the buildings on the front of the property.
A. This is standing --
Q. The bottom photograph?
A. That's standing at the site where the pole would be located, looking to the left.
Q. Or the south?
A. Or actually to the north.
Q. So you're looking towards Back River Neck Road?
A. Correct.
Q. And then to the left? The north?
A. Yes, to the north.
MR. BARHIGHT: Okay. I'd like to introduce those

as the next petitioner's exhibit.
THE CHAIRMAN: Petitioner's 6A through 6D.
MS. DEMILIO: I have no objection, but maybe I can ask him a question?
MR. BARHIGHT: Sure.
Q. (MS. DEMILIO) When you said standing at the site where the tower would be located, I presume the pictures were taken before the previous hearing? This is before the tower was moved about sixty feet?
A. Correct.
Q. (MR. BARHIGHT) Mr. Fastnacht, I understand since the time of the hearing, building permits were obtained, and that the tower itself, the monopole itself, has actually been erected on the site?
A. That is correct.
Q. When did that occur?
A. That actually occurred yesterday.
Q. Were there photographs taken yesterday as a result of that to give the Board further indication?
MR. BARHIGHT: Obviously, you all can drive out there, and I think we should talk about that at a later

moment, to see for yourself what they actually look like.
Q. But are there a series of photographs that I'm showing you now that actually show the tower on those photographs?
A. Yes.
Q. Did you or Mr. Jones take those photographs?
A. Mr. Jones took these.
Q. And they wre taken yesterday?
A. Yes.
Q. Do they fairly and accurately depict the areas identified?
A. Yes, because I actually went down there myself and saw it.
THE CHAIRMAN: That's 7A through D. Those were taken on the 24th?
THE WITNESS: Yes.
Q. Mr. Fastnacht, if I could ask you to take those in order, first say the number of the exhibit, and then just say what it's a photograph of, and where you're taking the picture from, what's in the view, without offering any editorial comment.

A. Okay.
THE CHAIRMAN: 7A.
A. 7A, this is a picture standing at the community -- on the property at the community center looking at the front of the buildings showing the tower in the rear.
Q. 7B?
A. 7B is standing in the front of the property looking towards the rear, also showing the monopole standing.
Q. 7C?
A. 7C is basically the same, taken from just a little different angle, also showing the tower.
Q. 7D?
A. 7D is taken behind the front row of buildings and the second building in the rear of the property looking over the second building, showing the tower sticking up above the building.
Q. I'd ask you to look at the site plan. Is that photograph taken in front of or on the Back River Neck Road side of the building labled existing one-story

masonry building (storage)?
A. Correct. That would be from right in here, looking back.
MR. BARHIGHT: The witness has indicated basically a position between two structures that are on the site plan. 7D is taken looking towards the rear of the property at a location between the two structures.
Q. Is that fair?
A. Yes.
THE CHAIRMAN: Referring to Petitioner's 3, or what?
MR. BARHIGHT: This has not been marked yet because we don't have the civil engineer up yet. If you want it labeled for identification purposes?
THE CHAIRMAN: Yes.
MR. BARHIGHT: For identification purposes, I'd like to identify the two-page exhibit, Petitioner's Exhibit 8A and 8B, as the revised site plan for the site. The first sheet actually contains the site plan view and some notes, and the second sheet contains some additional details showing the monopole elevation and other plan

views and details regarding the site.
Q. Mr. Fastnacht, you indicated those photographs were taken while you were present?
A. Yes.
Q. And that they fairly and accurately depict the area shown on the photograph?
A. That is correct.
MR. BARHIGHT: I'd like to introduce the next set of exhibits -- this is 7A through D.
MS. DEMILIO: No objection.
MR. BARHIGHT: One last photograph I want to walk through a little more slowly, because you will see in a moment why.
Q. Are you familiar with the location that this photograph was taken?
A. Yes.
Q. If you could, please, describe to the Board the location where this photograph or the photographer was standing, using, if possible, Exhibit 8A?
A. That photo would have been taken from right over here, looking towards the building in the rear.

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THE CHAIRMAN: The southeast corner?
THE WITNESS: I would say it would be the southeastern corner.
Q. The southeastern corner of the area below the southernmost portion of the front building, the existing one-story commercial building?
A. Yes.
Q. And that would be looking towards the rear of the site?
A. Correct.
Q. Is there a wooded area that obstructs your view of the monopole in that rea?
A. The woods start like right in this area.
Q. Are the woods that are shown in that photograph the woods that you're looking at from that area?
A Yes.
MR. BARHIGHT: I'd like to introduce that as the next petitioner's exhibit.
THE CHAIRMAN: Petitioner's No. 9.
MS. DEMILIO: No objection.
Q. You can go ahead and take the stand. One last

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question with Mr. Fastnacht. Mr. Fastnacht, as I understand it, the monopole that has been constructed is just a monopole?
A. That is correct.
Q. It does not contain any antenna whatsoever at the moment?
A. That is correct.
Q. I'm showing you what will be introduced, hopefully later, as Petitioner's Exhibit 8B. That shows a monopole elevation and it shows the proposed Sprint antenna and two future carriers located at different locations at the top end of the tower?
A. That's correct.
Q. Different elevations are shown for those?
A. Yes.
Q. What's the elevation shown for the top of the proposed Sprint antenna?
A. 117.4 feet.
Q. And what is the elevation of the top of the monopole itself?
A. The monopole itself is 115 feet.

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Q. So the photographs without the extra bit of height for the Sprint antenna and obviously without the array of the antenna, just to be clear about what those photographs depict, we are not trying to say that's the ultimate end view?
A. Yes.
MR. BARHIGHT: No further questions of this witness at this time. Thank you very much.
THE CHAIRMAN: Ms. Demilio.
MS. DEMILIO: Difficult yes.
CROSS EXAMINATION
BY MS. DEMILIO:
Q. Mr. Fastnacht, the gray circle that's marked on your Petitioner's 3, I believe --
A. Yes.
Q. -- are you saying that's the only area where the tower could be located?
A. That is the area that would give the optimum coverage in this area, that would provide Sprint with what their needs are.
Q. How far would the coverage go if the tower is

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located in this area in terms of miles, do you know that?
A. I'd prefer to defer to the next witness.
Q. That's fine. Now, when you said the property was a good site, or an ideal site, were you referring to the fact it was an open space located on a main road, is that what you consider an ideal site?
A. Well, the fact that it was a long narrow lot that had good access, and also was surrounded on three sides by thick vegetation, namely tall trees.
Q. So you didn't look at the zoning? You didn't have the zoning regulations with you?
A. No. I had looked -- I had done some preliminary investigation on what the zones -- you know, what zones were available in the area.
Q. When you talk about surrounded by trees, the trees are not located on the subject property?
A. No, but they ring the property, so to speak, on three sides.
Q. But there's no guarantee the trees will remain there, because they are not on the owner's property?
A. I believe they are in rural conservation

property, so they won't be cut.
Q. Now, what is the Baltimore County zoning requirement for setback distance for a tower from a road, do you know?
A. I believe it's 200 feet.
Q. So you need a long, narrow lot to have a tower located 200 feet from the road?
A. It's helpful. It eliminates --
Q. All right. But would any lot that was at least 200 feet from the road be satisfactory?
A. I can't say any lot would be. That's depending on what the zoning of the lot was.
Q. When you were at the site, what were the other uses on the site?
A. Well, there was, in front, there's a -- I guess you could refer to it as a strip mall. There is Free State, has their offices there. I believe there was a beauty salon at one of the properties.
I also believe there was a convenience store or a delicatessen. And then the building to the rear housed a motor repair -- boating repair shop.

Q. Were there boats located there?
A. There are boats on the property, yes.
Q. So would you consider those uses viable operating uses that were current uses? Operating people were using those different businesses that were on the site?
A. Yes.
Q. Now, in terms of satisfying the requirements for Sprint, could a tower be located on any position on this particular lot? Does it matter where it is on this lot as long as it's in that circle, is that correct?
A. We tried to take advantage of the tree coverage which provided us with some natural screening which, you know, you can see from. If you visit the site, you will see there is only maybe a two or 300 foot piece of the property where you drive by where you can actually see the tower.
Q. I'm sorry. I don't understand.
A. In other words, when driving down Back River Neck Road, you only see the tower when you're directly in front of the property.
Q. But from a technical point of view, it wouldn't

matter where on the site the tower was located? It still provides, from Sprint's view, the coverage that it would need for the tower?
A. I'd have to say yes.
Q. Now, does truck traffic or car traffic have any effect on the tower's efficiency?
A. No.
Q. None at all?
A. No.
Q. Doesn't matter, truck traffic or car traffic going by doesn't have any effect on the efficiency of the tower?
A. No.
Q. Now, do you actually construct the tower or is that another company that actually puts the tower up?
A. That's another company that does that.
Q. Are you familiar with designs of towers that may be available other than the monopole with the candelabra, as we call it, on top, the antenna?
A. Yes, I am familiar with them.
Q. What are some alternates?

A. Well, you have lattice towers.
Q. Have you ever worked with camouflaging the tower in another form as a flagpole or as tree?
A. I have where it was mandated by the board.
Q. By the zoning authority?
A. Yes.
Q. To hide the tower?
A. Yes.
Q. Was it Baltimore County?
A. No. These were in New Jersey.
Q. What design did those towers take?
A. A tree, tree form.
Q. Is it fair to say the height of the tower -- do you recall specifically that case? Were you involved in that case?
A. I didn't do the zoning. I just acquired the site.
Q. Was that site about the same height as this pole, do you recall?
A. It was probably closer to 140 or 150 feet.
Q. So the tower that was disguised as a tree was

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about 140 feet?
A. I believe so.
Q. So if so mandated, do you see any difficulty in disguising a 115 or a 117 foot pole as a tree?
A. Generally, tree poles are used where they are trying to -- where the carriers are trying to put a pole in a residential area. That's generally where they use them.
Q. Isn't it a fact that this area in your circle is surrounded by residential property? It's R.C. zone surrounding your ring there?
A. Well, it's surrounded by conservation, basically, trees, with the exception of a few houses where the owners didn't object to it.
Q. But are you aware of the fact R.C. zoning in Baltimore County is considered a residential zone?
A. Yes.
Q. Now, have you ever had occasion to see monopoles disguised as anything other than trees, such as a flagpole?
A. Yes, I have seen photos of them as flagpoles,

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yes.
Q. Would there be any reason if so mandated that a similar type camouflage such as a flagpole could not be located at this particular site?
A. Generally, a flagpole is used in a prominant location where you can display a flag and it looks appropriate.
I don't think in the rear of the property with, you know, snugged up against the treeline, would be an appropriate place to display a flag.
Q. You mean an American flag?
A. Yes. Also, you know --
Q. There's no -- as far as you know, there's no prohibition displaying an American flag on anyone's property?
A. No.
Q. On a wooded property, you can have your flagpole in a wooded area?
A. I guess so.
Q. Are you familiar with the term "transitional zone" when referring to wireless telecommunication

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facilities in Baltimore County? Do you know what that means, or you're not familiar with that?
A. No, I'm not familiar with that term.
Q. Could you tell the Board what the standards are to obtain a variance in Baltimore County, do you know?
A. We go to the Tower Review Committee. They determine the variances, if there's variances required, and they tell us what boards we have to go to.
Q. Do you know the legal requirements to obtain a variance?
A. No. That's handled by our attorneys.
Q. So you're not, when you look at a site, you have no way of knowing whether variances are needed or what is entailed in obtaining a variance, from your prospective?
A. No. I know what the setbacks would be.
Q. But when you look at a piece of property, you don't evaluate it in terms of minimizing the number of variances that are necessary?
A. No. We generally get -- the way Sprint does it is they get a zoning determination. They would get a zoning determination on the property.

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Q. That doesn't affect your job in looking for a site?
A. No.
Q. Mr. Fastnacht, has Sprint asked you to look for other search areas on the peninsula for a second tower to service this area?
A. No.
Q. Did I hear correctly that you don't know how far the coverage would carry for this particular tower if it were located at this site?
A. We have a witness who will testify to that.
Q. I just wanted to make that clear.
MS. DEMILIO: I have no further questions. Thank you.
THE CHAIRMAN: Mr. Barhight?
MR. BARAHIGHT: Yes. Thank you.
REDIRECT EXAMINATION
BY MR. BARHIGHT:
Q. How many different tree disguises -- if I can call it that -- tree disguised poles have you actually seen yourself?

A. Actually seen or been involved?
Q. Actually seen the structure after it's been erected.
A. Maybe a half a dozen.
Q. And could you please briefly describe -- I know we don't have a photograph, you don't have a photograph in front of you what they look like -- but can you briefly describe to the Board what these tree disguised monopoles -- they're all monopoles, not lattice?
A. Yes.
Q. -- what the tree disguised monopoles look like?
A. It's basically a monopole painted brown and tan, and it has tree branches at the top that are artificial branches that stick out from the side of the pole.
Q. And would they stick out from the side of the pole in a way that was intended to try and disguise the array of antenna?
A. Yes.
Q. Do they add additional massing, if you will, of what is viewed by the passerby?
A. Generally, it looks like a larger installation.

Q. I know you haven't studied this, you've only been asked the question a couple minutes ago, but do you have an opinion with regard to whether a tree disguised monopole would be appropriate at this location?
A. I don't think it would be any benefit to it. For one thing, it would be taller than the existing trees. It wouldn't shed its leaves in the wintertime. I don't see any real advantage to it at this location.
Q. Is it possible it could cause the viewer to be more aware of the facility, that it might draw more attention to the facility?
MS. DEMILIO: Objection. I think that's a little leading.
THE CHAIRMAN: Could you rephrase?
MR. BARHIGHT: Be happy to.
Q. What impact, if any, do you think a tree disguised tower at this location might have on the viewer's perception of the facility?
A. Well, for the short period of time that they would see it, it would probably stand out. Kind of stand out, be very noticeable.

MR. BARHIGHT: I have no other questions of this witness at this time.
MS. DEMILIO: I have one question.
RECROSS EXAMINATION
BY MS. DEMILIO:
Q. Are you saying the trees in the area you refer to as a disguise, the surrounding trees are decidious trees that would shed their leaves?
A. Yes.
Q. So the pictures you showed shows the leaves on the trees taken in the spring, I think you said?
A. Yes.
Q. Or the ones you took recent. But is it safe to say that once the leaves fall and until they are in full bloom again late in spring, they would be bare, all those trees?
A. Well, you still have the wood. You still have the tree there, the actual trunk, and the branches.
Q. But no leaves.
MS. DEMILIO: Okay. Thank you. I have nothing futher.

MR. BARHIGHT: Nothing further. Thank you very much.
MR. BARHIGHT: I'd like to call Mr. Khalil.
THE CHAIRMAN: How long do you think you will be with Mr. Khalil?
MR. BARHIGHT: I would think that the length of the witness would be somewhat similar to Mr. Fastnacht. I didn't look at my watch when we first put him on the stand. About forty-five minutes?
THE CHAIRMAN: Let's try to go forward.
MR. BARHIGHT: I call Mr. Khalil to the stand.
H A S S A N K H A L I L,
having been called as a witness, was duly sworn and testified as follows:
DIRECT EXAMINATION
BY MR. BARHIGHT:
Q. Could you please state your full name and business address, for the record.
A. My name is Hassan Khalil. K-h-a-l-i-l. My address is 6905 Rockledge Drive, Bethesda, Maryland 20817.
Q. Mr. Khalil, where are you employed?

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A. I am employed with Expert Wireless Solutions and I'm with Sprint PCS as a consultant. I've work in-house with Sprint and have been there over two years.
Q. What is the nature of your duties?
A. I'm a registered frequency design engineer.
Q. What is your educational background in this area?
A. I hold a Bachelor's degree in electrical engineering from George Mason University. That's a degree I have in wireless communication courses I attended.
Q. Could you please briefly explain to the Board the nature of your experience in RF design engineering?
A. I have worked in RF design engineering for over two years now specifically with Sprint PCS. I have been responsible for the last two and a half years for designing in the greater Baltimore area pretty much like Carroll County, Baltimore County, Harford County, Anne Arundel County and Howard County.
Q. What does "RF" mean?
A. Radio frequency.
Q. What is it in lay terms that an RF engineer does?
A. Well, pretty much our responsibility is to look

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at an area where the coverage, where a carrier such as Sprint needs coverage, evaluate the area, determine how many sites we can use to provide coverage in that area, issue search rings, and follow on the candidate and evaluate them and give our recommendation.
Q. Is it in the interest of Sprint in this case to minimize the proliferation of towers?
A. Absolutely.
Q. Does Sprint attempt to collate as many different carriers as possible on a facility?
A. Yes, they do.
Q. I'd like to show you a document that was introduced below, which I believe is your resume?
A. Yes. I have a more recent one.
Q. If you have have a more recent one, that would be wonderful. Mr. Khalil, I'm showing you your revised updated resume?
A. Briefly.
Q. Is there anything significantly different from the other resume?
A. No, I don't think so. I just looked over it

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quickly. I don't think I changed very much.
MR. BARHIGHT: I'd like to introduce Mr. Khalil's resume as the next petitioner's exhibit.
MS. DEMILIO: Objection.
THE CHAIRMAN: Petitioner's No. 10
Q. Mr. Khalil, have you testified previously as an expert in the field of radio frequency engineering?
A. Yes, I have.
MR. BARHIGHT: I'd like to offer Mr. Khalil as an expert in the field of radio frequency engineering design.
MS. DEMILIO: No objection.
THE CHAIRMAN: Accepted.
Q. Mr. Khalil, a couple quick background questions. Have you visited the site in question here today?
A. Yes.
Q. You're familiar with the search ring?
A. Yes.
Q. You're familiar with the general vicinity?
A. Yes.
Q. I understand that you're the gentleman who's currently responsible for the design of the expansion of

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the Sprint spectrum -- what should I call it?
A. I'm sorry. What's your question?
Q. What do you call the system that you work on?
A. Wireless system, I would say.
Q. So you're responsible for the Sprint wireless system?
A. Yes.
Q. Was there a point this time when it came to your attention there was a need for a facility in the general vicinity of the subject area?
A. Actually, in this specific area, the need was pretty much bought to the attention of Sprint even before I joined them.
So when I joined Sprint two and a half years ago, this search ring was pretty much been determined and they were already in the process of starting to look for a candidate in that area.
Q. I'd like to show you the next exhibit that was referenced below. I'm going to ask you to step down from the witness stand and ask you to identify the two page-document that you're helping me put on the board.

What is this drawing?
A. This is what we refer to as a propogation map. It's pretty much a simulation done by software to show the predicted coverage an this area.
Q. Do the little triangles with the "WA" number behind them indicate the location of a facility?
A. Yes.
Q. And do the colors in some coded fashion indicate the quality or the intensity of the coverage?
A. Yes.
Q. Could you please explain the colors to the Board and let them know in lay terms what's good and what's bad?
A. Basically, as the green color and yellow color is pretty close to the triangle, or the arrows, obviously, this is the best coverage you can get out of a site. The yellow is also fairly good coverage.
When it gets into the red area, where it's considered the signal starts to get weak. And then the blue and the pink is pretty much unreliable, no coverage.
Q. Could you please repeat what this bluish-purple is?

A. The bluish is unreliable coverage. Red is weak. The red area, if it's a clean environment, you will be able to make a call, but if it's an area like the Baltimore area, which in this case we are around Baltimore, it's unreliable again, because all the transmission is going around, so it's not clear.
Q. Can you make a phone call from to time in the areas that are identified as red?
A. Yes.
Q. How about in the area identified as bluish-purple?
A. It very -- I don't want to say you can't completely, but it's a very small percentage at a time that you can make a call.
Q. And the area that's the fleshtone pink?
A. Pink, no, not in this area.
Q. And the white?
A. The white, basically there's no coverage at all because the site did not reach that area.
Q. Are there any indications on this drawing that show the locations of any roads? For example, is Back River Neck Road identified?

A. Yes. The blue line here is showing, I believe, Route 702. And the white one here, that's Back River Neck. And they meet and continue as Back River Neck all the way down.
Q. Is the site marked in "X"?
A. This is the proposed site. The circle and the arrow point to it.
Q. Was the circle an attempt at the last hearing to approximate the location of the search ring?
A. Yes, that's correct.
Q. I believe you also made a mark further down?
A. This is Rocky Point, I believe. It's a golf course, if I'm not mistaken.
Q. What is on the second sheet?
A. The second sheet shows the same exact site that's on this sheet here, plus we added the proposed tower, or the proposed site along Back River Neck.
Q. What is the impact of the construction of this facility?
A. Well, definitely, it's going to carry the signal

down Route 702, turning into Back River Neck, approximately close to Rockey Point, which is the golf course.
MR. BARHIGHT: Going back to the first sheet, I'd like to mark this for identification purposes as the next petitioners exhibit.
THE CHAIRMAN: That would be Petitioner's No. 11. Do you want to mark this 11A and 11B? We'll make 11A the propogation map without the subject site coverage and 11B will be the propogation map with the potential coverage for the subject site.
Q. From the studies that are indicated on Exhibit 11A and 11B, with that information from that, would there have been the promulation of a search ring or a search map that would have been given to the site acquisition specialist?
A. Rephrase your question, please.
Q. Would Sprint, would its experts generate a site acquisition map, if you will, or a search ring, to give to the site acquisition specialist as a result of the information that you derived from your studies?

A. Yes.
Q. I'm now showing you a copy of what is Petitioner's Exhibit No. 3. Is that a copy of the site search ring that would have been given to the site acquisition specialist to locate a facility to meet the needs identified in the study?
A. Yes.
MR. BARHIGHT: I believe that's already been introduced into the record. With that, I'd also like to introduce into the record Petitioner's 11A and 11B, a study of the coverage for the area.
THE CHAIRMAN: Any objection?
MS. DEMILIO: No objection.
THE CHAIRMAN: Accepted.
Q. You can go ahead and take your seat.
A. Okay.
Q. Mr. Khalil, I'm showing you what was introduced below as an exhibit in the hearing and ask you to identify that for the record as well.
A. This is a copy of the FAA approval letter for this facility at the height requested.

MR. BARHIGHT: I'd like to introduce that as the next petitioner's exhibit.
MS. DEMILIO: No objection.
THE CHAIRMAN: Accepted. No. 12.
Q. Now, Mr. Khalil, you're familiar with the subject site and the earlier proposed location and the changes that would resolve the DEPRM comments and move the site sixty feet?
A. Yes.
Q. Do we still need to seek some kind of supplemental approval from the FAA to allow us to move it sixty feet?
A. We have submitted that already. Usually we do two kind of studies. One is preliminary that does study pretty the search ring itself.
Based on that, we should be fine, because the elevation on this particular property does not really change much at all. But we're required to file one since we moved it, so we filed that because the situation now, it takes four to six months to get results.
MS. DEMILIO: Four to six months?

THE WITNESS: Yes.
Q. So after DEPRM asked you to move the location the sixty feet, you felt it was necessary to seek confirmatory approval from the FAA?
A. Yes.
Q. But the original location which was sixty feet west was approved in this letter?
A. Yes, that's correct.
Q. One other further question. With regard to the FCC requirements regarding the emissions that come out of the antenna, are you familiar with the radio frequency patterns of emission?
A. To an extent.
Q. Are you familiar with the standards of the FCC with regard to this equipment?
A. To an extent yes.
Q. Do we meet those requirement?
A. Yes, we do.
MR. BARHIGHT: No other questions of the witness at this time.
THE CHAIRMAN: Your witness.

CROSS EXAMINATION
BY MS. DEMILIO:
Q. Mr. Khalil, on the FAA approval prior to applying for a new license because of moving the tower sixty feet, was your current approval in effect, or had it expired?
A. It was brought to my attention it had expired.
Q. So the earlier approval that you referred to is no longer in effect, even if you hadn't moved the tower sixty feet?
A. That would be correct.
Q. Now, when you have a key with the colors on Petitioner's 11A and 11B, I notice they are marked rural, rural, suburban suburban. Does that refer to population or --
A. Let me just say this is the tool that we use to produce these plots. It's called plan. It a tool that's been around for a long time. The key there started at the beginning of wireless system, so back then, these terms were accurate, let's say, they were useful.
But at the present time, especially in a place like Baltimore City, or any city pretty much, an extensive

amount of cellular towers or cellular antennas, and population which is mobile users, this key will have to change.

Unfortunately, again, the tool, this is the key in it, but the key -- now, we go by the signal level. If I may step down? The signal level which is referring to meg 94, this will be our break line.

Q. So we shouldn't be paying attention to the designations called rural rural, suburban suburan?

A. No, I --

Q. You don't think that's accurate?

A. Anything above meg 98, the signal will not be reliable. And anything above meg 100 we'll consider no coverage.

Q. So the colors then really refer to these numbers more so than your description of rural rural? That would still apply?

A. Yes, the numbers still apply.

Q. But when you look at the -- do you ever take into consideration the population of an area? For instance, you have your search ring here in the area you cover.

Would you not also look at the population?

A. Of course.

Q. Have you been to the site?

A. Yes.

Q. How would you describe the area covered by the search ring in terms of population?

A. Oh, I will definitely consider it urban. I'm sorry. Suburban. I would not consider it heavily.

Q. Would you say sparsely population? Is that fairly accurate, just using the term generically?

A. Yes.

Q. The area where you put want to put the tower then really doesn't have the greatest number of users than perhaps some other area?

A. Well, it's not only intended for the population. We do also traffic analysis to see how many cars use Back River Neck Road and Route 702 to go down south. And due to the fact there are several marinas in that area, these roads are heavily traveled and we have had a lot of complaints in this area.

And that's another drive for any carrier, when

they received a lot of complaints in a certain area, specifically an area which is very close to Baltimore City, definitely, they are going to have to serve their customers.

Q. Would you agree that probably the more heavily populated areas on this peninsula are the areas around the marinas and waterfront homes on the marinas are probably more dense than this particular location?

A. If you're looking at only homes, that will be probably correct. But, again, I mention covering the roads will be the primary objective for us.

Inside the homes, most people have their line but, traveling the roads, which in this case the main road in the peninsula is Back River Neck and 702 is our primary objective.

Q. What about people on boats, wouldn't that be significant?

A. Well, people on boats, usually a signal around in the water won't travel far. However, I don't want to say it's significant, but in this case, in some marinas, we're not going to reach, we don't have coverage.

Q. So even with this site, you're not going to reach some of the marinas?

A. Some of the marinas down this end with this site, no.

Q. That means Sprint is probably going to have ask for another tower to service those people?

A. I cannot answer to that at this moment. I know at this moment our plans for the year 2005, we are not planning anything.

Q. But it would make sense in terms of coverage?

A. Well, let me put it this way. Hypothetically, if Sprint sees the need, a tower that's needed, they will look for something.

However, I will assure you, since this is very close to the water, and knowing the design in this area very well since I designed this, there will not be a tower. It will be something very small, around fifty to forty feet, because it's very close to the water.

Q. Is that for aesthetic purposes, you mean?

A. No. That's how much we need to provide coverage for the marinas. Basically, since it's a very small area,

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that's one. Second, it's very close to the water. If Sprint is to look for something there, it will be a very small structure, a church steeple.

Q. Because there's less interference from the water?

A. No. The water will carry the signal.

Q. That's what I mean.

A. The water will carry the signal. So in this scenario, since we're only looking to cover marinas and surrounding area, we don't need to shoot up to, you know, excess height.

Another thing, this is much closer to the water. If you go high, it will cause interference on the other side where the land starts, where we don't want the signal disturbed because we have another tower.

So I am pretty much positive it will be something very small, if -- again, it's not on the plan, I know for sure, up to 2005 -- but if it comes in the future, it will be something very minimal, very small.

Q. So how could you answer for me how you relate the height of the tower to the area covered? Is there some quantitative way to measure that?

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A. Of course, the higher the tower, the bigger or larger the footprint of the coverage. I don't know if I am understanding your question exactly.

Q. So that -- let's just take, for example, on the subject site. You could put a smaller tower forty or fifty feet and it would cover less of an area?

A. Yes.

Q. But then you could put a second forty or fifty foot tower not too far from this one and, together, they may cover the area that you, in laymen's terms, that you hope to cover by a series of smaller towers as opposed to one larger tower?

A. Theoretically, if you're looking at a flat area, that's correct. But in this area, due to the trees and the high density of the trees, we have to clear the treeline.

Around the marina, again if memory is not failing me, there's not much trees around the marina. However, traveling south on Back River Neck, especially before you get to the airport, the trees are very heavy.

And in order for the site to be able to cover the

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roads, we'll have to clear the treeline, and the trees are -- I have not been there recently, but I think they are in the sixty and probably some cases seventy feet tall.

Q. How much taller does the tower need to be from --

A. It depends how far in the woods it is. The further in the woods it is, the higher it has to be. So, again, we can't really be right off the road.

Q. Let's just say you're on the edge of the woods, like this site where the woods are behind you and to the side of you. What's the minimum height of the tower?

A. We'll have to take it one spot at a time. Let's say we are at this point and there is some trees in front of us. The angle shooting towards this particular part of the road is going to be completely different than shooting in this direction, so it really varies.

I cannot say an exact height, but to come to a conclusion, I mean, ideally, if I have my way, I probably ask for higher, but I'm limited, because I know I'm not covering -- for example, like the golf course has marginal or weak coverage which is, again, an area which you'd like

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to cover.

However, we cannot meet that objective a hundred percent or where we feel comfortable with due to the fact FAA is limiting us to that height, and it's a minimum height that we can live with. For this search ring, it's pretty much the minimum height we can live with.

Q. Well, when you say you want the highest tower possible, that's just strictly --

A. No, no, no, I didn't say highest. In this particular situation, ideally speaking, the tower would be around 150 feet.

Q. But from an aesthetic point of view, there's nothing to --

A. Well, we have that problem. We have FAA issue. We have the fact that it's a peninsula, again. So that's pretty much the minimum height we can live with to cover this section of the road, and let's say to cover this peninsula up to -- if anything happens after 2005, I'm not sure -- but for that time, if this tower is to be built, this peninsula, Sprint would cover.

Q. But if I understand your testimony correctly,

you're saying if you were far enough removed from the trees, it's possible to have a series of smaller, shorter towers that would cover the area, but they would be more towers, but shorter?

A. There are going a lot more towers, yes.

Q. But shorter?

A. Much shorter. If you're talking below the treeline, then you're looking at -- again, this is theory, because you might be able to cover the main road, but you're not going to cover any secondary road where, if you get complaints, you have to go back. But this provides coverage on main roads along with secondary roads along the peninsula.

Q. Now, did you look at any other sites in this area?

A. Another location? To be honest, I think this was the most valuable candidate that I evaluated. There was nothing else.

Q. Is it fair to say this was the only location on the peninsula that you looked at to locate a tower?

A. To my knowledge, this is the only valuable

candidate submitted to me.

Q. Are you familiar with the Eastern Yacht Club?

A. No, I'm not.

Q. Have you ever done any work for Sprint or any other company in Albamar County, Virginia?

A. No.

Q. Are you familiar with the requirement in that county that towers have to be within a stand of trees and can rise no more above, say, two feet or so above the tree level, are you familiar with those type of towers?

A. I have not worked in Virginia at all. I know one of my colleagues was working in Faulker County where their towers are required to be eighty feet, and this situation, again, more towers are needed.

Second, the coverage that Sprint will provide there will be pretty much based on primary roads, so on, so forth, but I have not again worked in that county, so I'm not familiar with that, but that's what I heard from my colleague.

Q. Sprint will try to accommodate the local laws in particular areas if they have certain restrictions or

certain preferances as to how to design or locate the towers?

A. Of course. We don't have a choice.

Q. Are you familiar with the towers that are camouflaged as trees or flagpoles?

A. Flagpoles, I have seen a couple in this area. Trees, I have seen only one, again in New Jersey, Garden State Parkway.

Q. What is the flagpole in this area?

A. There is a flagpole -- I believe it's owned by AT&T -- if you do down York Road probably a few miles down in a shopping center on the left-hand side, going south to the city.

Q. I know that's a competitor, but can we say it works, the flagpole?

A. In certain situations, you have no choice, you have to use a flagpole. We have used lightpoles in the same shopping center. As a matter of fact, Sprint has constructed a lightpole.

Q. In a shopping center on York Road?

A. Yes, that same shopping center because, see,

that's where the problem comes. AT&T could not accommodate more carriers on the flagpole.

Flagpoles have drawbacks. Number one, we are limited to how we can monitor or control our signal because we don't have much access to antennas, which is, I guess, not anybody's problem but ours, but the second problem, the main problem, is accommodating more carriers Flagpoles do not provide flexibility like a monopole.

Q. But they can accommodate more than one?

A. Yes, depending on the site. Let's put it this way, if I may? Like the flagpole for AT&T, 120 -- if I'm not mistaken -- a 120 foot flagpole, and there is, to my knowledge, only AT&T on it.

Q. How high is the lightpole, do you know?

A. Eighty.

Q. On this Petitioner's 11B, you show this is a prospective of what area would be covered based on your --

A. Yes.

Q. -- reach, if the tower were constructed. You have marked here, site?

A. That's the proposed site.

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Q. So can you tell me in miles the distance of these colors?
A. I will try. The distance between this site which is the proposed site and going northwest, that would be to the site here, is approximately two and a half miles.
Q. Another tower?
A. Yes, that's already existing. Going south, the coverage that we're pretty much relying on, is about, I would say, a mile. And then the weak marginal red one is about, I would say, half a mile.
Q. There's a green and yellow would be a mile?
A. That's reliable coverage.
Q. And the red would be about half a mile?
A. Approximately.
Q. That's in all directions?
A. In all directions?
Q. A circle?
A. Well, in some areas, a circle. But, for instance, going this way, no, that's not the case. We don't have any antannas pointing this direction.
Pointing this direction, I would say that would

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apply, except for here is the water, so you can see the signal stretching further. That's water.
MS. DEMILIO: I just have one further question. If Mr. Barhight has no objection, I have the one thousand scale map. Is that all right?
MR. BARHIGHT: Yes.
Q. The subject site is marked in yellow, M.L. site for this hearing. I mentioned to you the Eastern Yacht Clov over here on Turkey Point --
A. Yes --
MR. WESCOTT: We can't hear you. You're mumbling to each other.
MS. DEMILIO: I'm sorry.
Q. The subject site is highlighted in yellow marked M.L. on Back River Neck Road, and on Turkey Point there's a B.L. zone which is the site of the Eastern Yacht Club, and I wanted to ask the witness if he could determine whether a tower located at that site would cover basically the same area as the proposed site on Mr. Jones' property?
And this, as I understand it, there's approximately a mile and a half distance as the crow flies

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between the Eastern Yacht Club and the subject site, with some water in there?
A. I will have to say no, it will not.
Q. Why is that?
A. Simple matter. The further away -- it might cover a small portion of Back River Neck Road, but connected to our site, which is up here, it's not going to make it. We have to come back and look for something here. That's one thing.
Again, the same applies going south. The second scenario, this is very close to the water, so if we could put it on a 110 foot pole, due to the fact that there's a big body of water, its signal will stretch to all this area, which can cause a lot of of interference in this area. So definitely that would not be an option as far as covering this search ring.
Q. But these could cover the area, the Turkey Point peninsula, to some extent?
A. If you're referring to this as Turkey Point, to some extent, probably, yes. I have not done the evaluation so I cannot tell you what kind of height to

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cover the whole peninsula, but, theoretically, yes, you can put something there and cover part of the peninsula.
MS. DEMILIO: For the record, Mr. Khalil was referring to the 1000 scale zoning map for Baltimore County and has identified the site on it, so I think his testimony will suffice and we don't need to put the map in at this time. Thank you. I have no further questions. Thank you.
MR. BARHIGHT: A couple quick questions to make sure the Board understands.
REDIRECT EXAMINATION
BY MR. BARHIGHT:
Q. Mr. Khalil, what is the relationshp from one site to another? Why do you care where other sites are located within your system?
A. Well, for the system to operate, the site, or the footprint of the coverage of the site, will have to overlap to an extent with the next tower, and so on, so forth.
Q. Why does it have to overlap?
A. Well, let's say you initiate a call up on route

702 traveling south. That site will carry the call as long as you're within the coverage area of that particular site.

When you get to the border, the signal starts getting weaker. The mobile will have to hand to the second site, serving that area. Again, so on, so forth. Everytime the mobile gets to a border, it hands onto the next site, as passing something to you and you pass to the person next to you, and so on.

Q. So the person who was driving from Towson to this location in Baltimore County, they might go through a series of cell sites and be handed off from one tower to another as they move through that geographic area?

A. Definitely, yes.

Q. One other quick question. Are you familiar with the work of the Tower Review Committee with regard to this site?

A. Yes, I am.

Q. Is this the report of the Tower Review Committee with regard to the specific location?

A. Yes, I believe it is.

MR. BARHIGHT: I think you have got a copy there, it was already a part of the record, but I'd like to identify it as an actual petitioner's exhibit and give it an individual number.

This is a memorandum dated April 25, 2001, from the Tower Review Committee. It speaks for itself.

THE CHAIRMAN: Petitioner's 13.

MR. BARHIGHT: Thank you.

Q. One another question just to clarify something. I'm not sure I completely understood you. I apologize if I'm asking a question the Board already grasps the answer to.

You were asked some questions about the lowering of the existing proposed facility in height. Can you please explain again -- if you have already done so, I apologize -- explain what the impact would be of making the tower shorter at the exact location proposed?

A. Well, making it shorter, again, a lot shorter, it will not clear the treeline. Then I would say the only coverage would be so limited that it would cover in front of the boat dealership and that trees will limit the

coverage going south and north due to, again, if the tower is lower than the treeline.

If it is still higher than the treeline, it depends how much higher. If only ten feet higher, it's going to cover a little bit more. I can't really say exactly what without knowing the height we are talking about.

Q. What is the minimum height needed to meet the needs of the Sprint requirements to service the customers in this area?

A. Well, I would have to say that we have to live with 115 feet. I would like to see more, as I said earlier, but that's the minimum based on this specific situation. Because its a special case, that's the minimum we can live with. We have evaluated, again with restrictions, other heights, and it just does not fit.

MR. BARHIGHT: No other questions of this witness,

MS. DEMILIO: Nothing further.

THE CHAIRMAN: You may be excused. I think at this time I would like for the Court to take a lunch

recess, and we'll return return at quarter after one.

(A luncheon recess was taken.)

* * * * *

AFTERNOON SESSION

* * * * *

THE CHAIRMAN: Mr. Barhight?

MR. BARHIGHT: We're back on the record after our lunch break. This is a document that is in the record of the proceedings having been introduced below that I wanted to mark so if there's an appeal we can refer to it with specificity. Oh, it's already in. This was marked Petitioner's No. 9.

What was marked below as Petitioner's No. 9, a memorandum dated December 16, 1998, from Karin Brown to Pat Keller, I would like to give this an actual number so in the event there is an appeal, there is an easier way to refer to it. I have looked through the other exhibits.

THE CHAIRMAN: Off the record.

(Discussion held off the record.)

THE CHAIRMAN: We'll make this Petitioner's No. 14, a December 16, 1998 memorandum from Karin Brown to Pat

keller.

MR. BARHIGHT: I'd like to call Ms. Kiernan to the stand.

MARIANNE KIERNAN,

having been called as a witness, was duly sworn, and testified as follows:

DIRECT EXAMINATION

BY MR. BARHIGHT:

Q. Can you please state your full name and spell your last name, and give your business address?

A. My name is Marianne Kiernan -- K-i-e-r-n-a-n -- with KCI Technology, located at 14502 Green View Drive, Suite 424, Laurel, Maryland 20708.

Q. I assume you're employed at KCI?

A. Yes.

Q. What are your duties there?

A. I am a civil engineer. I am a Division Chief for KCI's Laurel office and also project manager for telecommunication projects.

Q. Are you a licensed professional engineer in the State of Maryland?

A. Yes, I am.

Q. Do you have a resume that identifies your educational background and business experience, work experience?

A. Yes, I do. That's it.

MR. BARHIGHT: I'd like to introduce this as the next petitioners exhibit. I have given copies to Ms. Demilio.

THE CHAIRMAN: Petitioner's No. 15, Marianne Kiernan's CV.

Q. Focusing on your activities for KCI in the last couple years, can you please describe the nature of the work you do for the telecommunication industry?

A. I am involved in the planning and design of telecommunication facilities for various carriers within the Baltimore/Washington D.C/Virginia area.

I supervise all levels of engineering including planning, zoning, and design. I was personally involved in the planning and design aspects of this particular site for my client Sprint.

Q. Have you, in the work that you do for the

telecommunication industry, does that work include sites for a variety of carriers within Baltimore County?

A. Yes, it does.

Q. So you have worked before on Baltimore County sites dealing with development regulations, zoning regulations, et cetera?

A. Yes, I have.

Q. As well as, I guess, the environmental regulations which have touched on this project in the interim to a degree as well?

A. Yes.

MR. BARHIGHT: I would like to offer Ms. Kearnan as an expert in the field of civil engineering, planning and zoning.

THE CHAIRMAN: Any comment?

MS. DEMILIO: Let me have a few questions in the area of planning and zoning.

Q. (MS. DEMILIO) What course work did you take, if any, with planning and zoning?

A. In planning and zoning, I have a Bachelor's degree in civil engineering, and it was a general degree

from Villa Nova University. As far as planning and zoning aspects, those are related to my specific experience working for KCI Technologies on various projects within Baltimore County.

Q. You have no educational background in planning and zoning? You don't have a degree in land planning?

A. I do not.

Q. Have you testified before as an expert in planning and zoning in Baltimore County?

A. Yes, I have.

Q. Where was that?

A. That was on the prior case for this specific site in December of 2001, for this case in front of the Zoning Commissioner.

Q. That is the only time you have testified in Baltimore County?

A. Yes.

Q. Have you testified in any other jurisdictions as an expert in planning and zoning?

A. In Montgomery County, I have testified on behalf of AT&T Wireless. On two separate cases in Anne Arundel

County as well.
Q. Other than your engineering degree, have you taken any supplemental courses or advanced planning courses, or have you taken any other courses other than after you received your engineering degree from Villa Nova in planning and zoning, from another institution?
A. No.
Q. This is the only time that you have worked on the Baltimore County zoning regulations, the first time?
A. On this particular case?
Q. No. With the Baltimore County zoning regulations, have you worked with the zoning regulations on any other case?
A. Yes.
Q. In Baltimore County?
A. Yes.
Q. How many? If you know.
A. I have been working -- I have been involved in the planning and design of over fifty cell sites in the Baltimore County area for various carriers.
Q. But with your engineering background? You mean

for engineering purposes?
A. Engineering, and also in the development of zoning plans and planning for sites.
Q. What do you mean by that, planning for sites?
THE CHAIRMAN: Ms. Demilo, please speak up.
Q. You mean land planning?
A. Yes.
MS. DEMILIO: I have no objection to Ms. Kierman as an expert engineer, but I don't believe she's established the necessary criteria to be expert land planner for zoning and to discuss zoning and planning.
Is she wants to speak to the engineering aspects of this plan, I have no objection, I think she's qualified in that regard, but I do object as an expert in planning and zoning.
THE CHAIRMAN: Mr. Barhight?
MR. BARHIGHT: Very briefly, she's indicated she's worked on fifty different cell sites in Baltimore County dealing with planning and zoning aspects of those sites.
Ms. Kierman was qualified and accepted as an

expert witness in this very county before the Baltimore County Zoning Commissioner on exactly those requested criteria.
She's also been accepted as expert witness in two other jurisdictions under those same criteria, in Montgomery County and Anne Arundel County. The good fortune for Ms. Kiernan, she's not one of those, quote, professional witnesses that spend their entire time on the witness stand.
She's been able to spend a lot more of her time back in the office doing the planning necessary and zoning analysis necessary to do the work that she has performed.
The mere fact that she's only been identified and accepted as an expert witness once before in Baltimore County in this area, and twice before in Montgomery County -- and I don't think she give a number in Anne Arundel County -- should not mean that she's not qualified here today.
I think the Board is also aware that as part of the requirements of a civil engineer in the State of Maryland, that under the statute, the activities of

planning and zoning are indicated as activities that are relevant to the licensure of a civil engineer. I don't believe I'm mistaken about that.
MS. DEMILIO: Those qualifications fall under her expertise as an engineer. I don't think she's qualified to give an opinion as to whether or not a specific plan conforms to the zoning regulations of Baltimore County or the interpretation of the zoning regulations of Baltimore County.
It's true, I agree, an engineer would have to work within the context of the zoning regulations in terms of following them, but I don't think that makes her an expert to give an opinion on the interpretation of the zoning regulations in this case. Specifically, it would be the variance issue, and I don't see where she has that expertise.
I have no problem with her testifying as an engineer and saying these are the setback regulations, this is what we're asking for, that's a factual matter.
But if she's being offered to give expert testimony on interpretation of the zoning regulations, I

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don't believe that she's met those qualifications, although, certainly, she's qualified as an engineer to discuss the plan.

I think that's different than given an opinion to the interpretation of the regulations.

MR. BARHIGHT: Let me clarify that. I'm not sure that any of the questions that I'm going to ask her really go to interpretations of the zoning regulations. We're going to take the zoning regulations at their face value.

I am going to ask the questions that are required by the zoning regulations for a variance. So I don't want to misrepresent she's going to be interpreting in some way the zoning regulations. We are taking them at face value.

THE CHAIRMAN: We're not going to take her as an expert witness for zoning matters.

MR. BARHIGHT: I don't see why not. She's been qualified before the Zoning Commissioner before. She's been qualified in Montgomery County and Anne Arundel County for those same criteria.

Ms. Kierman is a civil engineer and regularly practices in the area of planning and zoning in this

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state, certainly in Baltimore County.

She's worked on at least fifty different matters for cell sites and analyzed zoning requirents in each of those cases. She has the requisite experience as well as she has been identified and accepted as an expert witness in three jurisdictions, including Baltimore County.

I'd be a little surprised if you wouldn't afford her the respect necessary and due her for her experience.

THE CHAIRMAN: Give us one second.

(Discussion at Bench off the record.)

THE CHAIRMAN: The Board is going to accept her as an expert based on her CV, and if there's any questions, Ms. Demilio, you can cross-examine her.

Q. A couple of site specific questions to lead off. Have you had an opportunity to visit the site?

A. Yes.

Q. You're familiar with the site plan that has been prepared and previously submitted to the Zoning Commissioner?

A. Yes.

Q. You testified in front of the Zoning Commissioner

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on this case?

A. Yes, I did.

Q. Did you supervise the creation of the amended site plan which has been marked for identification purposes in this case as Petitioner's Exhibit 8A and 8B?

A. Yes.

Q. Directing your attention a little more closely to the Exhibit 8A and 8B, you're familiar with all the notations on those plans and supervised the creation of those plans?

A. Yes.

MR. BARHIGHT: I'd like to introduce those now as actual exhibits. I think the notes indicte they were previously for identification purposes only?

THE CHAIRMAN: That's correct. Do you have those specific numbers?

MR. BARHIGHT: 8A and 8B, is how they were previously identified, I believe.

THE CHAIRMAN: So accepted.

Q. I'd like for you to do this either from your chair or you can step down, whatever you think is most

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efficient. Could you please identify the existing structures on the property and discuss the zoning of the site itself as well?

A. The property is located to the west of Back River Neck Road just south of intersection of Back River Neck Road and Pottery Farm Road.

The site is zoned M.L. It's approximately four acres in size. It's a long, rectangular parcel. It is primarily graveled and an open site. There are two structures located on the front of the property. They are used for commercial uses and storage facilities.

The site itself is surrounded by woodland area on the southern boundary, the western boundary, and the northern boundary as well.

Q. One of the exhibits that has already been introduced as -- this one didn't get marked. It's a copy of the search area.

THE CHAIRMAN: I believe that was three.

Q. If you've already got it, this is just a copy, and will mark it as three. Are you familiar with the Baltimore County zoning maps for this area?

A. Yes.
Q. Exhibit No. 3 has overlaid on it the search area map. Are you familiar with that exhibit as well?
A. Yes.
Q. Does that exhibit fairly depict the existing zoning for the site as well as the vicinity property?
A. Yes.
Q. If you could step down, briefly, and explain to the Board the nature of the zoning up and down this general vicinity on both the east side and west side of Back River Neck Road?
A. The subject property is located in this vicinity on this exhibit. It's zoned M.L. It is immediately surrounded by R.C. 20 zoned property. On the northern boundary, there are two different zones that bound the northern property of the subject parcel.
MR. WESCOTT: Excuse me. Are they marked on that?
MR. BARHIGHT: When you say "that"?
MR. WESCOTT: The copies?
MR. BARHIGHT: Yes, they are.

A. The R.C. 20. The M.L. zone is the subject property. On the northern boundary, D.R. 3.5. On the northern boundary of the property and just adjacent to Back River Neck Road is a B.L. zone. The extent of the R.C. 20 zone extends north through the search ring area. To the northern edge of the search ring area is zoned D.R. 3.5 as shown on the exhibit.
There's another zoned property zoned as B.M. Another zoned parcel area B.L. in the northern part of the search ring. On the east side of Back River Neck Road and 702, it's primarily zoned R.C. 2 which extends south past the subject site to a D.R. 3.5 zone and M.L. zoned property, C.B. zoned property, and on the southern tip is D.R. 3.5 once again. The very southern portion of the search ring is a small area that's R.C. 5.
Q. Directing your attention still to Exhibit No. 3, it depicts a large area as wooded as well as an area called Muddy Gut which is an inlet, as well as areas of wetland and streams.
I know you haven't surveyed the exact location of these areas, but do they generally depict the natural features accurately that are actually out in the system?
A. Yes, they do.
Q. The other thing that this map does, it shows an indentation, if you will, of a cleared area which is approximately the same size and shape as the subject site which is surrounded to a degree by the woods in a U-shape. Is that basically the same as what you would see if you walked out to the site?
A. Yes.
Q. I know you haven't located exactly the treeline, but as a general notion, do you know approximately where the treeline is?
A. Yes. We have actually surveyed the existing treeline surrounding that immediate property, our subject site.
Q. Where, generally, is that treeline?
A. It generally follows the line depicted on this exhibit.
Q. Directing your attention back to the exhibit 8A, let's talk in more detail about the actual proposal that's depicted on the Exhibit 8A for the subject monopole and

equipment cabinets that will be added to this facility.
If you could direct the Board's attention to that part of the site and what's proposed today, and then I'll come back later and we'll talk about how it evolved from the Zoning Commissioner's hearing.
A. Certainly. As it's shown on the site plan previously submitted as an exhibit, the proposed facility is located in the southwestern corner of the subject parcel in this vicinity right here.
It is centrally located in the open gravel area of the property. The existing treeline is depicted on the site plan and it follows the southern boundary of the property and actually comes through the northern portion of the property, so there are some existing trees in the northwest corner of the property.
Basically, the site itself is surrounded by woodland on primarily three sides. The proposed compound is essentially located in the open gravel area of the property.
Q. So this sort of squiggly line, upside down "U," if you will, continuous "U's," that identifies the

location of the treeline you actually surveyed on the property and just off the property?

A. Yes.

Q. There's another depiction here, some other lines that I'm not going to pretend to know what they are, but if you could explain to the Board, what are these different lines here within the wooded area to the western portion of the property? What do those depict?

A. Those lines show the topography throughout the sites. The contours pick up the natural gradient of the site. Through the front to rear portion, it's basically a flat site, well graveled. As you get to the rear of the portion, there's a swale, or a ditch, that runs along the northwestern corner of the property.

Eventually, that ditch runs into the Muddy Gut tributary.

Q. The Muddy Gut being the area shown on Exhibit No. 3, all the way over to the west of the search area?

A. Yes.

Q. There's a little designation on that exhibit within the search area of a stream. I assume you're

saying that where you locate the ditch continues on in a westerly fashion until it connects up to the stream depicted on Exhibit 3 which then goes into the wetland area and then the Gut?

A. Yes.

Q. So there's basically a stream or a ditch that goes from the rear of our property all the way over to Muddy Gut?

A. Yes.

Q. Now, when the petition was first filed, I will offer up, but I don't get to testify, that the site of the monopole was sixty feet closer to the western boundary of the property line, is that correct?

A. Yes, it was.

Q. So if one were to look at the site plan that was filed below, this would have been sixty feet closer to the rear property line?

A. Yes, it was.

Q. Could you please explain to the Board what happened after an order was signed by the Zoning Commissioner granting the variances that caused the site

to be moved?

A. When the time came that Sprint was able to file for a building permit at risk, Sprint decided to do so.

We submitted the plans for building permit. They went through Baltimore County for review. As part of that review, DEPRM issued a letter indicating that they preferred the site to be located further from that western property line to protect the existing swale that was located towards the rear of the property.

They wanted Sprint to move the compound sixty feet closer to Back River Neck Road to protect that area. As a result of that comment, Sprint agreed to move the site.

Q. As a result of that comment, was there also a spirit and intent letter that was obtained from the zoning office to confirm that the zoning office felt that it was appropriate to move the site and to reduce the variance requested and grant it by sixty feet?

A. Yes.

Q. Was there also as part of the building permit approval process an inquiry made of Lynn Lanham in the

Office of Planning as a response to the condition imposed by the Zoning Commissioner that the Office of Planning be consulted with regard to a landscaping plan?

A. Yes.

Q. Did Ms. Lanham indicate that no landscaping would be required?

A. Yes.

Q. I'm going to show you in turn each of these exhibits. The first one is a letter dated May 7, 2002, from Keith Kelly of the Environmental Impact Review Division of DEPRM, to Mr. Buck Jones.

Is that the letter that indicates their desire to have us relocate the compound, if you will, because of an existing stream they identified?

A. Yes, that's the letter.

MR. BARHIGHT: I like to make this be the next petitioners exhibit. There's three copies.

THE CHAIRMAN: This should be Petitioner's 16.

Q The next one that occurred in time was a letter dated July 15 from Mr. Jones to the Department of Planning that bears a signature at the bottom of Ms. Lanham, dated

July 24, '02, confirming the waiver of any landscaping requirement that would be imposed by the Office of Planning consistent with that order. Is that a copy of that letter?

A. Yes.

MR. BARHIGHT: I wold like to introduce this as the next exhibit before the Board.

THE CHAIRMAN: Petitioner's No. 17 is admitted.

Q. Is this a copy of a letter from Mr. Merry confirming the movement of the tower sixty feet was determined to be within the spirit and intent of the original order?

A. Yes, it is.

MR. BARHIGHT: I would like to offer this as the next petitioner's number.

THE CHAIRMAN: Petitioner's Exhibit No. 18.

Q. One of the questions - changing subject matter completely for a moment -- one of the questions that always seems to come up in these cases, what happens if the tower is to fall, and what is the fall area, or the fall line?

I'd like to direct your attention to Exhibit 8B that contains detail of the monopole elevation. Obviously, you're familiar with those numbers and details?

A. Yes, I am.

Q. Are you familiar with the actual monopole that's been erected at this location?

A. Yes. I visited the site yesterday and saw the tower erected.

Q. How does an engineer determine the fall zone or fall area for a monopole of this characterteristic? Is there a way to predict the area in which it would fall?

A. Yes.

Q. Does it fall like a pencil, or fall some other way?

A. It's designed to fall upon itself. It will not fall like a pencil. The monopole is constructed in sections.

The monopole would be designed that should a catastrophic event occur where the wind velocity exceeds Baltimore County code for this particular structure, the monopole would fail in sections.

Hence, the monople would crumple upon itself in a fall zone, or an area, circling the base of the tower that is far less than the actual tower height.

Q. Is there a percentage area that you're aware of that is coincident or equals the area that it would fall within for this particular monopole?

A. For this particular monople, the fall zone is about sixty percent of the tower height.

Q. How does that work out in computation if the tower height is 115 with a little extra on top, 117.4 with the antenna, how does the sixty percent figure work out in natural distance?

A. The distance is somewhere around sixty-five feet, which is far less than the setback from the southern property line of seventy-five feet, so should the structure fail, the fall zone is entirely located within the subject property.

Q. So looking at Exhibit 8A then, the setback that we've identified for the southern property line is dimensioned out to be seventy-five feet from the center of the monopole to the closest property line?

A. Yes.

Q. It's 135 feet to the west, and 148 feet to the north?

A. Yes.

Q. All within the fall zone?

A. Yes.

Q. Could you please describe in a little bit more detail what the tower will actually look like? I know we have a photograph, it's only a digital photograph just to give the Board a sense of what it generally looks, but could you please describe the monopole in a little more detail? Feel free to use the elevation drawing that's shown on Exhibit 8B.

A. The monople is graphically depicted on the monopole elevation on this particular exhibit. The structure is supported by a concrete foundation which is typically six to seven feet in diameter, extends into the ground about thirty-five feet deep, concrete cassons existing in the ground.

The steel structure is mounted to that casson. The stucture is comprised of twenty foot steel sections.

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The section at the base of the tower is the largest, ranges from five to six feet in diameter. The twenty foot sections are stacked one on top of the other until it reaches the full structure height of approximately 115 feet.

At the top of the structure, it's approximately twelve to eighteen inches in diameter. On the steel monopole structure, an array or steel platform is mounted onto the structure, and the antennas are attached to that platform.

Typically, in this particular instance, actually, the antennas that Sprint proposes to place on the platform will bring the full structure height to 117.4 feet above ground.

Q. Now, this monopole elevation indicates proposed Sprint antenna at the top. Is that where Sprint is going to put its array?

A. Yes.

Q. And then future carriers at the bottom. Why is there a provision made for future carriers on the monopole?

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A. As part of the Baltimore County Code, the monopole needs to be designed for three -- a minimum of three carriers.

Sprint has ordered the structure to be designed for three carriers, and they're depicted on the plan. Those carriers would be located approximately, one, approximately ten feet below the Sprint array; the second, approximately ten feet below that array, so it's design to accommodate three carriers.

Q. Is there any information here on Exhibit 8B that relates further to the equipment panel as it might give the Board a further sense of what the panels look like? Is this isometric view a view of the panels?

A. Yes. The isometric is a view of the equipment panels or equipment cabinets. At the base of the structure -- there's a compound detail located on this exhibit. The monopole is located in this corner. At the base of the monopole will be a concrete pad, and on that concrete pad will be five Sprint equipment cabinets. They range from twenty-two to thirty inches in width and depth, and they're typically five feet in height.

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Q. What will actually be within those cabinets?

A. The radio frequency equipment that will transport signals to the co-axial cables which are then routed up through the structure itself and connected to the antenna.

Q. I notice there are two different rectangular areas within the compound detail labled future carriers. In the event that future carriers did come onto the site, is that where they would put their concrete pads with the equipment panels?

A. The compound detail demonstrates that the fifty-by-fifty gravel area at the base of the structure is large enough to accommodate two additional carriers, which would meet the Baltimore County Code, demonstrating that three carriers could locate on this structure.

THE CHAIRMAN: This is all in reference to Petitioner's exhibit 8B?

MR. BARHIGHT: Yes, 8B. Thank you.

Q. Either from your seat, or if you need to step down to answer the next set of questions, there's already been conversation with regard to the variances requested, but no one has actually pointed them out, if you will, to

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the Board in detail.

Could you please describe to the Board with specificity the three variances that relate to the monopole for the site?

A. Yes. As required by the code, a 200 foot setback is required for a monopole structure. That's based on the residential zoning that surrounds this M.L. parcel. This particular case is seeking a variance to the 200 foot setback.

The setback from the southern property line is seventy-five feet. The setback from the western property line is 135 feet. The setback from the northern property line is 148 feet.

Q. As I indicated previously, there are two variances being requested with regard to the equipment cabinets. Assuming for the moment they are identified as buildings by the Board of Appeals, could you please describe to the Board those variances that are requested?

A. Yes. The required setback is 125 feet, but what we are seeking is a setback of forty feet from the southern property line and 100 feet from the western

property line.

Q. Now, some of the witnesses earlier in the day indicated that there was a desire to move the compound as far west as possible for a variety of reasons.

Is it possible to move this compound any further to the rear of the property, or is that as close to the environmentally sensitive area as possible?

A. That's as close to the environmentally sensitive area as possible, and it would not be possible to move it further to the back.

It would be in conflict with the request from DEPRM to maintain a hundred foot from what DEPRM has identified as the existing stream in the back of the property.

Q. One of the other items that was mentioned was to keep the monopole not only away from Back River Neck Road and tucked into the trees, but try to keep it away from the two residents that exist on the site. Are there two existing dwellings as shown in the vicinity?

A. Yes.

Q. On the the other side of Luciano Drive?

A. Yes, two residential dwellings.

Q. How much closer, if at all, could the compound be moved in a southerly direction to continue to try to get it away from the two existing dwellings and the rest of the residentially zoned properties to the north? How did you determine the distance from the southern property line to the compound?

A. We set that distance based on the fall zone criteria that I identified before. Basically, technically, we wanted to keep the fall zone on the subject property.

And placing the tower seventy-five feet from that southern property line, we are within the fall zone criteria, and it would not affect any adjoining property, and that's basically how we set the setback on the southern property.

Q. The next question I'd like to ask relates to the unique or unusual situation regarding the property. Could you please explain to the Board what, if anything, is unique in the configuration of the property or unique in the setting of the subject property?

A. The property itself is unique in the narrowness of the property itself. It's a long, rectangular parcel approximately 850 feet deep, 223 feet wide, plus or minus. That makes the property unique in itself.

The setting of the property is unique in this area also. It is surrounded by woodland on the northern, western and southern boundaries. There are two existing structures located on the very front of the property.

The property itself is primarily graveled in the southwestern corner of the property where the subject site is located. There's an open gravel area.

So the property is unique in it narrowness and in the setting itself basically with the existing structures on the front, near Back River Neck Road, and the open area towards the rear of the parcel.

Q. Let me explore a couple of these items in a little more detail. With regard to the location of the monopole, will the two existing structures in the front act as a buffer or screen some of the visual impact of the monopole to the passersby on Back River Neck Road and anyone that might view the property from the east?

A. They will shield the equipment cabinets and they they will shield the monopole somewhat. Not entirely.

Q. Are you familiar with the photographs that were introduced previously?

A. Yes.

Q. Do they fairly and accurately depict the views that one would see if they went out there today of at least the monopole that's constructed?

A. Yes.

Q. With regard to this insert, if you will, of graveled area, will we need to have any adverse impact on any existing vegetation on the site in order to be able to locate the monopole where it's proposed?

A. No. There's no cutting of trees. There's no additional disturbance to grass area.

Q. So we will be able to push this monopole as far away from Back River Neck road as possible without having any negative impact on the existing woodlands?

A. Yes.

Q. And it won't have any impact on any of the other environmental features and it meets all the

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environmentally sensitive requirements of DEPRM?
A. There will be no additional impact to the environmental impact and, yes, we will meet DEPRM requirements.
Q. Now, would we be able to place a monopole on this property without needing a setback from the northern property line or the southern property line? A setback variance -- excuse me -- from the north or south and meet the 200 foot requirement?
A. No. In order to do that, the subject parcel would need to be a minimum of 400 feet wide, which it's not, it's 223 feet wide at that location.
Q. Would it be actually physically possible to move the monopole in an easterly direction to meet the 200 foot setback requirement in that location? Physically possible?
A. Physically possible, yes, it could be done.
Q. What would be the impact of moving that in an easterly direction an additional sixty-five feet?
A. Moving it closer to Back River Neck Road would place the tower closer to the existing residences that are

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located on the northeastern side of the property.
It would also place it closer to the road and, in my opinion, increase the visibility of the tower itself.
In sighting it in the southwestern corner as far back as we could, that increased the distance between the tower and the existing residential homes in that area.
Q. And up until DEPRM made its comment, you had actually placed the monopole an additional sixty feet further away from the residences and the views along Back River Neck Road?
A. Yes.
Q. If these variance are granted as requested, do you believe they will be consistent with the spirit and intent of the zoning regulations?
A. Yes.
Q. Why?
A. The tower itself and the compound that it's based is designed to accommodate a minimum of three carriers. The tower was sighted on the property of commercial and industrial zones. And the tower will not have an adverse impact to environmentally sensitive areas.

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Q. Can the variances be granted by the Board in this case without any adverse impact on the health, safety or general welfare of the community and locality involved?
A. Yes.
Q. Why do you say there won't be any adverse impact?
A. The subject site will not increase traffic in that area as the site only requires a minimum of maybe a once a month maintenence visit to check the upkeep of the site itself.
It has no adverse effect on light or air. It has no impact -- this is an unmanned facility -- it has no impact an water, sewer, any of the public utilities in that particular area.
Q. What about visual impact? Honestly, any tower is going to have some degree of visual impact. What is your opinion with regard to the nature of the visual impact of this particular tower located as it is proposed in this case?
A. As it's located far away from Back River Neck Road and tucked into an existing treestand or grove, there's a very limited visual impact from the north. As

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you drive down Back River Neck Road, that northern tree canopy shields the tower itself to the north.
It does the same to the south of the property. As you're driving north on Back River Neck Road, there is an existing tree canopy there that shields the tower as well.
If you were on the eastern side of Back River Neck Road across the street from the subject parcel, looking straight at the existing buildings on the parcel, you will see the top half of the structure. That is where you have the visual image of the structure itself. At 115 feet, it's shielded from the north and and the south.
Q. One of the questions asked of some of the previous witnesses relates to a camouflaging technique, if you will.
One of the camouflaging techniques that I wanted you to discuss was a technique trying to disguise the monopole as a tree. Are you familiar with those kinds of disguising techniques?
A. Yes.
Q. How is it you're familiar with those techniques?

A. I have designed several sites in the Washington/ Baltimore area as what we call tree poles. I also visited a few different sites with tree poles on the site. So I am familiar with the way they are designed and existing structures.

Q. Basically, how is that disguise implemented? What does one do to make a monopole look like a tree?

A. Basically, the monopole is painted brown. It is also textured on the outside of the monopole to resemble bark on a tree.

The structure itself is just a steel brown pole that extends to the full structure height. And I would say, depending on the height of the tree pole itself at the top, twenty to thirty feet would have branches that extend away from the monopole, and these, what they call branches, are fabricated and placed to shield antennas that are placed on the structure.

Q. I assume the branches that are attached to the monopole are not natural? It's a man-made substance?

A. Yes.

Q. I assume whatever leaf-like features that are

added to the branches don't fall on the fall and sprout again in the spring?

A. Yes.

Q. They are permanent?

A. Yes.

Q. If one were to look at one of these objects, would you know it was not a natural tree?

A. From close, yes.

MR. WESCOTT: How about in the wintertime?

THE WITNESS: Typically, you can -- if you're looking for it, typically, you would be able to spot it. It depends really on the setting of the structure itself.

Q. Let's assume for the moment that we are able to obtain the variances as requested for the monopole at the proposed location.

Do you have an opinion as to whether there would be a benefit in this case from requiring this particular monopole to be a tree-disguised type monopole?

MS. DEMILIO: Objection. I don't think she has the expertise or can express an opinion as to the aesthetics. I don't think it's part of her job to decide

whether or not they should -- I don't think she can give an opinion to the aesthetic appeal of it.

MR. BARHIGHT: If I could be heard, briefly, she's quite familiar with them. She's designed them. She's seen them. She's seen the location of them.

She's already described her understanding of what they looked like in the setting. She understands this setting as an expert in civil engineering planning and zoning, and I'm asking her to describe her opinion of what their benefit might be in this particular setting. I can't imagine a more appropriate question to ask her.

THE CHAIRMAN: I'm going to allow it.

Q. I'll repeat the question for you. You're familiar with these types of facilities?

A. Yes.

Q. Assuming for a moment that this particular monopole is granted and a requirement is imposed to make it a, quote, tree-disguised type monopole.

Do you have an opinion as to whether there would be any benefit from an aesthetic or visual perspective to making that a requirement at this location?

A. My opinion is that I don't see the benefit to a tree pole in this particular location, primarily because the site itself is already shielded by the natural canopy and surrounding woodland.

As far as a viewpoint from across Back River Neck Road looking at the site where it is wide open, what you would see would be structure that would basically extend approximately eighty-five feet in the area, and then would have a branch-like protrusion at the top.

And, in my opinion, as you were looking head-on onto the site, what you would see at the top of the structure would be much more obtrusive than a streamline set of array or antennas.

Q. One of the other questions I want to ask relates to much of the wooded area that shields this site is not on the site. You have identified the treeline here. There are existing trees along the northern boundary on the site and along the western boundary on the site, some to the south, but it's predominately off site.

What is the likelihood that any of those trees would be removed as a part of the development going

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forward? Do you have a sense of the zoning in the area and the developability of the area especially as it relates to the natural features and forest conservation and DEPRM requirements that might be imposed on any kinds of development activitiues off site?

MS. DEMILIO: Objection. Beyond the scope of her expertise, and it calls for a speculative answer.

MR. BARHIGHT: I'll break it done to the minutest --

MS. DEMILIO: It doesn't matter. It's still speculative.

MR. BARHIGHT: I'll withdraw the question.

Q. Directing your attention to the off site tree'd areas, what is the zoning of those areas off site?

A. R.C. 20.

Q. How can that be developed residentially? What kind of density requirements are there in the R.C. 20?

A. One dwelling per every twenty acres.

Q. What are the setback requirements in that zone?

A. The setback requirements --

Q. Just zoning setbacks.

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A. As far as structures?

Q. Yes.

A. They were -- the structures themselves would be subject to -- as far as environmentally, we would be subject to --

Q. Well, not the environment. Just the zoning setback. If you don't know off the top of your head, I can give you the zoning regulations and have you identify them.

A. Sure.

MS. DEMILIO: If she doesn't know, she doesn't know.

Q. Have you memorized the setback requirements for the R.C. 20 zone? Do you know off the top of your head what the setback is?

A. No.

Q. Is there such a setback?

A. There is a setback for structures and minimum lot size requirements.

Q. Let me give you the zoning regulations, if you don't mind looking up the R.C. 20 zone, and tell us what

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the actual setback requirement is.

MR. WESCOTT: Can't you stipulate what they are?

MR. BARHIGHT: Sure. I think it's thirty-five feet.

MS. DEMILIO: They are what they are.

MR. WESCOTT: Okay. Without going back and forth.

Q. Now, with regard to the DEPRM requirements, would there be forest conservation requirements imposed on any activities off site?

A. Yes.

Q. This is all within the critical area?

A. Yes.

Q. And the natural feature that comes onto our property identified by DEPRM as a stream does continue on away from the site, does it not?

A. Yes, it does.

Q. It would also, if there was any development, it would be required to have forest buffer requirements imposed as well?

A. Yes.

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Q. As well as limit any opportunities for destroying any of those trees as well?

A. Yes.

MR. BARHIGHT: No other questions of this witness at this time. Thank you.

THE CHAIRMAN: Ms. Demilio.

CROSS EXAMINATION

BY MS. DEMILIO:

Q. What are the requirements to obtain a variance in Baltimore County, do you know?

A. To obtain a variance?

Q. Yes.

A. To obtain a variance, we would need to submit through the Baltimore County zoning -- submit a plan to the Office of Planning and Zoning for review, to obtain a variance, go before the Zoning Commissioner and seek site specific variances.

Q. What are the standards for obtaining a variance? Do you know the standards?

A. For the particular site, to obtain a variance, we would need to demonstrate the uniqueness or peculiarity of

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the site.
Q. Anything else?
A. No.
Q. Now, is it your testimony that a rectangular piece of property in Baltimore County is unique? Is that what you are saying, the shape of the property is unique?
A. That is one of the thing I am saying, yes.
Q. And there's no other piece of property, rectangular shaped property, in Baltimore County zoned M.L?
A. I did not say that.
Q. How is this property unique in its shape?
A. This property is unique in its shape in that it is very narrow, approximately 220 twenty feet. It's very deep, 850 feet, approximately, plus or minus. In addition, it's unique in --
Q. I'm just asking about the shape. Are you saying there's no other piece of property in Baltimore County designated M.L. that's shaped like a rectangle that's 200-some feet wide?
A. No, I'm not saying that.

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Q. It's not the only property in Baltimore County shaped like this? Do you agree with that statement?
A. I would have to -- I have not examined every piece of property in Baltimore County.
Q. But you know for a fact this is not the only piece of property in Baltimore County shaped in this manner about 200 feet wide, that's a fact you agree with, won't you?
A. I have not done any investigation, so.
Q. How do you know this property is unique if you haven't looked at any other?
A. This property is unique --
Q. Compared to what?
MR. BARHIGHT: Objection. She should allow the witness to fully answer.
Q. Excuse me. That's my fault. This property is unique compared to what other properties? That's what I meant to ask you.
A. Okay. If I could explain, I am also bounded within the search ring area that's issued by Sprint PCS. Their intent is to place a telecommunication tower in a particular area.
That area is defined by sprint RF engineers. Mr. Hassan who testified prior explained how the area itself was defined to meet Sprint's coverage objective. Within that particular search ring, this subject parcel is unique.
Q. Are you aware of the fact the standard for uniqueness to describe a piece of property in requesting a variance refers to the property itself, the shape or the size of the property itself, and not to what Sprint wants, or any other user wants?
A. Yes.
Q. So just because Sprint has identified a ring in that area, that makes this piece of property unique compared to other properties in Baltimore County? Yes or no? Or you don't know? So we can move on.
A. Yes, I believe the property is unique.
Q. Unique under the variance standard?
A. Under the variance standard.
Q. What section of the variance regulations? Do you know what section that is?

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A. Under Section 307.
Q. Does that say that it depends on the desires of the user of the property, or is it particular to the property itself?
A. Particular to the property itself.
Q. Now, are there other uses on this property?
A. Yes.
Q. What are they?
A. They are commercial and industrial storage.
Q. Are they active uses?
A. Yes.
Q. So those properties are able to locate on this site, those uses?
A. Yes.
Q. They are viable uses?
A. Yes.
Q. So there's no problem with this property accommodating M.L. uses?
A. None that I am aware of.
Q. Do you know what "M.L." stands for?
A. Medium light industrial.

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Q. Do you know how many uses are permitted in the zone?
A. No.
Q. Do you know the type of uses that are permitted in the zone?
A. Commercial and industrial.
Q. Who owns the property?
A. Mr. Buck Jones.
Q. Is it fair to say Sprint is just going to lease a portion of the property if it's successful in obtaining the variance? It will be a tenant on the property?
A. Yes.
Q. So Mr. Jones will continue to operate the property and operate the uses already there?
A. Yes.
Q. How much of the property does Mr. Jones use for those uses? The percentage of the property, how much of the property is used?
A. The two existing buildings are in use, and they are located in the front of the property. And I would say that he uses approximately fifty percent of the property

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located closest towards Back River Neck Road, fifty to sixty percent.
Q. Would it be possibly to, generally speaking, locate another use towards the rear of the property, another M.L. use on this site similar to the ones towards the front?
A. Yes.
Q. So is it fair to say Mr. Jones is the owner of the property and does and has uses in the M.L. zone for this site?
A. He has existing uses, and should the tower not be erected in the southwestern corner, he would most likely be able to use the property, the rear portion of the property, for M.L.
Q. Now, I note that on this site that there are existing dwellings on the northeastern portion of the property, correct?
A. Yes.
Q. And there are building lots, three vacant lots on the rear of the property?
A. Yes.

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Q. Now, Mr. Barhight submitted to the Board -- and I don't remember the numbers of the exhibits -- but consent from Ms. Luciano and Mr. Gibson who are owners of the dwelling units that currently exist on the property. Are you familiar with that consent from those property owners?
A. Yes.
Q. Were consents obtained from Mr. and Mrs. DiAngelo, or Mr. and Mrs. Odonnie (phonetic), who own the other two building lots on this property, near the property?
A. I have no knowledge of those consents.
Q. But you will agree those property owners have just as much right as Mr. Gibson and Ms. Luciano with regard to the location of a tower near them as property owners?
A. As property owners? I don't know that I can really weigh if they have more or less interest in the site. If they're adjoining property owners, I would say yes.
Q. Well, isn't it a fact that the Luciano family actually sold to Mr. Jones the M.L. portion of the

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property? You're familiar with that?
A. Yes.
Q. Are you familiar with the fact that the Lucianos hold the mortgage to Mr. Jones' property?
A. I'm not familiar with any of the financial dealings. All I know is that the deed research that we have performed in relation to the survey work, the Luciano name was on the prior deed.
Q. Are there any requirements to locate a tower a certain distance from a residence?
A. Yes. From a residentially zoned property, yes.
Q. And you agree, in your direct examination you said it would be possible to put the monopole 200 feet from the rear property line and not need a variance for that location, isn't that correct?
A. Technically and from an engineering prospective, yes.
Q. And it would still be 200 feet from the building lot for any of the four building lots to the north of the property, isn't that correct? It would still meet that requirement of 200 feet? Or it would not meet the 200

feet, but it would not have an effect on the northern variance that you're requesting if you moved it further east?

A. If I moved it further eastward, it would not affect the variance that we are still seeking. It would not meet the 200 foot setback.

Q. Right. But it wouldn't increase -- you wouldn't put it closer to the property line?

A. No.

Q. So you could, by moving the monopole, you could eliminate the need for the variance from the western portion of the property?

A. Yes.

Q. Now, as far as one of the structures to accompany the monopole, isn't it a fact you could move that structure 125 feet from the western property line and not request a variance for that structure?

A. Yes.

Q. So there's two variances that you are asking for that you don't really need, given the size of the property?

A. From an engineering prospective, yes.

Q. From a zoning perspective?

A. Yes, if you're looking strictly at the zoning regulations and not the practicality or the setting of the site.

Q. What do you mean by that? You don't need a variance to put the tower 200 feet from the western line, or the structure? It's just where the tenant is choosing to put it, or you're choosing to put it?

A. There's no zoning regulation that would preclude me from moving the tower closer to Back River Neck Road.

Q. Now, I think you used the words that the location of the tower, the monopole, would be tucked into the trees, you used that phrase?

A. I can't recall exactly, but it would be located in the southwestern corner and surrounded by existing woodland. And I may have said tucked into the grove or trees.

Q. Did you hear the testimony this morning where the trees are probably no more than forty or sixty feet high?

MR. BARHIGHT: Objection. That's not what was

said.

MS. DEMILIO: I'm sorry. If I'm wrong, what was said?

MR. BARHIGHT: Between sixty and seventy-five feet.

MS. DEMILIO: All right. Sixty and seventy-five feet. Okay.

MR. BARHIGHT: Is that the Board's recollection?

THE CHAIRMAN: Seventy to eighty.

MR. BARHIGHT: Seventy to eighty? I remember sixty to seventy-five.

Q. Let's just say, on the average, the trees are probably no higher than around seventy feet.

A. I don't recall the exact footage that was said earlier, but I would agree with that, being out at the site.

Q. The monopole itself would be a good forty-five feet, fifty feet above the trees?

A. Yes.

Q. So you're going to see all of the attachments? In other words, not just the pole itself, but you will

definitely see all of what we're calling the candlelabra or antannas?

MR. BARHIGHT: Objection. I beleve the question needs to be more specific. From what vantage point?

Q. From any point? The trees are not going to be higher than the pole and the antenna if the trees are no more than about seventy feet, as you said?

A. If I am comparing above ground elevation, yes, the trees are shorter than the subject monopole, but there's also the topography of the land to be taken into consideration from whatever view you're looking at the subject site from.

Q. You mean from the approach?

A. Yes.

Q. But is Mr. Jones' property relatively flat or is it elevated at certain portions?

A. His property is relatively flat and slopes actually downwards in elevation towards the rear of the parcel.

Q. In the wetlands, you mean?

A. Yes.

Q. But not where the pole is?
A. No.
Q. So when you're saying depending on where you are, you mean the approach makes it less visible from some approaches than other approaches, is what you are saying?
A. Yes, off site, depending on where you are off site.
Q. I'm not trying to trick you on that. I just wanted to make it clear for the Board.
So even though you're saying the tower is recognized above the tree, it doesn't always look that way depending on the angle you see, is that your testimony?
A. You can't always see the tower, depending on the angle you're looking, or where you are are off the subject site.
Q. But there was testimony this morning that most of the trees in the area are decidious trees, that they will lose their leaves?
A. Yes.
Q. So you can't count on the leaves to cover the tower from any angle, is that correct?

A. No, not the leaves, but I guess maybe the density of the trees themselves.
Q. Would you have an approximation of the trunk sizes of those trees?
A. They vary. We have not done a study to locate all the specimen trees on the adjoining properties. In the R.C. 20 zone that exists out there, I can tell you from being out on the site several times, that it is heavily wooded.
Q. Are the trunks of any of the trees wider than telephone poles?
A. Yes.
Q. In talking about the antennas on the poles, you indicated there's a minimum of three. Is there any maximum number you can put on this pole of antennas?
A. The maximum number of antenna would be defined by the structure's capacity itself. For this particular location, the structure was designed for three carriers.
Q. So would that be the maximum, or don't you know?
A. I can't say that would be the maximum. That's what the pole itself was designed for.

At far as each specific carrier, they would be evaluated as each carrier added antennas and equipment to the pole. And let me just explain, depending on the carrier that would want to co-locate on this, and the number, height and weight of the antenna they would place on the structure, you may be able to accommodate more than three carriers.
Q. When you talked about uniqueness, you said the property was unique because it was surrounded by woodland, am I correct?
A. Yes.
Q. Does that mean the property -- that there's no other property in Baltimore County or even on the peninsula here in Baltimore County that's surrounded by woodland with all the R.C. 20 property?
A. No, I'm sure there are other properties surrounded by woodland.
Q. So the fact that there are existing structures on the property doesn't make it unique in and of itself?
A. What makes it unique are the existing structures located in the front portion of the property, leaving the

rear portion available.
Q. That's unique? That's your testimony that's unique?
A. Yes.
Q. Well, isn't it a fact that towers sometimes locate with other uses on properties? Towers aren't necessarily the only use on a piece of property?
A. On a piece of property?
Q. Especially commercial property?
A. No.
Q. So oftentimes you will have towers with one use along with other uses on a piece of property?
A. You can.
Q. So there's nothing unique about having multiple uses on a site?
A. No.
Q. You also talked about the fact that the site was graveled. Did you mean that to mean it was unique, or were you just saying that as a description of the site? I wasn't sure?
A. It's a description of the setting of the site.

Q. The gravel doesn't make it unique? The fact there's a gravel parking lot doesn't make the site unique?
A. In and of itself, no.
Q. I wanted to show you Petitioner's Exhibit 14, which is the letter dated December 16, 1998. You highlighted something in yellow. Are you familiar with that?
MR. BARHIGHT: Does that relate to our site?
MS. DEMILIO: No.
Q. Are you familiar with that letter? Take a few minutes to read it over.
A. I believe I heard mention of this letter.
Q. This is the first you have seen it?
A. This is the first I have seen it.
Q. You can keep that copy. I just want to ask you a couple questions about it. If I can paraphrase, I think Ms. Brown categorizes the Back River Neck Road site -- which is the subject site -- two abandoned buildings were boarded up and the parking area was littered with debris and abandoned equipment. Do you think that that adequately describes the site today?

A. No.
Q. So the two abandoned buildings are now being used as depicted in the pictures Mr. Barhight submitted, isn't that correct? Those are the businesses that Mr. Jones has, the tenants he has there?
A. Yes, as I described earlier, the two existing buildings on the site are being used.
Q. Then on the first site, My Friend's Tavern site, which is a different site, and the last two sentences in the second paragraph say Section 426 of the zoning regulations provide performance standards for wireless communcation towers, requires that the use be set back 200 feet from residential zone line, the site is too small to accommodate such requirement. Do you see that?
A. Yes.
Q. Wouldn't that also describe the current site in the way you have gone through all the variances that are requested?
A. Those sentences, yes, the site is narrower than the required 400 feet.
Q. Have you, in designing site plans for towers,

have you ever had the opportunity to work with a flagpole described this morning by some of the witnesses?
A. Yes.
Q. Are you familiar with the one on York Road?
A. No, I'm not.
Q. Where were those sites that you're familiar with?
A. I have seen one erected in Louden County, Virginia, in the border of Louden and Fairfax County. It's a 180 foot flagpole, actually.
In addition, we designed several flagpoles in the Washington metropolitan area, Baltimore area, as well. I have not seen them constructed.
Q. So your firm would actually do the designing of the flagpole, or are you saying the location, and somebody else built it?
A. We designed the location and all of the equipment to accompany the pole itself. The actual structural design is typically performed by a specific tower manufacturer.
Q. So if you were asked to design a flagpole for this site by Spring, would you be able to accommodate

them?
A. If Sprint asked us to design a flagpole, or place a flagpole on their site, we could develop the plans to show the flagpole on the site.
Q. There's no requirement in the zoning regulations that a tower has to be set back a certain distance from the road, other than, you know, a residential property, but there's no specific requirement that it has to be set back from the road 200 feet back from a residential zone property across Back River Neck Road? If it weren't residentially zoned across the street, there would be no requirement to set back the tower a certain distance from the road itself, other than the normal setback in the?
A. Theoretically, no.
Q. It wasn't a trick question.
A. Okay.
Q. On your original site plan, I think you indicated that there could be future structures built on this site?
A. Yes.
Q. But that's not on this site plan, because you're not asking for anything for that today?

A. No.
Q. That may be plans that Mr. Jones has to add onto his shopping center or uses there?
A. I'm not aware of his future plans. He would, of course, be limited by the tower's use, the proximity of any new structures, and limited with the setback.
MS. DEMILIO: I have no further questions. Thank you.
MR. BARHIGHT: Nothing further, and the developer/petitioner rests its case in chief.
THE CHAIRMAN: Let's take a ten-minute break.
(A recess was taken.)
THE CHAIRMAN: It's your case.
MS. DEMILIO: Mr. Jack Dillon.

* * * * *

JACK DILLON,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MS. DEMILIO:
Q. State your name and address, for the record,

please.
A. My name is Jack Dillon. My address is 543 Park Avenue, Towson, Maryland.
Q. What is your employment history, Mr. Dillon?
THE CHAIRMAN: Ms. Demilio, can we stipulate --
MS. DEMILIO: That's fine. I would offer Mr. Dillon as an expert in planning and zoning, and I do have his resume. This is the current one. I'd offer People's Counsel 1.
MR. BARHIGHT: No objection to the exhibit, and no objection to his qualifications as an expert in planning and zoning.
THE CHAIRMAN: Thank you. He's been here before many times.
MS. DEMILIO: I appreciate that.
THE CHAIRMAN: This will be People's Counsel 1, the CV.
MS. DEMILIO: Thank you.
Q. Mr. Dillon, in your expertise as a land planner, have you had occasion to participate or review cases involving wireless telecommunication towers?

A. Yes, I have.
Q. About how many in the past several years?
A. I have looked at a number of cases. Oh, how many? Probably fifteen or twenty that I've looked at.
Q. In the Baltimore area?
A. In the Baltimore metropolitan area.
Q. How about out of states cases? Have you had any opportunity to review types of towers constructed in other locations outside of the State of Maryland?
A. Yes. I have done some research down in Virginia.
Q. Are you familiar with the subject site?
A. Yes, I am.
Q. At the time that you were employed by Baltimore County as an area planner, isn't it a fact that you actually were the planner for the area that encompasses the subject site?
A. Yes. My last two years with Baltimore County, I was the area planner for the 5th District, which includes that area. It was the Essex/Middle River and Back River Neck area, yes.
Q. Were you here for the testimony this morning?

A. I was here for, I think, most of it.
Q. You were away, briefly, some of this afternoon?
A. Yes.
Q. Now, with regard to the proposed towers at this location, what is your opinion as an expert with regard to the location of the tower and the request for variances at this site?
A. Well, first of all, in terms of the request for the variances, in my review of the site plan and my knowledge of the property, I did not see anything particularly unique about this property that would warrant the variances needed, or requested.
Q. Is there anything unique about the size of the property or the shape of the property?
A. No. This property is unique because it's an M.L. in an area that's pretty much, I'd say, we are in the rural part of the county for the most part. There are some D.R. zones nearby and adjacent to the property, but it's predominantly rural, and there are a couple other industrial uses in the area, industrial zones.
This property has a history of zoning industrial

because of the previous cement plant that used to be there where they manufactured steps and ornamental cement products, and the zoning was placed there to cover that use.

MR. BARHIGHT: Objection to the insertion of what he understands went on in the mind of Baltimore County when they zoned the property.

I don't think that is appropriate for this witness to try and testify about the thought processes or the decision-makers, about why a particular use was zoned a particular way. It's zoned M.L.

Q. Based on your knowledge of the site, was the industrial use, the cement manufacturing use, existing on the property when the M.L. zone -- the first time you can remember the M.L. zone being attached to the property?

A. Yes.

Q. Now, you said there are other industrial zones in this area. Do you know the location, or would it be helpful to look at the 1000 scale map?

A. I could point one out on the zoning map.

Q. I'm going to have you identify the map and offer

it as People's Counsel No. 2, the 1000 scale Baltimore County Office Planning map. The subject site is highlighted in yellow?

A. Yes.

Q. Now, you had indicated there are other M.L. sites similarly shaped, similar in size to the instant site. Can you point out where those are?

A. There's another M.L. site that is less than 1500 feet to the -- I guess this is south of the site -- of the subject property on Back River Neck Road, on the east side of Back River Neck Road. It is zoned M.L. and has a small sliver of C.B. adjacent to it.

Q. Were you an area planner for other areas besides the 5th District in Baltimore County?

A. Yes. I have been the area planner for the 3rd Councilmanic District, and also at one time I was for both the 2nd and 3rd Councilmanic Districts.

Q. Are there other M.L. zoned properties similarly shaped in all of Baltimore County?

MR. WESCOTT: Excuse me. Is he marking these on the map, or what?

MS. DEMILIO: I'm sorry.

THE WITNESS: (Indicating.)

MS. DEMILIO: Let the record show that Mr. Dillon is highlighting the second site that he pointed out near the subject property with a magic marker.

MR. BARHIGHT: We made that People's Counsel 2?

THE CHAIRMAN: People's Counsel 2.

MR. BARHIGHT: Thank you.

MR. WESCOTT: Is the subject property marked on there?

MS. DEMILIO: Yes. The subject property is marked in yellow.

Q. Are there other M.L. zones in Baltimore County that might not even be on this map that are similarly shaped?

A. Well, yes. There are other M.L. zones in Baltimore County that are rectangular in size and do go deep into an area off the main road. There's also other kinds of non-residential zones that do a similar thing.

Q. And there's nothing unique about this size of the property or the shape of the property?

A. Not particularly, no.

Q. I don't believe that the petitioner has claimed that there was any uniqueness to the topography of the property, but you would agree there's nothing unique about this property?

A. I would agree, yes.

Q. Are you familiar with the fact that there are other uses currently on the property?

A. Yes.

Q. You heard the testimony this morning?

A. I did hear the testimony this morning.

Q. In your opinion, is that an indication that this property is suitable for a manufacturing light use or similar type uses in this area?

A. Yes. There are numerous other industrial uses that are allowed in the industrial zone and commercial zone. Sorry. Manufacturing light zone.

The fact that they had a commercial business along the front in its prior use, that's been allowed to continue with other commercial uses along the front. They have cleaned the property up considerably in the last

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several years from what I remember it to be when I was area planner.

Q. So is it fair to say Mr. Jones has a viable use, if not uses, for this property?

A. Yes.

Q. About how many uses are there in the M.L. zone, if you know?

A. Gosh. There's, I guess, on the first couple of pages without the zoning regulations in front of me, it's probably fifty or sixty listed. Maybe more.

Q. Is it unusual for a property of this size and dimension to have the front portion developed with the predominant use of the commercial use or manufacturing use, have them in the front of the property along the road, is that unusual?

A. Not in this particular area. I think most of the commercial uses are related to the road activity towards the front.

Q. What has been your experience as a land planner in the tower cases that you have worked on in recent years, primarily in Baltimore County?

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A. Say that again?

Q. What has been your experience with the tower cases that you have been involved with as a land planner?

A. My experience has been somewhat frustrating.

MR. BARHIGHT: Objection. It's irreleant whether he's frustrated or not. The question needs to be more specific.

THE CHAIRMAN: I will sustain that.

Q. Let me ask you, Mr. Dillon, what has been your opinion with regard to the location of towers in the Baltimore County area, particularly the monopole towers which accommodate three separate uses?

What position have you taken with regard to the location of those towers in the cases that you have been involved?

A. The position that I have taken is that there is a better way to provide the cell tower service and not be as disruptive to the visual environment that we have in Baltimore County, and that they can have the towers and provide the service and not have the intrusion of what many consider to be a not very attractive facility.

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Q. Have you seen examples of construction of towers other than the traditional towers proposed here that have been used by the tower companies and, in your opinion, have satisfied, or been more compatible with the visual environment?

A. Yes.

Q. Where would that have been?

A. When I started on this, looking at towers and having this concern, I was led to Albamar County, Virginia, where I went down and spent some time there in May of this year with their planning staff and went out in the field with them, took a number of photographs of towers that they have there in their area, and went over their policies and regulations that they use. If I may elaborate on that a little bit?

Q. Do you have pictures?

A. I have some pictures, yes. But as I lead into those pictures, it was interesting to note in Albamar County, it's also where the City of Charlotte is located and the University of Virginia, and it's quite a beautiful part of Virginia.

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They had undergone a deluge of towers that were constructed over time, since the nineties, I guess, when they started coming in, more frequent applications, and in that county, they felt that the towers were a detriment to the visual aspect of their area, that they depend on tourism, and a lot of their value is on their historic character and the visual character of that area.

So they developed -- they had a report prepared and adopted the recommendations, but basically -- to put it as simply as possible -- you can build a cell tower anywhere you want, as long as you can't see it.

They want to keep them as invisible as possible. And they took me out to show me what they have done to accomplish that.

Q. Are those the pictures that you have that you brought with you?

A. Some of the pictures I have are from Virginia.

Q. Let me talk about one page with nine pictures on it that I have given to Mr. Barhight. Were those pictures that you downloaded from your computer?

A. Yes.

Q. And you'll be able to identify what those sites are?
A. Yes. Not all are in Virginia.
Q. Some are in Maryland?
A. Some are here in Baltimore County.
Q. I'd like to mark, initially, People's Counsel 3, and just have you briefly --
A. Do you want to go A, B, C, across the top?
Q. The top row on the left-hand side.
A. The top left-hand corner is actually here in Baltimore County. This is the flag tower, cell tower, down at the old Caldor store down on York Road which is now, I think, occupied by offices of Baltimore County.
Q. Is that the tower referred to this morning?
A. Yes, I believe that was referred to this morning.
Q. That tower is about -- do you know the size of that?
A. I believe that tower is around a hundred -- in excess of a hundred feet. It may be as high as 125 or 130.
The next picture is a shot along, actually, a

back road in Albamar County, the top center picture, that has a cell tower set into the hillside amongst the trees.
And their policy down there is one in dealing with -- they have hills a little steeper than ours, but they have a lot of hills down there, and trees, and they have a method of having these towers built so they are almost invisible, to set a single tower into the trees, preferably on a wooden pole, but it be can be a metal pole painted brown, with the antenna held very tightly against the pole itself, also painted brown, and then they are set into the hillside with the trees behind it so there's no what they call skylining of the tower, of the sky behind it, and there's trees behind it.
And the trees, while they may lose their leaves in the wintertime, the pole is of a dark color and blends in with the branches of the trunks of the trees and still remains pretty much invisible.
I do plan to go back this winter and get some winter shots. There is actually a tower right here where my finger is. I know it's hard to see that.
The next shot is shot along I-64, and in the

distance here, and you will be able to see it a little closer. There's a tower, a wooden tower, sticking about ten feet above the treeline, but it's unnoticeable as you drive by. They actually had to point it to me, and I shot it as I went by.
The next shot is close-up of a larger picture that actually shows three cell towers in this cluster of trees on the hillside off I-64 west.
The center picture with the "X" through it is an existing monopole up on Greenspring Avenue, up on Chestnut Ridge, right behind the Volunteer Fire Company, and it sets in the trees. You can see how it juts out of the trees and into the skyline, the skyline behind the tower.
The next picture on the right-hand side is a church over on Joppa Road at the beltway. I'm sorry. I forgot the name of the church over there. And the tower, the antennas on there are hidden in the upper part of the church. There's a small cupola, and there's the antennas laying horizontally along that ridge, and they're hidden very effectively there.
The next shot is also down in Albamar County at

an interchange off of I-64, very close to where the Appalachian Trail, or the major trail goes through. There are two towers on a ridge set in the trees, wooden poles.
This is a sideview. You can see them from the side. From the highway, they just blend to the trees as they do go up and rise behind it.
The center bottom picture is actually a shot of the three towers that are here in this center left picture, and there you can just see them poking above the trees in a very discreet way.
And the bottom right picture is another flagpole in downtown Charlotte at an apartment complex.
Q. As a practical matter, there's not a church on this site, and the topography may differ from some of the pictures that you have here, but, in your opinion, what would be the most practical alternative to the traditional monopole that's in the center picture or the one that's proposed here?
A. Well, as I look at the site today, there are trees surrounding this property, but I don't think there are very many trees that are actually on this property.

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It seemed like most of them are off site.

My first suggestion would be, if it was possible, to have the monopole placed in the trees and limit it to extend no higher than ten feet above the nearest tree within twenty-five feet of the pole. That would give them fairly good coverage.

It may require, in this type of approach, to have more towers, but you're saving the visual impact, the negative impact of the towers proliferating the skyline.

Another alternative for this particular site, if you're inclined to grant the variances, is rather than have the variances granted for the monopole on the back end the site, is to move it forward and actually use a flagpole as part of the cluster of buildings in the front.

It would become part of that commercial center, very much like it is on York Road, and it wouldn't have as much of a negative impact as the monopole with the candellabras on it.

Q. Do you have a larger picture of the York Road property?

A. Umm --

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Q. If you don't have it right now, that's fine.

A. No, I don't have it with me.

Q. Okay. What impact, if any, do you think this proposed tower would have on the Back River Neck peninsula area, if the tower would be granted?

A. Well, Back River Neck Road is part of the scenic, designated scenic route within the Master Plan for Baltimore County. It's also --

Q. What does that mean? Would you explain what that means?

A. They have adopted, as part of the Master Plan, areas of the county that they feel are of scenic value.

The area along Back River Neck Road and onto the peninsula has been identified as one of those areas of scenic importance to the county.

Q. Excuse me. This is the section of the Master Plan that you're referring to, pages 249 --

A. Yes.

Q. -- through 252 of the Master Plan 2010?

A. Yes.

MS. DEMILIO: Just to make it easy to refer to, I want to put this in, and I know the Board has access to it, but if I could use it as People's Counsel 4?

MR. BARHIGHT: No objection.

Q. Go ahead.

A. Furthermore, it's also, if you will, part of where 702 ends into the lower Back River Neck area there, it's a gateway to that rural part of the county that is, I think, particularly unique in itself.

Q. What does the Master Plan mean when talking about a "gateway?" Would you explain what that means?

A. I'm not sure how the Master Plan describes it, but it's when you're changing from one type of area to another, it creates a gateway or entranceway into that area.

In this case, you're going from the urban development into the rural development. Much of this area has also been placed in the Rural Legacy area, preservation area.

Q. What effect will all these designations have on any development in the area, the gateway area, or scenic resources, or scenic view? What are the expectations for

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development in those areas as you understand them as a planner, given the Master Plan has outlined?

A. Planners are eternally optimistic, and we hope that with designations such as these in the Master Plan, which we know is advisory, that it's a signal to developers and to people within the area that when areas are identified as special in a certain way, such as a scenic area, or rural legacy area, that, hopefully, there will be some additional care to trying to preserve the character of that area.

Q. In your opinion, is the tower proposed out of character with these designations, or the Master Plan advisory comments?

A. In my opinion, the monopoles and the lattice towers are totally alien to most environments.

Q. Is it fair to say, in your opinion, a way to reconcile, restrict, wireless mounted communication towers with the scenic resources of the area would be to use one of these alternate type of camouflage towers?

A. I believe, particularly in research I have done, and what they have done in Albamar County, they have

struck upon -- and it's an interesting tool -- that there are other ways to provide service that everybody uses

Nobody is saying that the use of cell phones is not important or it's going to go away, but how can we provide that service without interferring with the individual character and in many cases in my opinion, harming that character of the area

Q With regard to the variances that were requested on the site with regard to Mr Jones the owner of the property in your opinion, is there any practical difficulty that he would experience if he's not able to erect a tower on his property that would justify these variances?

A No Mr Jones has a viable property He has a number of uses on it Apparently there's additional area to do some other things without the need for variances

Q So he has a reasonable use of his property now?

A I believe he has

Q So a denial of these variances in your opinion, would not be denying him a reasonable use of the property?

A I agree with that

Q If these variances where denied, would there be a particular injustice to Mr Jones as compared to other property owners in the area such as the residential sites, undeveloped sites to the north, or any other property in the area? Is there a particular injustice to Mr Jones if the variances are denied?

MR BRIGHT Objection I'm not particular familiar with that particular phrase being part of the requirements of 307 or Cromwell versus Ward and therefore, I don't think it's relevant to these proceedings

"Particular injustice" is something I've never heard of before I think it's vague and has no merit in these proceedings to even make such an inquiry

MS DEMILIO I m sure the Board is familiar with that language directly from the McLean v Soley case I know the Board is familiar with that case, and if I get the opportunity to get the case and show it to Mr Barhight, he'll see that specific language is used in that case regarding injustice to the property owner if the variance is not granted and the basis for my question

THE CHAIRMAN Are we talking about Mr Jones or Sprint?

MS DEMILIO That's a very interesting question that I believe this Board may have to deal with But when you talk about a variance being granted, in all the case law, they talk about the owner of the property

And it's the owner of the property who is put in a position when asking for a variance to carry the burden of proof on both uniqueness and practical difficulty or undue hardship

The owner of the property has that burden to satisfy and that's what the case law says

Now I know Mr Barhight may differ with that and I will grant that that's an issue that this Board may have to come to resolve But if you look at McLean v Soley it's talks about -- on page 214 -- 270 Md 208 on pages 214 and 215

The first criteria whether practical difficulty has been established was set up by -- according to McLean -- 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

The second criteria is whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners

The third criteria is whether relief can be granted in such fashion that the spirit of the ordinance will be preserved and public safety and welfare is secured

That was the basis for my question regarding injustice to Mr Jones, because the court clearly says that, to give substantial relief to the owner of the property involved -- and I think that's what McLean v Soley is referring to -- and I think my first question is perfectly legitimate in light of this case

And there are other cases. I don't want to give the Board a legal argument at this point. I don't think it's fair to Mr. Barhight, either. But I think he knows what I'm talking about.

MR. WESTCOTT: Why don't you let him respond?

MR. BARHIGHT: Two points. It wasn't the way she phrased the question. If she wants to ask the question in McLean v. Solely, I think that it is relevant, but it's important to point out "owner" doesn't have to mean only the person who has fee simple ownership of the property.

It's recognized in the state of Maryland that a leasehold interest represents an interest in real estate.

But, most importantly, what does the Baltimore County Council say? In Section 426, "owner" is specifically defined as the owner/agent/lessee/or person in control of a wireless telecommunications tower. I think that's my client, Sprint.

THE CHAIRMAN: To be honest, I can see where you're going, based on the case law, of how it's written about the owner of the property.

But Mr. Barhight is bringing up an obvious, valid

point of what we are dealing with is cell towers, and the lessee, that is the owner of that company.

So this is going to get into legal argument. At this point, I'm trying to figure out how we can streamline this without --

MR. WESCOTT: What was the question?

MS. DEMILIO: Whether there is substantial injustice to Mr. Jones if these variances are not granted compared to other property owners in the area.

And I think, under McLean, I have the right to ask that question. If the Board later sorts it out, they'll sort it out, but that doesn't mean I can't ask the question now.

THE CHAIRMAN: Go ahead and answer the question, please.

A. I will try. Well, I think, as I stated earlier, Mr. Jones has enjoyed a reasonable use of the property with multiple types of businesses on that property.

My opinion, there is not a particular injustice to Mr. Jones. There might be an injustice to the neighbor that, if it is granted, that enjoys looking over, enjoys

the skyline in that area, and would be aggrieved by the granting of the petition for a tower of that size.

Q. Being so close to the property line, is that what you mean by --

MR. WESCOTT: Are you testifying?

MR. BARHIGHT: I was going to object, but you got in front of me, Mr. Wescott.

MS. DEMILIO: I'll withdraw that.

MR. WESCOTT: Let's not beat this to death. We understand what your point is.

Q. Generally then, Mr. Dillon, is the proposed variance, in your opinion as an expert land planner, consistent with the spirit and intent of the zoning regulations?

A. No, it is not.

Q. Do you have a basis for that opinion?

A. The regulations for towers were set up with certain setbacks in mind to protect the height of the tower and to provide sufficient setbacks from property lines.

And in this case, the fact it is wooded, and

maybe it isn't, maybe it's occupied nearby and maybe it's not, it's still a protection that is required under the regulations, and I don't think they have shown a reason to grant the variance for that.

MS. DEMILIO: I have no further questions.

THE CHAIRMAN: Your witness, Mr. Barhight.

MR. BARHIGHT: Thank you.

CROSS EXAMINATION

BY MR. BARHIGHT:

Q. Mr. Dillon, this is not Albamar County, is it?

A. No, it's not.

Q. And although they might have a very, very interesting, and maybe even a better scheme than what the wisdom of the Baltimore Councty Council has provided us, it's not the scheme as identified in Section 426 of the Baltimore County zoning regulations, is it?

A. That's true.

Q. Because, for example, the Baltimore County zoning regulations don't say, If I hide it, I can put it anywhere, does it?

A. No.

Q. In fact, it has a completely different format in the way that it goes about directing people like my client, Sprint, to identify proper locations, isn't that true?

A. Yes, that's true.

Q. Of course, that policy speaks for itself, but it does include, for example, that if a new tower must be built, the tower shall be constructed to accommodate at least three providers, isn't that the case?

A. It says -- yes, should be provided. Yes. Not shall be.

Q. If a new tower must be built, the tower should be constructed to accommodate at least three providers? That's what it says?

A. That's what it says.

Q. Is that because we're worried about the proliferation of towers in Baltimore County?

A. I think, at the time, that was what the conventional wisdom was, that the fewer towers, the better; let's cluster them as much as possible.

That may have before they realized what they were

really going to be dealing with, as many as they were going to be dealing with.

Q. But in this case, that's the law that we are going to deal with today?

A. What we're working with today.

Q. It would be nice if they were as smart as Albamar County, but at the moment, they are not?

A. Yes.

Q. Are you familiar with the study done by the Office of Planning back in 1998 that specifically called this site out as a good location for this kind of facility?

A. I have not read that. I heard about it today. I did not see that study.

Q. Are you familiar with the report of the Tower Review Committee which agreed that there was a need for this facility at this location and that all the Tower Review Committee requirements were met by this application?

A. Quite frankly, I've never a report of the Review Committee where they have rejected a tower site.

Q. I'll have to bring you to my office and show you some.

A. There may be some, but I haven't seen one.

Q. I wish I was batting a thousand, but that's not the case. But did you read that report?

A. I did not look at that report.

Q. You didn't come prepared to testify to that report either. Okay, let's take a look at the neighborhood that we're involved in. Would you please describe the neighborhood of the subject site?

A. Yes. As I said before, when you're -- if you're coming down 702, Back River Neck Road, you're entering in what is predominantly called the lower neck area of Baltimore County.

Q. So where does this neighborhood begin?

A. In my opinion, it begins to change right as you hit Back River Neck Road. There's R.C. 2 on the eastern edge of Back River Neck Road and it's R.C. 20 on the right-hand side of Back River Neck Road.

Q. If I could ask you to just take this pen and identify where you're pointing as the beginning of the

neighborhood?

A. Okay. For the most part, this is what you begin to see as you drive through.

Q. How far south does that neighborhood extend?

A. Well, neighborhoods in rural areas are not like neighborhoods in urban areas. I think we are into an "area" as opposed to "neighborhood."

Q. You understand why I'm asking the word "neighborhood, though? Because Cromwell versus Ward uses the word "neighborhood," and I'm kind of stuck with it. Therefore, you're stuck with it.

A. I would say it is an area of --

Q. From that point, how far south does "neighborhood" go?

A. I think it goes actually below this map.

Q. That's fine. You're allowed to do that.

A. I don't have the other map to go below, but I would say probably down to about where Turkey Point Road veers off, you start to change this way.

Q. Turkey Point Road is actually north of the proposed location?

A. I'm sorry. I don't have a map in front of me. As it gets further on and starts splitting off into the waterfront areas.
Q. You mean Holly Neck Road?
A. Holly Neck.
Q. So south of Holly Neck?
A. And then you're sandwiched between Back River and Sue Creek and Middle River on the east and west. In this neighborhood -- I'm having trouble with the term "neighborhood" in this kind of setting, because it's kind of broad.
Q. In that --
A. In that general area, I would say that's the neighborhood, and it's a mix of some housing, there's a lot of woods, there's wetlands, there's some scattered businesses, some taverns, and some boat facilities as you go down the road.
Q. In the neighborhood as you have described it, how many M.L. zoned properties are there?
A. On this map, there are two.
Q. Are you aware of any other M.L. zoned property in

the neighborhood, as you have described it?
A. I don't recall any other M.L. Further down, there might be.
Q. Now, you're familiar with the policy of Baltimore County -- not Albamar County -- that the policy basically is to identify where these uses are permitted as a matter of right in order to encourage the cell tower companies to go where they are permitted as a matter of right versus where they need a special exceptions, is that correct?
A. Yes. Usually subject to the setback requirements.
Q. And in those areas that are permitted as a matter of right -- if you don't mind, I'll just read them for you so you don't have to recall them specifically -- there's the high intensity commercial 03, OT, and MH. Let's take those. In this neighborhod, is there any high intensity commercial O3, OT and MH?
A. No.
Q. They also identify medium intensity commercial where this use is permitted as a matter of right, again, to encourage them versus a special exception. Is there

any O.R. 2?
A. No.
Q. Any B.L.R?
A. Not in this neighborhood, no.
Q. Any B.L. in this neighborhood?
A. Yes.
Q. Where are the B.L. zones in this neighborhood?
A. There's a B.L. immediately adjaacent to the property to the north, and there is some B.L. further south, about 2000 feet away, approximately.
Q. Is there any B.M. in the neighborhood?
A. No.
Q. Is there any B.R. in the neighborhood?
A. No.
Q. Is there any M.R. in the neighborhood?
A. No.
Q. We have already discussed M.L. Just a few sites, you've said. Is there any M.L.R. in the neighborhood?
A. No.
Q. So of the sites permitted as matter of the right in the neighborhood, we have identified four?

A. Yes.
Q. Are any of those sites at least 400 feet wide and deep at the same time?
A. The B.L. to the north is about 300 feet wide, 250 deep. This site is 200 feet wide and 600 feet deep. The M.L. down further, it's very narrow along the frontage, actually looks like it's probably less than fifty feet wide along the frontage, and extends about 500 feet deep, and widens out in the back to maybe 250 feet, and the B.L. further down is only approximately 200 feet wide and roughly 200 feet deep.
Q. So in places where you could put it as a matter of right in the neighborhood, nothing would meet the 200 foot setback requirement in every direction?
A. That's correct.
Q. But those four sites are various shapes and configurations?
A. That's true.
Q. I'd like to direct your attention to what I think is People's Counsel Exhibit 3, and in order for me to understand this, there are three pieces of information

which I think are critical.

I'm going to ask you the same three questions for each of the sites, and here are the three questions. What's the height of the tower? What are the number of carriers on the tower? What's the distance from the place where the photograph is being taken to the distance of the tower that we are viewing?

I think it's important to understand so you can understand what you're really looking at, are you comparing apples to apples.

If we can call these boxes one through three, four, five, six, seven, eight, nine, across top to bottom, in box one, what's the height of that tower? If you know exactly the height of the tower.

A. I don't know. I don't know the exact height.

Q. How many carriers are on that?

A. I believe there is one.

Q. What's the distance from the point of the photographer to the tower?

A. I'm across the parking lot. I'd say that parking lot at that point is probably about 200 feet.

Q. In number two, what's the height of the tower? It's very nicely camouflaged. I will admit that.

Do it on mine first, and then you can just put a nice circle around where the tower is, just on my copy, and we'll see whether we should do it on the other one.

A. (Indicating.) You will see a very slight vertical here. That's where it is.

Q. I apologize. I'm not honestly seeing it.

A. They do a very good job.

Q. I'm going to ask the witness to circle on the board the exhibit at that location.

Q. The same three questions, height, number of carriers, and distance to tower.

A. Here, this is one that was taken in Albamore County. I have to rely on the planners I was with who showed me this tower. Here, they told me that the tower in this area was about eighty-five feet, and we are probably about 400 feet away.

Q. How many carriers?

A. There's one.

Q. Number three?

A. Number three --

Q. I assume the third one is the stick off in the distance there?

A. Let me circle that, too.

Q. If you don't mind, the Board might appreciate that later.

A. (Indicating.) That is also one carrier. The distance here, we might be a quarter of a mile away. And, again, from what they were telling me, the way they site these in the trees down there, the trees range between sixty to ninety feet, and the tower, these poles, are in the seventy-five to eighty-five foot height range.

Q. So you're asserting the tower in the photograph is approximately seventy-five to eighty-five feet high?

A. Seventy-five to eighty-five feet, yes.

Q. Are you guys having a little conversation up there I'm not privy to?

A. I will go to the next one up here.

MS. DEMILIO: He wants me to get the blow-up of the next picture, if that will help him, Mr. Barhight.

MR. BARHIGHT: Only if it helps him.

Q. So the three, we're saying, is seventy-five to eighty-five in height?

A. Yes.

Q. Real quickly, four, is that the one you have the blow-up for?

A. Yes.

Q. Do you object to us utilizing the blow-up?

A. No.

MS. DEMILEO: Let's admit the blow-up as the next People's Counsel Exhibit.

MR. BARHIGHT: No objection.

MS. ADAMS: No. 5.

A. Here, here, and here.

Q. So that would be here, here, and here (indicating)?

A. Yes.

Q. Are all those three the same height?

A. Yes, they are. And those were in the -- they were about eighty-five feet at that location.

Q. So how many carriers on each one?

A. One.

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Q. How far away are you?
A. Here, I'm -- oh, let's see. That's probably about a quarter of a mile off the interstate, and I'm shooting across the westbound -- I'm in the eastbound lane of the interstate, so I'm probably not quite a half a mile.
Q. You're saying a quarter mile and ahalf mile?
A. Yes.
Q. Number five, the one that's "X'd" in the middle, how tall is that?
A. That, I believe, is a 199 foot tower.
Q. How many carriers?
A. There are three, I believe, and also some other antennas.
Q. So there might be more than three carriers?
A. Three cell tell carriers.
Q. And some others?
A. Some other communication.
Q. So that one is consistent with the Baltimore County policy load basically of loading up a tower with users?

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A. Yes.
Q. How far away on that photograph?
A. There, I'm only about 200 feet. This is a zoom-in of that tower.
Q. So it's 200 with a zoom. I will try to move through as quickly as I can. Six, what's the height there?
A. There, that building is probably about thirty-five feet high, forty feet maybe in the center. And I'm 150 feet away.
Q. How many users?
A. One user.
Q. Number seven, down the bottom left?
A. Sorry. We're now at No. 6, I think?
Q. I'm moving on.
A. Okay. No. 6, that is also a zoom, and I'm probably -- is that six or seven?
Q. Seven. Bottom left.
A. Bottom left? I'm probably about 800 feet away, and there are actually two poles there with one provider on each, and they are in about a seventy-five foot range.

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Q. Would you mind circling where they are?
A. (Indicating.)
Q. Right next to each other?
A. Right next to each other, yes.
Q. Thank you very much.
MR. BARHIGHT: For the record, the witness has circled the two towers on box number seven.
Q. Let's move on to eight.
THE CHAIRMAN: Mr. Barhight, I've got No. 3-7, the tower is seventy-five feet tall, and how many carriers, one on each?
THE WITNESS: One on each.
THE CHAIRMAN: Thank you.
Q. Number eight, it's three different towers?
A. Number eight is the same as the one we looked at with No. 4. It's that same site from a different location, and we are looking at it from a side view.
Q. Okay. About how far away are you?
A. There, I'm about a quarter-mile away.
Q. Nine, the flag?
A. Number nine is the flag, and that flag is -- I

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don't know the height. I'd be guessing. Ninety feet or so. And I'm about a block away from it, shooting through a windshield.
Q. How many carriers?
A. I believe there is one.
Q. One?
A. One, although flagpoles can carry more than one.
Q. Yes. Under certain circumstances.
MS. DEMILIO: Objection. Move to strike.
MR. BARHIGHT: I apologize.
Q. Are you an RF engineer?
A. No. Thankfully.
Q. Do you design these systems for carriers?
A. No, I do not.
Q. So you don't know whether an eighty-five foot tower would provide adequate coverage at this particular location, do you?
MS. DEMILIO: Objection. I don't think that's what he said.
MR. BARHIGHT: He said that you could reduce the height of this to extend no higher than ten feet above the

trees and provide good coverage. That's what he said.
MS. DEMILIO: For the specific site?
MR. BARHIGHT: Yes, he did. So I am cross examining on that, because I don't see how he could possibly have said that without being an RF engineer.
A. I did say that.
Q. But you said that with no basis whatsoever in your expertise?
A. My only expertise in that area is in speaking with my friends in Virginia and how their systems have worked there.
Q. And those friends in Virginia are in Albamar County?
A. Albamar County, yes.
Q. Any RF engineers?
A. No.
Q. It's interesting.
MS. DEMILIO: Objection. Move to strike. Mr. Barhight, please restrain yourself.
MR. BARHIGHT: I'm having so much fun.
MS. DEMILIO: Retraining yourself from having

fun.
MR. BARHIGHT: I'm sorry. I'm trying hard to move fast, and things just keep coming out of my mouth.
Q. I think you also indicated that we might be required to have more towers if we reduce the size of this particular tower. Is that what you said?
A. Yes.
Q. Have you done the study that would analyze how many more towers would be required?
MS. DEMILIO: Objection. What kind of study? As a land planner?
Q. Sorry. Have you done any RF engineering studies to determine how many towers would be necessary to raise the height of the proposed tower to ten feet above the treeline?
A. No.
Q. So it's pure speculation on your part to determine how many additional towers might be required?
A. I didn't give a number, yes.
Q. Now, you mentioned, you talked about an area in the vicinity that was a gateway, and I was a little

confused about where you thought that gateway was located.
Could you be more specific and come down to People's Counsel No. 2 and identify on that map where the gateway is located? I'm cognizant of the fact that gateway is discussed on page 252 of the People's Counsel Exhibit No. 4. Do you have that in front of you?
A. Yes, I do.
Q. Gateway refers to the location where the area surrounding a transportation corridor clearly changes, is that right?
A. Yes.
Q. Could you please identify where you think the gateway is in this vicinity?
A. Here's where 702 enters into Back River Neck Road, so you have a change in the transportation corridor with a major highway merging into basically a local collector road.
Q. So it's where 702 merges into Back River Neck Road?
A. Yes, that's the beginning of that area.
Q. If Sprint is not able to put a tower at this

particular location, isn't it true that it would be a denial of Sprint of a reasonable use of this property?
A. Well, "reasonable use" is based on the surface as meeting all the requirements of the Baltimore County code, and they can't meet the setback requirements, so I don't know that they are denied a reasonable use of the property.
Q. That's your answer?
A. Uh-huh.
Q. So then if you can't meet the requirements of the setbacks, you can never be denied reasonable use of the property, that's what you are saying?
A. If a use is permitted, but you can't meet the setbacks, then you're not able to have the use there. The setbacks are controlling the permitted application of the use.
Q. So by definition, as I understand your testimony, if you can't meet the setbacks, you can never be denied a reasonable use of the property?
MS. DEMILIO: Objection. Asked and answered.
MR. BARHIGHT: I didn't get an answer. That's

why I asked it again.

MS. DEMILIO: He's answered the question.

THE CHAIRMAN: Can we get an answer to clarify? And could someone do me a favor and shut that back door?

MR. BARHIGHT: Would you like me to restate the question?

THE CHAIRMAN: Yes, please.

Q. Mr. Dillon, I apologize if you said the answer and I didn't get it. I will try to rephrase it so a yes or no answer is given.

MS. DEMILIO: Objection. He doesn't have to answer yes or no. I want the witness to understand that he doesn't have to answer yes or no. Go ahead, Mr. Barhight.

MR. BARHIGHT: If I phrase it as a yes or no question, that's the way it gets answered, either that, or "I don't know."

Q. You recall your testimony with regard to your asssertion that we have been discussing about reasonable uses?

A. Yes.

Q. Isn't it true, under your assertion -- just answer yes or no -- isn't it true -- yes or no -- that under your theory, if an applicant was unable to meet the setback requirements, the denial of that variance could never be the denial of the reasonable use of the property?

MS. DEMILIO: Objection. It's a speculative answer. It doesn't even pertain to this case. He can limit it to this case, but that's calling for a speculative answer.

And my questions that were requiring speculative answers were sustained. What difference does it make, generally speaking? He asked about Sprint. He answered the question. I don't think we need to speculate generally about all potential users of the property. That's not the issue.

MR. BARHIGHT: I'd be happy to explain why it is clearly relevant. The witness was asked questions about reasonable use that arises out of case law that Ms. Demileo relied on for variances.

Part of the variance asssertion she's making from the McLean versus Solely case is that in her understanding

of the argument, because the owner of the property would not be denied a reasonable use if the variances were denied, that it's okay to deny the variances. Here, I'm saying, what about my guy --

MS. DEMILEO: Objection.

MR. BARHIGHT: Please, let me finish. What about the lessee? The first question was, isn't he going to be denied a reasonable use of the property? And the answer that he gave was, No, because he can't meet the setback requirements.

So my question that I'm trying to get an answer to is the inverse of that. Okay. Does that mean if you can't meet the variance requirement, then you can never be denied a reasonable use? It's the inverse of the same idea. It shows the absurdity of it.

MS. DEMILIO: No. It's an abstraction. If Mr. Barhight wants to argue that legally, fine, but he's not going to pin down this witness and ask him to speculate. And it's irrelevant to this case. The important thing is --

THE CHAIRMAN: Excuse me. I'm going to stop you

right now. I'm going to make a decision. Mr. Barhight, obviously, that's going to be done in argument and briefs, so we'll have to address it there. Let's move on.

MR. BARHIGHT: Thank you. Last question on this topic to make sure I understand what he had already said. I'm not trying to trap him or trick him.

Q. I want to make sure I understand when I asked the question, is there going to be a denial of a reasonable use of the property by Sprint, you said, No, because they can't meet the setback requirements?

MS. DEMILEO: Objection. Let the court reporter read it back. Why does he have to read it back two or three times? What's the purpose of that? He knows that's objectionable, and that's not allowed.

If he wants to know the answer, have the court reporter read it back. He's not going to keep asking him the same question, trying to get something else out of him.

MR. BARHIGHT: The reason I did it, because it would take me longer -- and has taken longer with your objections -- rather than go through --

MS. DEMILIO: Repeating yourself takes a long time, too, Mr. Barhight.

MR. BARHIGHT: Who's making me do that now?

MS. DEMILEO: You are.

THE CHAIRMAN: It's ten after 4. Let's just streamline this real quick. Could you ask a question, and could you let him him finish the whole question before you object?

MR. BARHIGHT: I'm going to do as Ms. Demileo suggests.

THE CHAIRMAN: Ask the question.

Q. Mr. Dillon, with all this hoop-la, I have forgotten the answer. I apologize.

A. I've probably forgotten the question.

Q. I will try it again. My client Sprint, the lessee here, not the owner, if they are denied the variances, will that or will that not be a denial of a reasonable use of the property by Sprint, the lessee?

MS. DEMILEO: Objection on the basis of asked and answered.

THE CHAIRMAN: I'll let him answer so we can move

on.

A. I said what I said.

Q. Which was?

A. That if they can't meet the setbacks, if they can't get a variance, they haven't been denied a reasonable use of the property. They haven't met the conditions of the site.

Q. Under the zoning regulations, do you believe that Sprint meets the definition of "owner" in 426.1?

A. The fact they are a lessor, a lessee of the property, yes.

Q. Turn to the site real quickly. We've got about two minutes to do this. I'm showing you 8A which shows the proposed location of the monopole.

A. Yes.

Q. If we move the monopole east an additional sixty-five feet, it would be 200 feet away from the western boundary mapwork there?

A. Uh-huh.

Q. Isn't it true that as the monopole gets closer to the rear of the existing one-store commercial building, it

gets closer to Back River Neck Road, that the negative visual impact increases?

A. In terms of the fact that you're moving this pole from a location further -- the further away it is, theroetically, the smaller it is.

But, in this case, it's framed by the woods, so what happens is the closer you move it to the road, the larger it looms above the woodline in the back, so it gives the impression of being even higher, but it's still extending sixty-five or seventy feet above the woodline even in its present proposed location.

MR. BARHIGHT: No other questions of the witness. Thank you.

THE CHAIRMAN: Ms. Demilio, any cross?

MS. DEMILIO: Do we have time?

THE CHAIRMAN: We are going to need a day two. I don't know if we want to try to finish with Mr. Dillon today?

MR. WESCOTT: How much more do you have?

THE CHAIRMAN: Off the record.

(Discussion held off the record.)

THE CHAIRMAN: We will adjourn for today and we'll find a date that's agreeable to all parties.

MR. BARHIGHT: I understand the witness is not to discuss his testimony with any party during the time period?

THE CHAIRMAN: That is correct.

MS. DEMILIO: I note I would put the sign-in sheet in for today as the next People's Counsel exhibit.

MR. BARHIGHT: No objection.

THE CHAIRMAN: We'll take it in as a Board exhibit, Board Exhibit 1.

(Hearing adjourned.)

* * * * *

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IN THE MATTER OF:	* BEFORE THE
BACK RIVER, LLC,	* COUNTY BOARD OF APPEALS
BUCK JONES, President-	* OF
Legal Owner; Sprint PCS -	* BALTIMORE COUNTY
Contract Purchaser	* Case No. 02-159-A
810 Back River Neck Road	* January 21, 2003

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 a.m., January 21, 2003.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

BOARD MEMBERS:

LYNN BARRANGER, Acting Chairman
MELISSA MOYER ADAMS
LAWRENCE WESCOTT

APPEARANCES:

G. SCOTT BARHIGHT, Esquire
JENNIFER R. BUSSE, Esquire
On behalf of Petitioner

CAROLE S. DEMILIO, Esquire
Deputy People's Counsel
On behalf of Baltimore County

PROCEEDINGS

* * * * *

THE CHAIRMAN: Good morning. We're here in the matter of Back River LLC, Buck Jones president, legal owner, Sprint PSC is the contract purchaser, and it's 810 Back River Neck Road.

This is day two, and it's Case No. 02-159-A, and it's based on the Deputy Zoning Commissioner's order from January 4, 2002, in which variance requests were granted with restrictions. Counsel, if you'd identify yourselves.

MR. BARHIGHT: Thank you. Good morning. Scott Barhight and Jennifer Bussey, from Whiteford, Taylor, Preston, on behalf of the petitioners/appellees this morning.

THE CHAIRMAN: Thank you.

MS. DEMILIO: Carole Demilio, Deputy People's Counsel, for Baltimore County.

THE CHAIRMAN: According to my notes, we are on redirect with Mr. Dillon? Are there any preliminary matters?

MR. BARHIGHT: Thank you. Yes. Ms. Demilio and

I have had an opportunity to review the Board files prior to today's hearing to just double-check on the exhibits, and we discovered there's an exhibit that's not in the files, specifically Exhibit 8A and 8B, and we would like to, with the agreement of the Board, provide you with a replacement exhibit that Ms. Demilio and I have reviewed to make sure that it is, in fact, what was supposed to be Exhibit 8A and 8B.

It's a two-page exhibit. Exhibit 8A and 8B reflect the revised site plan for this petition. I believe your notes from the Board's files indicate that that's the description of the exhibit, but when we reviewed the file, it was not present in the file.

THE CHAIRMAN: I did note in the file that 8B is in there under the balance of the Zoning Commissioner's exhibits.

MR. BARHIGHT: That could not be possible because Exhibit 8 is a revised exhibit. It did not exist until September of 2002.

THE CHAIRMAN: Should we go off the record real quick?

MR. BARHIGHT: Yes.

(Discussion held off the record.)

THE CHAIRMAN: Let's go back on the record.

MR. BARHIGHT: Thank you. For the record, I believe a review of the Board's files indicates that we have accurately and properly replaced Petitioner's Exhibit 8A and 8B into the record.

There was another preliminary item that Ms. Demilio and I discussed that relates to how we would refer to the Zoning Commissioner's exhibits that were introduced below before the Zoning Commissioner and which are a part of the Board's files, and with the Board's concurrence, Ms. Demilio and I thought it best just to refer to them in the number references that were given to them by the Zoning Commissioner, so Zoning Commissioner Exhibit No. 1 would be referred to as Zoning Commissioner Exhibit No. 1, et cetera, et cetera. If that's okay with the Board, we would do that.

THE CHAIRMAN: I have no problems with that.

MR. BARHIGHT: Thank you. I think we both anticipate memos or briefs in lieu of oral argument, and

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to refer to things the same way, I think would be helpful to the Board.

THE CHAIRMAN: We appreciate that.

MR. BARHIGHT: Thank you. The last thing to comment on preliminarily relates to the Zoning Advisory Committee comments.

As the Board is aware, there's a list of all of the file that's presented to the Board from the Zoning Commissioner. Many of those documents we just discussed which bear a Zoning Commissioner's exhibit number.

There is one set of documents that I would like to give a number, and it would be a Board number, Petitioner's Board number, which is the Zoning Advisory Committee comments, so that in any briefs or appellate documents, we'd be able to refer to those with an exhibit reference, but they are already in the Board's record as a part of the Zoning Commissioner's file, but we'd like to give them a number for reference purposes. We'd like to make them Petitioner's Exhibit No. 19, if we could.

THE CHAIRMAN: Okay. The Zoning Advisory Committee comments would be accepted as Petitioner's Exhibit 19.

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MS. DEMILIO: No objection.

MR. BARHIGHT: Thank you. Those are all of the preliminary issues that we discussed prior to the hearing today.

THE CHAIRMAN: Thank you. I believe, Ms. Demilio, it's your case.

MS. DEMILIO: Yes, Madam Chairman. Mr. Dillon, as you may recall, was on redirect, I believe, and he's expected momentarily.

He had an 8 o'clock meeting, and he expected to be here at ten, but rather than delay -- I only have a few brief questions for him anyhow -- I mentioned to Mr. Barhight before the hearing started that I would start with another witness and then put Mr. Dillon on when he came.

THE CHAIRMAN: I know Mr. Barhight has no objection, so we'll proceed.

MS. DEMILIO: Jackie Nickel.

J A C K I E N I C K E L,

having being called as witness, was duly sworn and testified as follows:

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DIRECT EXAMINATION

BY MS. DEMILIO:

Q. Could you state your name and address, please, for the record?

A. Jackie Nickel -- N-i-c-k-e-l -- 721 Rockaway Beach Avenue, Essex Maryland 21221.

THE CHAIRMAN: Ms. Nickel, could you spell your last name again, for the record?

THE WITNESS: N-i-c-k-e-l.

THE CHAIRMAN: My apologies. I thought it was "H."

Q. How long have you lived in Baltimore County?

A. Sixty years.

Q. Are you a member of any community association for that area in which you live?

A. Yes.

Q. What's the name of the assocation?

A. I am a member of two, Rockaway Beach Improvement Association and the Back River Neck Penninsula Association, and I'm the president of both.

Q. What community association encompasses the

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subject property?

A. The Back River Neck Penninsula Community Association.

Q. Do you have the Rule 8 materials for that community association?

A. Yes.

Q. I'm going to show you what I believe are five documents which include three affidavits and ask you if those are the Rule 8 materials that you are required to bring according to the Board of Appeals rules?

A. Yes, they are.

MR. BARHIGHT: No objection.

MS. DEMILIO: I'd like to submit these. Can we do them as a package?

THE CHAIRMAN: People's Counsel No. 5. Do you want to identify each, and do it as A, B, C?

MS. DEMILIO: 5A --

THE CHAIRMAN: Excuse me. No. 6.

Q. 6A is the listing of the people that are responsible to the zoning committee that are responsible for speaking on behalf of the community?

A. Yes.
Q. 6B is the resolution of the position of the Back River Neck Community Association on the Sprint tower that's subject of this hearing?
A. Yes.
Q. 6C is the affidavit of you as president, that you're authorized to speak on behalf of the Back River Neck Peninsula Community Association?
A. Yes.
Q. And the next affidavit is Leroy Sennett who is authorized to speak?
A. Yes.
Q. I might have mislead the Board. I think there are only two affidavits, A, B, C and D.
MR. BARHIGHT: Excuse me. Off the record?
(Discussion held off the record.)
MS. DEMILIO: I apologize. There were other affidavits if other members came to speak, but were unable to attend, so we'll submit the two affidavits for the two members of the community association who's here, one of which is is Ms. Nichels.

MR. BARHIGHT: For the record, 6C is the affidavit regarding Ms. Nickel?
MS. DEMILIO: Right.
MR. BARHIGHT: And 6D is the affidavit recording Mr. Sennett?
MS. DEMILIO: Correct.
Q. Now, Ms. Nickel, would you briefly tell the Board what the boundaries are of your community association?
A. Our boundaries begin at Hyde Park Road and Back Riveer Neck Road all way down to the end of Back River Neck peninsula, which is at the Rocky Point, Barrison Point area including Turkey Point and all offshoot roads.
Q. And Back River Neck Road, the review is to the east of the subject site, so you would run that portion of the peninsula with the Back River Neck Road Association?
A. Right, within the boundaries.
THE CHAIRMAN: One interjection, Ms. Demilio. I'm having a hard time hearing you.
MS. DEMILIO: I will speak up. I'm sorry. Do I have to repeat anything?
THE CHAIRMAN: No.

Q. MS. Nickel, how many members are in the association?
A. We have 205 households with 400-plus members.
Q. Now, does any other community association in the area include the subject site?
A. No, they do not.
Q. So it's just Back River Neck Community Association?
A. That's true.
Q. Now, what was the position of the community association regarding the tower?
A. The association concurred with People's Counsel's conclusion on the excessive number of, you know, variance setbacks, special exceptions, that were in that particular petition, and that there would be a more appropriate site, perhaps, you know, if it were reconsidered.
Q. So your association was opposed to the tower at this location?
A. Yes.
Q. But perhaps another location, they would support?
A. Yes.

Q. Now, you were here for the last hearing because you saw the site plan and you saw the proposal on the site plan?
A. Yes.
Q. Entered as Petitioner's Exhibit 8?
A. Yes.
Q. 8A and 8B. The site plan said there are several commercial or industrial uses on the site. Do you agree with that?
A. Yes.
Q. Have you ever patronized any of the businesses there?
A. At least three, I'm a regular patron of.
Q. In your opinion, are they viable businesses?
MR. BARHIGHT: Objection.
THE CHAIRMAN: Basis?
MR. BARHIGHT: She just asked her if in her opinion are they viable businesses. I mean, there is absolutely no foundation.
MS. DEMILIO: I'll rephrase the question.
Q. Have those businesses been operating for

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sometime at this site?
A. For a couple years, yes.
Q. Since Mr. Jones purchased the property?
A. Yes. He's developed that area since he purchased and established the Pottery Farm Station as a shopping area. It has developed continuously.
Q. Now, as far as you know, all of the space in the building is occupied by a tenant or of a business or retail use, based on your observation?
A. Yes.
MR. BARHIGHT: Objection. Not a proper foundation that she even knows the exact square footage of the areasl, or the areas that are leasable.
MS. DEMILIO: I'm asking on her observation, having been about there.
THE CHAIRMAN: It's just basically a community peron, her observation.
Q. Now, you have seen the lot itself and the site plan showing the parameters of the lot that's the subject of this hearing?
A. Yes.

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Q. I assume that it is fair to say that you're familiar with other properties in the area that encompass your community association?
A. Yes.
Q. Now, let me ask you, based on those observations, is there anything unusual or unique about the shape of this property?
A. No, it's not. It's not unique.
Q. Not -- I'm sorry?
A. It's not unique, no.
Q. Is there anything unusual or unique about the topography of this piece of property?
A. No, it's not.
Q. Is it flat?
A. Yes.
Q. Is that similar to most of the other properties within the boundaries of your association?
A. Yes.
Q. Are you aware of any subsurface conditions that make this site unique from any others?
A. No, I'm not aware of any.

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Q. You were here for the last hearing?
A. Yes.
Q. Did the petitioner's witnesses cite anything unusual about the subsurface condition of the property?
A. No.
MR. BARHIGHT: Objection. The previous witnesses' testimony speaks for itself. It shouldn't be appropriate for a lay witness to try to characterize any of the expert testimony of an expert witness. It just simply speaks for itself.
MS. DEMILIO: I asked her if she heard anything. That goes to her answer as to whether she's aware of any. It's a yes or no answer.
THE CHAIRMAN: We are going to give her the weight that she deserves. Continue.
Q. Ms. Nickel, is there anything unique about the environmental factors of this site compared to others that you are aware of within the boundaries of your association?
A. No, not compared to the other areas in our area.
Q. Are you aware of any historical significance to

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this site compared to others?
A. No.
Q. The buildings, I take it, are not historical, to the best of your knowledge?
A. Not to my knowledge, no.
Q. Are you aware of any restrictions imposed by the abutting properties that would make this subject site unique in any way?
A. I'm not aware of any.
Q. Now, were you here for Mr. Dillon's testimony several months ago?
A. Yes.
Q. Mr. Dillon said there were no special circumstances peculiar to the land or structures on the site. Do you agree with that statement?
A. I agree.
Q. I want to ask you a few questions about the site itself. The site plan shows that there were trees in the area.
Are those trees, based on your observation, located on the site itself, or on adjoining properties, or

both, if you can describe that?
A. Well, there are trees on the adjoining properties. I think -- I believe there are trees to the rear of the existing lot that we are speaking of.
Q. In terms of the history of the site, since you have lived in that area for about sixty years, do you know how long it's been maintained as a commercial or industrial use?
A. It has been -- since I was a child, I remember concrete manufacturing -- you know, manufacturing concrete objects as an industrial use at that site.
Q. So in 1977 when the property was zoned M.L., it had a use as an industrial use?
A. Yes, I think it did.
Q. Did there come a time when the property was vacant?
A. Yes.
A. Yes.
Q. Do you recall when that was?
A. I would think it was in the early nineties.
Q. That was prior, obviously, to Mr. Jones purchasing the property?

A. Yes.
Q. What was the condition of the property during that time?
A. It became very run-down, and it was an eyesore in the community.
Q. So is it fair to say that after Mr. Jones purchased the property, he improved the appearance?
A. He greatly improved the appearance.
Q. Now, Mr. Dillon also described the area near the point where Southeast Boulevard, which is also known as 702, merges into Back River Road as the gateway. Would you agree with that statement?
A. Yes.
Q. Is that the same assessment you find in the Master Plan 2010?
A. Yes.
Q. So it's a gateway, designated as a gateway?
A. Yes.
Q. That's near the subject site?
A. Yes.
Q. Mr. Dillon also said the tower as proposed would

violate the spirit and intent of the Master Plan for this area and the Coastal Legacy designation on the peninsula. Do you agree with that?
A. Yes.
Q. So is the whole Back River Neck peninsula designated as the Coastal Rural Legacy?
A. Yes, it is.
Q. Is that similar to the Rural Legacy program in northern Baltimore county for agricultural land?
A. Yes, it is.
Q. Mr. Dillon also testified that it would be out of character to place a tower at this location since it would interfere with -- and I'm paraphrasing -- the views in this area, the scenic view or panaramic views. Do you agree with that assessment?
A. Yes.
MR. BARHIGHT: I am going to have to object to this line of questioning. For awhile, it was fine because it's a lay witness, but it's clear that Ms. Demilio is mischaracterizing Mr. Dillon's testimony.
I had the opportunity to review it yesterday, and

his testimony speaks for himself and for itself. If Ms. Demilio, rather than leading this witness, who's only a lay witness, would like to ask non-leading questions and just ask her her beliefs, then I will not object.
But these are clearly leading questions which mischaracterize to a degree the testimony of a previous witness, who's actually, in fact, still on the stand.
MS. DEMILIO: Let me just say, in my defense, I, too, read Mr. Dillon's testimony, and I believe these are the statements he had made.
And my reason for presenting it this way is to expedite the hearing instead of having Ms. Nickel repeat all of the testimony that Mr. Dillon gave, and to cooroborate it. I was just asking briefly to go through some of those things so we wouldn't have a long explanation of things.
I apologize if it appears I was mischaracterizing Mr. Dillon's testimony, and I will just ask her the questions straight up then.
I take it Mr. Barhight is only objecting to the last question, so I don't have to re-ask everything else?

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MR. BARHIGHT: Correct. It didn't start to her me until it became cumulative.

MS. DEMILIO: So the other ones will stand and I will just ask this question.

Q. What effect, if any, would the proposed tower have on the scenic views in the area as you understand them as the president of the community association and also as a resident of area?

A. At the gateway of the community, it's a bad location for a cell tower to begin with. If there were a way to hide it among the trees, further back from the road, in an area that would not impact, negatively impact the environment, I do not think the community would be as opposed as it is out in the open in this commercial strip.

Q. Thank you. Now, you are aware that the petition for variances requires three setbacks requirements, three setback variances from the requirement of 200 feet for the tower and two variances for the setback requirement of 125 for the accessory structure for the tower, you are aware of that?

A. Yes.

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Q. Are you aware of any other properties in the area that, because of their size, would not be able to accommodate these setbacks?

A. No.

Q. Are there other areas that also would not be able to accommodate --

A. There are other areas that would not be able to accommodate. There are other properties that would not have sufficient land mass or would not have the appropriate location for a cell tower. There are other locations as such.

Q. Are there other areas that are preferable to you to accommodate the tower that may require a special exception to the tower?

A. Yes. We have discussed it among our membership and have come up with a half dozen other suggestions that we feel would be more appropriate.

Q. When Mr. Dillon testified, he introduced as an exhibit camouflaged towers, either flagpoles or hidden in the trees at other locations, some in Baltimore County, others in other states. Do you recall that testimony?

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A. Yes.

Q. What is your position regarding the location of the tower at this site or another site if it were camouflaged?

A. We would like to see the precedenct set for camouflaging towers, or making them less visible, because we know one tower will not serve the entire peninsula.

We would really like to see the tower companies work with us in this Coastal Rural Legacy area to hide the towers and work with the new technology to do so.

Q. Is it your opinion that your community association would work with any of the tower companies to try to achieve the goals that you have?

A. We would very much like to work with the tower companies and have them come to us for some input.

Q. Can you tell the Board, specifically, if there are other sites that would be preferable to the association in lieu of Mr. Jones' property for a tower?

A. There are wooded areas that probably could be -- where a tower could be camouflaged. There are structures where a tower could be attached and camouflaged as a

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flagpole. There are at least a half dozen that our membership came up with in suggestion.

Q. Can you tell the Board if any of those specifically are in the immediate area of this site?

A. On the community center across the street is a one and a half story structure, possibly could be attached as a flagpole. There's a medic unit across the street which is existing, which a flagpole would be appropriate at that location.

And there are many areas of farmland where the tower could be camouflaged among the trees.

Q. Now, I want to show you two photographs and ask you if you can identify these as the recreation center across the street from the subject site that you talked about?

A. That's the site of the recreation center. The center itself is off to the left.

Q. Is that what you referred to in your testimony?

A. Yes. The center itself is not pictured there.

Q. But that's the entrance?

A. Yes.

MS. DEMILIO: I would like to mark these as People's Counsel 7A and B.

MR. BARHIGHT: No objection.

THE CHAIRMAN: Accepted.

A. There's probably another picture in the file of the center itself from tge last time.

Q. In the Board's file?

A. (Nodding head.)

Q. Now, in that particular picture, 7A and 7B, there appears to be a flagpole already on that site, is that correct?

A. Yes.

Q. Would you support a second flagpole to house the carriers for cell towers?

A. Yes.

Q. Do you know the size of that property, about how many acres it is?

A. Mr. Jones' property?

Q. No. The recreation center.

A. Oh, it's -- the entire -- the Pottery Farm Park is right next to that property. It's over a hundred acres

total, county-owned land, right there.

Q. What about that site? Do you know if it's over five acres?

A. Oh, yes.

Q. Are there any other sites in the area, institutional locations, that your community association would prefer to house a tower, rather than the instant --

A. Rather than?

Q. Rather than Mr. Jones' property?

A. There are schools. There's a medic station. There's a park, Rocky Point.

Q. How far is -- what school are you talking about?

A. There is Chesapeake High School.

Q. How far is that from Mr. Jones' property?

A. Less than a mile.

Q. Do you know if that's more than five acres?

A. Yes, I'm sure it is.

Q. How about the medic center, how far is that from Mr. Jones?

A. It's right across the street.

Q. Across Back River Neck Road?

A. Right.

Q. Do you know the size of that property?

A. That property is owned by Baltimore County, so the rec site, the medic site, the former school site, Pottery Farm Park, it's a huge parcel.

Q. Is it my understanding that the tower has already been constructed on Mr. Jones' property?

A. Yes, that's right.

Q. Have you seen it? Have you driven by that site?

A. Yes.

Q. I want to show you a series of four photographs after I show them to Mr. Barhight and ask you if you can identify that tower as the one on Mr. Jones' property and from where they were taken.

Ms. Nickel, I'd like to show you these four photographs or, actually, I should say they are computer printouts of photographs, and ask you -- this one we'll mark as People's Counsel 9A --

THE CHAIRMAN: No. We're at eight.

MS. DEMILIO: I'm sorry. Eight.

Q. Can you tell the Board or describe to the Board

where that picture was taken from?

A. That is taken from Back River Neck Road onto the cell tower site.

Q. That's the tower with the candelabra, as we have been calling it?

A. Yes. There are two.

MR. BARHIGHT: She said that was taken from the road?

THE WITNESS: It was taken from the lot across the road.

Q. And the picture is Back River Neck Road?

A. Back River Neck Road. The photographer was standing on the land on the opposite side of the road.

THE CHAIRMAN: Who took these photos?

MS. DEMILIO: Mr. Dillon took them.

Q. Do they accurately represent the site as you witnessed it recently?

A. Yes.

Q. Can you identify the second photograph?

A. This was taken from the parking lot of Pottery Farm Station, I assume.

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Q. Is that the subject tower?
A. Yes.
Q. Over the roof?
A. Yes.
MS. DEMILIO: Mark this as People's Counsel 8B.
Q. What about the third photograph, can you identify where that was taken?
A. That was taken from the community center parking lot on the opposite side of Back River Neck road, and the cell tower is shown behind Pottery Farm Station shopping strip.
MS. DEMILIO: People's Counsel 8C.
Q. The final picture, can you identify that?
A. That's taken from the driveway leading into the M&M boat facility that is on Mr. Jones' property looking directly at the cell tower.
Q. So looking towards the rear of the site?
A. Right. It's looking towards the rear of Mr. Jones' site.
Q. And that's the tower in the center of the
[illegible]cture?

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A. Yes.
MS. DEMILIO: People's Counsel 8D.
MR. BARHIGHT: No objection to any of the exhibits.
THE CHAIRMAN: Accepted.
MS. DEMILIO: Thank you.
Q. Now, the tower is already constructed with two platforms on it. What opinion do you have of this effect, if any, on the area, that you talked about before?
A. The effect on the area is an eyesore in that nothing has been done to mitigate the appearance, and the setbacks are still inappropriate, and the impact would be to encourage the other cell towers that will be needed down the peninsula to follow the same pattern.
MS. DEMILIO: Thank you. I have no further questions.
THE CHAIRMAN: Mr. Barhight?
MR. BARHIGHT: Thank you.
CROSS EXAMINATION
BY MR. BARHIGHT:
Q. Ms. Nickel, when you were giving the boundaries,

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the outside boundaries to create the shape of the community association, I was confused, and I apologize.
Could you please describe to me the northernmost boundary of the Back River Neck Peninsula Community Association?
A. Hyde Park Road.
Q. What's the souternmost boundary?
A. Can I read the boundaries?
Q. Actually, if you have them present, why don't we introduce that?
A. This is a copy of our by-laws. Could I just read them? Because I really need those by-laws tonight. I only brought one. Can I read it and then have a zerox made?
Q. That would be fine.
A. The boundaries of this corporation shall be starting at the intersection of Back River Neck Road and Hyde Park Road traveling south to the end of Back River Neck Road to include all intersecting roads and cross roads that need access to Back River Neck Road, also to include Hart Miller Island.

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Q. Thank you. So basically, to summarize, from Hyde Park Road south, the entirety of the Back River Neck peninsula, and Hart Miller Island?
A. That is correct.
Q. Thank you. You gave a lot of opinions today, so I want to make sure I understand your experience and background. Could you please explain your educational background?
MS. DEMILIO: Objection. She gave her opinion as a representative of the community association. She didn't give an opinion as an expert, and I don't think I asked her any questions as an expert.
THE CHAIRMAN: I think we clarified that her opinions were going to be just that of a community person, not as an expert person, and we're going to give it the weight as such.
MR. BARHIGHT: I want to make sure, given that she's only here as a lay witness and not as an expert, I wanted to understand just how lay she was.
THE WITNESS: I am an expert lay witness.
THE CHAIRMAN: Ms. Nickel, when we have

questioning going on here, please let us finish.
MR. BARHIGHT: I just wanted to know if she graduated from high school, if she graduated from college.
THE CHAIRMAN: Let's expedite it and just ask the one question, and let's move on.
Q. The question was, could you briefly explain your educational background?
A. Okay. I attended Notre Dame Maryland Preparatory School, graduated in 1960. I attended the University of Maryland, majored in education from 1950 to 1953.
I attended Towson State University, received a certificate in elementary education in 1953. Dropped out twenty credits shy of graduataion because of a great need for teachers, became an elementary school teacher in Baltimore County Schools, taught for awhile.
I took off twelve years to raise my family. Went back to teach in Catholic school. Worked there for a half dozen years. I worked as a free-lance writer and reporter for The Avenue for a year, become editor of the publication, remained there for fourteen years.
I founded and started The Essex Times, was

managing editor for four years, moved on to work as a reporter for several magazines and The Avenue News, and I continue now as a free-lance writer.
I write history books and work free-lance for two magazines and one newspaper, and I am working on a new history of the Back River Neck peninsula.
Q. So just for clarification, you're not a civil engineer? Environmental engineer? Landscape Architect or land planner?
MS. DEMILIO: Objection. She was never presented as such, and you said one question.
THE WITNESS: Well, that's education.
THE CHAIRMAN: We did verify she's not an expert.
MR. BARHIGHT: Thank you.
Q. Have you had an opportunity to walk the site?
A. Yes. I haven't walked every square inch in it, but I have walked back towards the tower, but I haven't walked every square inch of the site, no, I haven't.
Q. You walked the rear area of the property where the tower is located?
A. Yes.

Q. All the way back?
A. Not all the way back.
Q. Not all the way back?
A. No.
Q. So you don't know where the property line actually is?
A. No, I don't.
Q. Isn't it true that as you're traveling south on Back River Neck Road and you get to the place where you call the gateway, that this tower is not visible?
A. The tower is not visible at a portion of the road, and then it comes above the trees as you ride in a certain area.
And as, you know, the closer you are to the Pottery Farm site, the more visible it becomes.
Q. But you identified an actual specific location, did you not, that's the gateway? That point of the gateway, can you recall what that location was, that point you claim is the gateway?
A. I don't think I named an exact point. Maybe Mr. Dillon did, but I don't think I did.

Q. Well, you were asked whether you agreed with Mr. Dillon's testimony about all of that, so you must have understood his testimony.
What is the gateway? What's the point where the gateway begins?
A. The gateway is the sign near Cherry Day Nursery that welcomes you to the Coastal Rural Legacy area and asks visitors to please keep it clean and green, and that is the designation that we give to the gateway.
Q. During your direct examination, you were asked a question with regard to whether other areas of land were large enough to accommodate the cellular tower, and I honestly was confused by the answer.
Could you restate, again, your answer to that question? I did not understand it.
A. There are many places that have sufficient acreage to accommodate that tower. Just two weeks ago, I was in Annapolis supporting the county's purchase of 233 more acres of legacy land.
We have Rocky Point Park, we have two school sites, we have a medic site, we have a community center

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site, all with more than adequate acreage to support the [redacted]l tower.

In addition, we have the Essex Sky Park site which is 600 acres we acquired as Coastal Rural Legacy land, and many hundred more acres that now we have approximately fifty percent of Back River Neck in preservation.

Q. Isn't it true that the areas of land that are zoned Coastal Rural Legacy contain prohibitions against the placement of cellular towers?

A. I'm not an expert on the technology of that. I think we agreed to that.

Q. So you don't know the answer to that question?

A. I cannot say yes or no to that.

Q. I believe you indicated that the area across the street from the subject site contains a series of different properties that are owned by Baltimore County. Did I follow that properly?

A. Yes.

Q. And one of these areas is the medic center?

A. Yes, the ambulance medical unit for our area.

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Q. I believe when you were asked the question about the acreage of that parcel, either you didn't answer it, or I didn't hear the answer. What is the acreage of that parcel, do you know?

A. I'm not an expert on that.

Q. So you don't know?

A. I don't know.

Q. Ms. Nickel, during your preliminary comment early on in direct examination, I believe you indicated the community association was opposed to the variances and special exceptions sought for this site?

MS. DEMILIO: Objection. She didn't say the special exceptions.

A. I think I slipped and said special exceptions. I take that back.

Q. So there are no special exception requested for this site, is that correct?

A. Give me a second.

Q. Take your time.

A. It is M.L. As far as I recall, the variances requested were on setbacks, an excessive amount of setbacks, and that's what we based our opposition on.

Q. What are the setbacks or variances that are requested, do you know?

MS. DEMILIO: Objection.

THE CHAIRMAN: She should know. She did a resolution on it.

MS. DEMILIO: Do you expect her to recite them, or can she look at them?

THE CHAIRMAN: I think she can testify to the best of her knowledge.

MS. DEMILIO: I disagaree. I don't think she should be required to say from memory -- I don't think their expert would be required to say from memory. Can't she refer to the decision or the site plan?

A. We had calculated at one time it was sixty percent in excess of what was allowed. That, I do recall by memory.

Now, I believe there was some reconfiguration since that point, but I cannot recite the numbers.

MR. BARHIGHT: No other questions of this witness at this time. Thank you.

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THE CHAIRMAN: Did that bring up any additional questions?

REDIRECT EXAMINATION

BY MS. DEMILIO:

Q. At the time the community association objected to the tower at this site, would you aware and did they have in front of them the petition for variances requested to give you the exact dimensions?

A. Yes.

Q. And did your description of the gateway to the community coincide with the Master Plan designation of the gateway to the community and on the peninsula?

A. Yes.

Q. That's in the Master Plan 2010?

A. Yes.

Q. That's been introduced into evidence?

A. Yes.

MS. DEMILIO: I have no further questions.

THE CHAIRMAN: Does that bring up further questions, Mr. Barhight?

MR. BARHIGHT: No further questions. Thank you

very much.
THE CHAIRMAN: You may be excused.
MS. DEMILIO: I would like to put Mr. Dillon on. He's here now and on redirect.
THE CHAIRMAN: Yes, that's my notes, it's your redirect.

JACK DILLON,

having been previously sworn, was recalled and testifyoed as follows.

CONTINUED REDIRECT EXAMINATION

BY MS. DEMILIO:

Q. You're still under oath, Mr. Dillon. I have only one question for you. I don't want to characterize your testimony, but do you recall when Mr. Barhight was asking you questions on cross examination that you discussed camouflaging towers with flagpoles and referred to one in Baltimore County -- if I may lead a little bit -- which is the Caldor Store, and you were looking for the blow-up of that picture. Do you recall that?

A. Yes.

Q. Let me ask you if this is the photograph that you

were discussing in your cross examinataion?

A. Yes, that's it.

Q. Just for the Board, could you identify that and tell us who took the picture, and when?

A. I took this picture probably sometime this summer. I know it was very hot. It is a site of the new county offices in the old Caldor building on York Road across the street from where the Giant is, very close to the city line.

Q. The flagpole with the American flag flying on it in that photograph, is that a cell tower?

A. Yes, that's at least one. It may be more than one inside the tower. I did not do anymore research.

Q. What are the uses on the site, if you know?

A. There's a deli -- it's a strip center there with a drugstore and deli and some other shops. And then the county has renovated the old Stewart's/Caldor building into offices.

Q. That's retail and office use?

A. Yes. I just might add that the flagpole tower is, when they are designed, they can be designed to hold

more than one. I can't say there's more than one on that particular tower.

Q. You mentioned that in your cross examination?

A. I believe I did.

MS. DEMILIO: Thank you. That's People's Counsel No. 9.

MR. BARHIGHT: No objection.

MS. DEMILIO: I have no further questions of Mr. Dillon.

THE CHAIRMAN: Mr. Barhight?

MR. BARHIGHT: Thank you.

RECROSS EXAMINATION

BY MR. BARHIGHT:

Q. Good morning, Mr. Dillon. Just a couple quick questions based upon your redirect. Isn't it true, in fact, the tower that's identified as People's Counsel Exhibit No. 9 has but one carrier, isnt that a fact?

A. I know it has at least one. I don't know if it has more than one.

Q. Do you know the tower height of this flagpole?

A. I'd be guessing, but it looks to be around 120,

maybe, or over a hundred feet, but certainly not 200 feet.

Q. You have not measured it?

A. I have not measured it.

Q. You have not looked at any plans to identify the height?

A. No. I really went down to take a picture as an example of a flag tower.

MR. BARHIGHT: No other questions. Thank you very much.

THE CHAIRMAN: Ms. Demilio, anymore questions?

MS. DEMILIO: No. Thank you.

THE CHAIRMAN: You may be excused, Mr. Dillon. Is it safe to assume if Mr. Dillon would like to leave, there's no furter questions of him.

MS. DEMILIO: I ask the Board if that's possible if he has to leave anytime during the remainder of the hearing. Thank you. Mr. Sennett.

LEROY SENNETT,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

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BY MS. DEMILIO:
Q. State your name and address, please?
A. Leroy Sennett -- S-e-n-n-e-t-t -- 1716 Beachwood Avenue 21221.
Q. Mr. Sennett, you also a member of the Back River Neck Community Association and authorizeed to speak on behalf of the association as well as yourself, obviously?
A. Yes, I am.
Q. You heard Ms. Nickel discuss or talk about the community association's position and various other matters that the community association considered in opposing this tower, did you not?
A. Yes, I did.
Q. You heard that, and is it safe to assume you agree and corroborate her testimony?
A. I sure do.
Q. I'm not going to have you repeat all the things she talked about. Are there any particular concerns with regard to this tower that Ms. Nickel did not mention that you want to bring before the Board?
A. Yeah. I'd like to highlight that the rear of the

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property is boarded by Muddy Gut. That's a habitat protection area that Baltimore County designated nearly fourteen years ago.
Even prior to the critical areas legislation, studies were made about indiginous species that migrate there. On this tower submittal, I have not seen anything, dealing with impact statements of migratory birds and dealing with that kind of situation.
There has been encouragement programs in Muddy Gut, SAV's (phonetic), along with the community association, working with the county and state agencies where we have put in migrating bird houses throughout the gut and the peninsula, especially in the Muddy Gut.
Q. What impact, if any, would this tower on this particular site on the property have on the habitat protection area?
A. Well, I'm not an expert in the area, but I have read literature and pieces of paper and articles that radio frequencies do have a certain kind of intimidation factor in dealing with migrating birds, to say nothing if we had the last species and it was nesting in that area.

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With regard to a tower, there's a technical question I'd like to pose. I'd like to know how they keep birds from nesting on the tower? I am familiar with how they keep them off buildings.
Q. Is it your testimony that you saw nothing in this proposal that would alleviate those concerns?
A. I see nothing in the paperwork that I had access to.
Q. In addition to the habitat protection area designation and the concern you have with regard to that, are there any other concerns Ms. Nickel did not express?
A. Well, of course, of the deviation in the zoning, the setbacks, I'm afraid that would set a precedent throughout the community.
I have been involved with this association since its initial founding, been involved with quite a few zoning cases, and to see the deviation that was requested, and then granted, initially granted, I am concerned about that.
Q. Are you concerned for the impact on this site alone as well?

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A. The precedence, the heartbeat that it will set, I've been to a number of zoning cases where there have been references back to who versus who and what the condition ws and how it had read. This particular situation, I think, would be tantamount to that same similar issue.
Q. Do you agree with the statement that the variances requested here violate the spirit and intent?
A. Absolutely.
Q. In your opinion, is there anything unique about this property?
A. I see nothing unique about the property.
Q. When I ask that question, I mean with regard to the size, shape, topography, historical significance, adjoining properties?
A. Well, with regard to its size, it's too small to accommodate what the tower requirements are in dealing with setbacks.
Q. But is it safe to assume there are other small lots in the area that also wouldn't accommodate the tower?
A. Well, in the same area, there has been a

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rejection on a property of similar size and arrangement, more so in the metropolitan area.

Q. So the same setbacks, you're saying, would apply to other properties of the same size as this property?

A. Sure.

Q. Do you agree with Ms. Nickel's suggestion of other alternate sites that would be more favorably received by the community association for a tower?

A. Well, I most certainly do.

Q. Even if a special exception was required?

A. Even if a special exception were required. I mean, just simply the footprint of the tower, concealing it in the right area, or even having a tower at its maximum efficienty in higher points.

Q. So you recognize the need for the type of towers, until the technology advances without the need for towers, may be necessary on the peninsula to accommodate the use of cellular phones?

A. Well, I acknowledge that somebody has expressed that there's a need. Is it a need for this particular tower in this particular location? I cannot attest to

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that.

The only thing I can attest to, that I have witnessed, the execution of cell phones at the distances further away from this tower that are functional. Of course, again, I do understand you only get what you pay for.

Q. Are you talking about other brands?

A. Other brands.

Q. Other than Sprint?

A. Other than Sprint.

Q. If I can turn your attention a little bit to the site, Ms. Nickel talked about the fact this site for many years has accommodated industrial and retail type uses. Do you agree with that?

A. Oh, absolutely. I know that for a fact.

Q. For how long has either industrial or retail uses operated at this site, if you know?

A. Prior to me moving into the community thirty-seven years ago, it had been a pre-cast concrete yard making patio blocks, birdbaths, so on.

Q. Other uses developed?

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A. Well, the other uses developed, I can address that, because I had worked with the prior -- not owners -- but the lessees, the Deckle boys, and Joe Deckle, for a period of -- and I still do -- and I go for a history of twenty years in dealing with pre-cast concrete.

Q. So you're saying you moved to the area thirty-seven years ago?

A. Yes.

Q. At that time, it was some type industrial or retail use?

A. Yes, but in a much smaller arrangement.

Q. Are you familiar with the uses that are there now?

A. Yes, I am.

Q. In your opinion, does the community seem to support those uses, the retail uses that are there, as Ms. Nickel pointed out in her testimony?

A. Well, it seems obvious to me when I see the traffic that's there, the vehicles are parked, and later on in the evening hours, there's no one there, so, apparently, it's viable to the particular usage.

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MR. BARHIGHT: Objection. That was not the question asked. The only question was, does the community support the uses. He got into an opinion about the viability of the business, which is not the question asked, or the proper foundation laid for that.

THE CHAIRMAN: Strike that.

MS. DEMILIO: I think we should keep in evidence his observation about the parking lot being full and empty at certain times. I think that's an observation. I don't think Mr. Barhight objected to that portion.

MR. BARHIGHT: Now I am objecting to your characterization. The testimony stands for itself. I only objected to that which I objected to, his opinion about viability.

Q. Mr. Sennett, were there any other concerns you had that you did not express to this Board or Mr. Dillon did not testify to when you were here for his earlier testimony? Which I trust you were, is that correct, you were here?

A. Yes, I was.

Q. And Ms. Nickel testified to today?

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A. No. I think that's all I have. It's been pretty well covered.

MS. DEMILIO: Thank you. I have no further questions.

THE CHAIRMAN: Mr. Barhight.

MR. BARHIGHT: Thank you. I believe but one.

CROSS EXAMINATION

BY MR. BARHIGHT:

Q. I was confused by one of the answers that you gave where you talked about the rejection of something or other in the area, and I want to be clear what that was. Do you recall your testimony when you said something else got rejected?

A. There was a submission of another site in the Essex community on a commercial property. You have in your folder a letter, I have a copy of, which was a short list created by the county employee Ms. Karin Brown that earmarked this particular property. And that letter, if you check your dates and coalition of dates, I am pretty sure it preexists Mr. Jones' leasing of the property, or acquiring it.

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Q. Now I am even more confused. Are you suggesting that there was a rejection of a cell tower at this site?

A. At a similar property, I had said.

Q. Okay. Where is that property?

A. I didn't memorize the letter.

Q. (MS. DEMILIO) Were you referring to Petitioner's Exhibit 14, the letter from Ms. Brown to the Department of Planning?

A. Yes.

Q. (MR. BARHIGHT) Now I understand. So the basis of your information is Ms. Brown's memorandum, which is a part of the record in this case?

A. Yes.

MR. BARHIGHT: No other questions. I was just confused what he was talking about. Now I understand. Thank you very much.

THE CHAIRMAN: Ms. Demilio?

MS. DEMILO: Nothing further.

THE CHAIRMAN: You may be excused. Ms. Demilio, does that rest your case?

MS. DEMILIO: Well, that's the end of the witnesses. I have a few documents I'd like to put into evidence, and I think this would probably be the appropriate time before I close my case.

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I understand Mr. Barhight has some documentary evidence which we have agreed to put in, and he'll refer to that in his rebuttal case as petitioner's exhibits.

As People's Counsel No. 10, I would like to submit three pages of the computer printout from the Department of Assessment and Taxation referring to the Board of Education property, Baltimore County property, located across from the subject site that Ms. Nickel referred to in her testimony. It's two printouts of the site which are map 98, grid 19, parcel 217, and then the map that goes with that.

THE CHAIRMAN: Mr. Barhight, any objection?

MR. BARHIGHT: None whatsoever. Ms. Demilio and I discussed the exhibits she's going to introduce to you now, and I have no objection.

THE CHAIRMAN: Do we want to do People's Counsel 10, or A, B, C?

MS. DEMILIO: It doesn't matter.

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THE CHAIRMAN: Make it People's Counsel No. 10.

MS. DEMILIO: Also submitted as People's Counsel No. 11, the parcel 106 on map 97, which is also across the street from Back River Neck Road, and it's also part of the Baltimore County Board of Education property. It's listed as parcel 106 on the Department of Assessment map.

MR. BARHIGHT: No objection.

THE CHAIRMAN: Accepted.

MS. DEMILIO: Although I know Mr. Barhight has excellent exhibits, if I could enter the same printout for the subject site which is Mr. Jones parcel, parcel 824, which is located on map 98, two pages of the Department of Assessment printout and the map.

MR. BARHIGHT: No objection.

THE CHAIRMAN: People's Counsel No. 12.

MS. DEMILIO: Thank you. I know I put in the zoning map but I am going to add also the 200 scale zoning map which encompasses the subject property.

MR. BARHIGHT: That's already in.

MS. DEMILIO: I don't think it's necessary to add pages of the Master Plan as exhibit. If Mr. Barhight

disagrees, and I need to refer to them in my memorandum, they are public record, and the Board can take jurisdictional notice.

MR. BARHIGHT: The Board should always be able to take judicial notice of any of the resolutions of the Baltimore County Council including the resolutions adopted in the Master Plan, so no objection whatsoever.

MS. DEMILIO: If I could have one moment? The only other thing, if there were any exhibits or any records in the record below from the protestants, which would be Ms. Nickel and the Back River Neck Community Association, we move it be part of the record in the Board's hearing, which I don't think we need to attach.

THE CHAIRMAN: You mean those below? They are in the file.

MS. DEMILIO: Right. They can keep their same exhibit number.

THE CHAIRMAN: As we discussed in the beginning of today's hearing?

MS. DEMILIO: Yes, if we have to refer to anything in our memorandum, and that would conclude

People's Counsel and protestants' case in chief.

THE CHAIRMAN: I assume you're going to have a rebuttal case?

MR. BARHIGHT: If I can take a quick two-minute break, it may be nothing more than the introduction of a couple documents that Ms. Demilio and I have already agreed on.

THE CHAIRMAN: I was actually going to ask for a five-minute break.

MR. BARHIGHT: We might be well done within five minutes after that.

THE CHAIRMAN: Thank you.

(A recess was taken.)

THE CHAIRMAN: Mr. Barhight?

MR. BARHIGHT: Thank you. For the petitioner's rebuttal case, Ms. Demilio and I, off the record, have agreed to allow me to make a proffer and to introduce some documents to complete our rebuttal case.

The first thing I'd like to do is introduce three photographs which I will proffer Mr. Jones took this morning, and I will proffer to you the location from which

they were taken in each case.

I believe our next exhibit is 20, so 20A would be a photograph from the front of the retail area just beyond the parking lot looking directly at the tower.

20B is a photograph looking towards the tower, taken from the medic station property. You can see there in the foreground is a mailbox that orients you to the angle of approach.

Petitioner's Exhibit 20C is taken from the other side of Back River Neck road, standing on the east side of Back River Neck Road, across from the Luciano property, which is, if you look on the zoning map, the B.L. property which is just north of the subject property looking towards the rear of the subject site.

We also have, in addition to that, which would be Exhibits 21A, B, C and D, four tax maps. As is always the case, the property is situated in the corner of four different maps, so we need to provide you with four maps to be able to give you the environs.

I have them situated out in front of you, left to right, so that they can be read left to right, top to

bottom. I'm showing you a little chart. It's map 97, 98, and then below that, map 104 and 105. Just to get you oriented, this is how these lay out.

THE CHAIRMAN: Ms. Demilio, do you mind if he submits this handwritten orientation and we'll have Petitioner's 21A from map 97, 21B would for 98, 21C for map 104, 21D for map 105.

MR. BARHIGHT: And 21E would be my chart.

MS. DEMILIO: I won't ask Mr. Barhight if he's an expert in --

THE CHAIRMAN: We'll not go any further. We'll call that a hand chart.

MR. BARHIGHT: These can be taken off the board and we will do so immediately following the conclusion of the testimony.

On the same boards are the corresponding aerial maps, which again, are read -- four maps -- corresponding precisely to the tax maps that are shown, again read left to right, top to bottom.

The top left is Tile 098a3. Top right, Tile 097 -- whoops. I apologize. I messed it up.

THE CHAIRMAN: 22A should actually be 09 --

MR. BARHIGHT: 7c3. 22B would be Tile 098a3. Lower left-hand quadrant of that four block quadrant would be Tile 104c1. The lower right-hand tile is Tile 105a1.

These are all from the GIS, as indicated, the Baltimore County GIS Services Unit. The date of the photography is shown on the document as March 1995, the scale being one inch equals 200 feet, and we'd like to introduce those maps as the next petitioner's exhibit.

THE CHAIRMAN: There's no objection, and they are accepted.

MR. BARHIGHT: Thank you. That is our rebuttal case. We rest our rebuttal case.

THE CHAIRMAN: I'm going to be requesting memos. Today is January 21. How much time do you think you need? Usually people are given about a month or less. Off the record.

(Discussion held off the record.).

THE CHAIRMAN: Briefs will be due on February 24th. That's fine. Then we'll have to schedule a deliberatioan by the end of March, if not by the middle.

MS. DEMILIO: Keep in mind from March 15th -- if that's a Saturday -- that whole week and the following Monday and Tuesday, I won't be available, but Mr. Zimmerman can come to the deliberation if I am not.

MR. WESCOTT: Doesn't make any difference if you're here or not, to tell you the truth.

MS. DEMILIO: But I care. I'd like to hear it.

THE CHAIRMAN: I want my fellow Board members to have time to read this and review the files, but we're going to need time to write the opinion and have everything processed before the end of April.

And with that, we've concluded our case.

MR. BARHIGHT: Thank you very much.

(Hearing concluded.)

* * * * *

I N D E X

Witness	Direct	Cross	Redirect	Recross
Jackie Nickel	7	31	41	
Jack Dillon		42	44	

E X H I B I T S

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No. 20A, 20B	59
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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

December 21, 2001

Jennifer R Busse
Whiteford Taylor & Preston
210 W Pennsylvania Avenue
Towson MD 21204

Dear Ms. Busse:

RE: Case Number: 02-159-A, 810 Back River Neck Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on October 19, 2001.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure 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. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.

W. Carl Richards, Jr. GDZ
Supervisor, Zoning Review

WCR: gdz

Enclosures

c: Buck Jones, President, Back River LLC, 810 Back River Neck Road, Baltimore 21221
Howard Lyer, Sprint PCS, 1 International Blvd, Ste 800, Mahwah NJ 07495
People's Counsel

Printed with Soybean Ink
Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: November 30, 2001

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

SUBJECT: 810 Back River Neck Road

INFORMATION:

Item Number: [redacted]

Petitioner: Buck Jones
c/o Back River LLC

Zoning: 02-159

Requested Action: Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning supports three of the four subject setback variances. However, this office has concerns about the request to allow a setback of 148 feet in lieu of the required 200 feet to the northern property line. Two properties to the north are currently developed with residential dwellings, and are residentially zoned. This office is of the opinion that a communication tower within close proximity of these lots could have a negative impact on their value.

The petitioner indicated previously that the two aforementioned property owners were in support of the communication towers. Written proof of their support should be presented at the time of the hearing.

Prepared by: Mark A Cunningham

Section Chief: Jeffrey W. Long

AFK:MAC:

R:\WORKGRPS\DEVREV\ZAC\02-159.doc

Baltimore County
Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

December 10, 2001

JAN - 7

Department of Permits and
Development Management (PDM)
County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTENTION: Gwen Stephens

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF November 26, 2001

Item No.: See Below

Dear Ms. Stephens:

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.

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

151, 152, 155, 156, 157, 159, 161, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, and 175

REVIEWER: LIEUTENANT JIM MEZICK, Fire Marshal's Office
PHONE 887-4881, MS-1102F

cc: File

Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: Todd G. Taylor TGT

DATE: 12/26/01

SUBJECT: *Zoning Item* 159
Address 810 Back River Neck Road

Zoning Advisory Committee Meeting of 11/26/01

____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

____ The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.

__X__ The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

____ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).

____ Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).

__X__ Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

____ Additional Comments:

Reviewer: Mike Kulis Date: 12/27/01

12/28/0

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

JAN - 7

TO: Arnold Jablon, Director
Department of Permits & Development Mgmt.

DATE: December 20, 2001

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans Review

SUBJECT: *Zoning Advisory Committee Meeting*
For December 3, 2001
Item No. 159

The Bureau of Development Plans Review has reviewed the subject zoning item.

The property to be developed is located adjacent to tidewater. The developer is advised that the proper sections of the *Baltimore County Building Code* must be followed whereby elevation limitations are placed on the lowest floor (*including basements*) of residential (*commercial*) development.

See the revised map dated November 17, 1993, panel number 240010 0445 C of the Flood Insurance Rate Map (copy attached), for tidal flood zones A9, B, and C on this site. The minimum flood protection elevation is 10.4 feet for any work on this site.

In accordance with *Bill No. 18-90, Section 26-276*, filling within a flood plain is prohibited.

The engineer shall verify the contour elevations shown on the plan and provide spot elevations at the northwest and southwest property corners, the proposed tower location, concrete pad, and access road elevations.

RWB:HJO:jrb

cc: File

ZAC-12-3-2001-ITEM NO 159-12202001

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 12.3.01

Mr. George Zahner
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. [redacted] JNP

Dear. Mr. Zahner:

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.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

L. J. Gredlein

for Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

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

Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

February 4, 2002

Jennifer R Busse
Whiteford Taylor & Preston
210 W Pennsylvania Avenue
Towson MD 21204

Dear Ms. Busse:

RE: Case No. 02-159-A, 810 Back River Neck Road

Please be advised that an appeal of the above-referenced case was filed in this office on January 14, 2002 by Peter M Zimmerman, People's Counsel for Baltimore County, Baltimore County Maryland. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

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

Sincerely,

Arnold Jablon
Director

AJ:

c: Buck Jones, President, Back River LLC, 810 Back River Neck Road, Baltimore 21221
People's Counsel

02 FEB -5 PM 12:57

APPEAL

Petition For Variance
810 Back River Neck Road
SW/S Back River Neck Road, 330' SE of Pottery Farm Road
15th Election District – 5th Councilmanic District
Back River LLC, Buck Jones, President - Legal Owner
Sprint PCS - Contract Purchaser
Case No.: 02-159-A

✓ Petition for Variance (dated 10/19/01)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (dated 11/30/01)

✓ Certification of Publication (The Jeffersonian issue 12/13/01)

✓ Certificate of Posting (dated 12/07/01 posted Stacy Gardner)

✓ Entry of Appearance by People's Counsel (dated 12/10/01)

✓ Petitioner(s) Sign-In Sheet (1 page)

✓ Protestant(s) Sign-In Sheet (1 page)

Citizen(s) Sign-In Sheet (none)

✓ Zoning Advisory Committee Comments

Petitioners' Exhibits:

1. ✓ Letter to "Sir or Madam, Whiteford Taylor & Preston" from "Arnold Jablon Director" dated 5/15/01 → dtd 5/14/01
2. ✓ Memo to "Donald T. Rascoe, Development Manager" from "Sprint PCS – Back River Neck Road) dated 04/25/01
3. ✓ Resume Hassan Khalil
4. ✓ SAR# WA54XC461 Back River Neck (no date)
5. ✓ Federal Aviation Administration Aeronautical Study dated 10/22/01
6. ✓A Colorized map showing existing coverage and location of that "hole" (no date)
7. ✓ 9 Pictures 7A – 7I
8. ✓ 4 Pictures 8A – 8D
9. ✓ Memo to "Arnold "Pat" Keller" from "Karin Brown Community Planning Office of Planning" dated 12/16/98
10. ✓ Resume Marianne Kiernan
11. ✓A 3 Pictures 3A – 3C
12. ✓ Letter in Support Willis & Ellen Gibson, 808 Back River Neck Road
13. ✓ Letter in Support Elsie Luciano, 806 Back River Neck Road
14. ✓ Plan to Accompany Petition for Variances (no date)

Protestants' Exhibits:

1. ✓ Facts, Findings & Conclusions Zoning Chair Back River Neck Peninsula Community Association Inc. Leroy Sennett dated 12/21/01 or 12/28/01

Added to file 3/07/02
Hillorie S. Morrison
Zoning Associate
Independent Contractor / TH, Inc.
VoiceStream Wireless
12050 Baltimore Avenue
Beltsville, MD 20705

Jim Mitchell, VP
Holly Neck Conservation Assn.
1241 Engleberth Road
Baltimore MD 21221

Miscellaneous (Not Marked as Exhibits):

- None

✓ Deputy Zoning Commissioner's/Zoning Commissioner's Order (dated 01/04/02 - GRANTED)

✱✓ Notice of Appeal received on 01/14/02 from Peter M Zimmerman, People's Counsel for Baltimore County Baltimore County Maryland

✱ Notice of Appeal received on 1/31/02 from Jackie Nickel, President, Back River Neck Peninsula Community Assn, Inc., 721 Rockaway Beach Avenue, Baltimore, MD 21221

c: Jennifer R Busse, Whiteford Taylor & Preston, 210 W Pennsylvania Avenue, Towson 21204
Buck Jones, President Back River LLC, 810 Back River Neck Road, Baltimore 21221
People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

Send notice.

Hillorie S. Morrison
Zoning Associate
Independent Contractor
TH, Inc

Office (240) 264-8616
PCS (443) 570-0014
Fax (240) 264-8610
12050 Baltimore Avenue

Case No. 02-159-A

VAR – Series of variance to permit construction of a 115-foot wireless telecommunications tower from § 426.6A.3 of BCZR and § 426.6.A.4 of BCZR /setbacks.

1/14/02 – D.Z.C.'s Order in which requested variance relief was GRANTED with restrictions.

2/22/02 – E-mail from James L. Mitchell, vice president of the Holly Neck Conservation Assn; requesting that his association be added to the case file. So noted.

3/07/02 – Letter from Hillorie S. Morrison, Zoning Associate, VoiceStream – requesting notice of hearings held in this matter. File noted.

6/07/02 -- Notice of Assignment sent to following; hearing assigned for Wednesday, September 25, 2002 at 10:00 a.m.:

G. Scott Barhight, Esquire
Jennifer R. Busse, Esquire
Buck Jones, President
Back River LLC
Howard Lyer /Sprint PCS
Hillorie S. Morrison /VoiceStream Wireless
Leroy Sennett
Jim Mitchell, VP /Holly Neck Conservation Assn.
Pat Keller, Director /Planning
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

9/25/02 – Board convened for hearing (Barranger, Wescott, Adams); continued to 1/21/03 for day #2 upon verification of availability of parties; notice to be sent.

9/26/02 – Notice of Assignment /Day #2 sent to parties; scheduled by agreement to Tuesday, January 21, 2003 at 10:00 a.m.

1/21/03 – Concluded day #2; completed case; memos due from parties on 2/24/03; deliberation to be assigned and notice sent. (Barranger, Wescott, Adams).

1/28/03 – Notice of Deliberation sent to parties; assigned for Thursday, March 20, 2003 at 9:00 a.m. FYI copy to B.S.M.

2/12/03 – FAX from J. Busse – request for extension for submission of briefs; C. Demilio has no objection to this extension request. Requesting that date be moved to Monday, March 3, 2003 as due date.

2/13/03 – T/C to J. Busse and C. Demilio (Rebecca); extension request granted; memos to be due on Monday, March 3, 2003; letter sent this date to Demilio and Busse advising of same. Confirmed via telephone this afternoon. Deliberation will remain as scheduled for Thursday, March 20, 2003.

3/03/03 – People's Counsel's Memorandum filed this date; Memorandum of Petitioner, Sprint PCS filed by G. Scott Barhight, Esquire and Jennifer Busse, Esquire on behalf of Petitioner. Copies to B.S.M.

3/20/03- Board convened for deliberation (Barranger, Wescott, Adams); unanimous decision by panel that variance relief is to be denied; first prong (that of uniqueness) was not met; no need to go further but also found no practical difficulty (property owner can use property for permitted purposes without variances; towers can be built at other locations; no evidence that special exception locations were searched). Written Opinion and Order to be issued; appellate period to run from date of written Order.

02-0159-A	SW/S Back River Neck Road, 330' SE of Pottery Farm Road; 810 Back River Neck Road	15th District **BACK RIVER LLC.**

10/19/01	Petition for variance filed by Back River LLC –to allow setback of 75' to the southern property line ilo 200' for wireless communication setback of 75' to the western property line ilo 200' for wireless communication setback of 148' to the northern property line ilo 200' for wireless communication setback of 40' to the southern property line ilo 125' for wireless communication setback of 40' to the southern property line ilo 125' for equipment cabinets for wireless communication setback of 40' to the western property line ilo 125' for equipment cabinets for wireless communication
1/4/2002	Request was granted with restrictions.
1/11	Notice of Appeal filed by Peter M. Zimmerman, Office of People's Counsel.
5/14/2003	Opinion Issued By The Board Of Appeals /Petition for variance – DENIED.
6/11/2003	Petition for Judicial Review filed by James R. Michal, Esquire and Syeda B. Naqvi, Esquire, JACKSON & CAMPBELL, P.C., 200 A. Monroe Street, Suite 225, Rockville, MD 20850, on behalf of Sprint PCS and Back River LLC.
February 5, 2004	Order issued by Judge Michael J. Finifter, Circuit Court for Baltimore County AFFIRMING the decision of the Board of Appeals.

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Back River LLC – Legal Owner; Sprint PCS - CP
Case No. 02-159-A

DATE : Tuesday, March 20, 2003

BOARD /PANEL : C. Lynn Barranger (LB)
Lawrence S. Wescott (LSW)
Melissa Moyer Adams (MMA)

RECORDED BY : Kathleen C Bianco /Administrator

PURPOSE: To deliberate Case No. 02-159-A /Petition for Variance – for a series of variance to permit construction of a 115-foot wireless telecommunications tower from § 426.6A.3 of BCZR and § 426.6.A.4 of BCZR /setbacks.

Panel members discussed:

- Stated the four variances sought by Petitioners and the applicable sections of the BCZR from which variance relief was being sought
- Cited § 307 of the BCZR – special circumstances peculiar to the land or structure; practical difficulty or unreasonable hardship; in strict harmony with height and area regulations; without injury to public health, safety and general welfare
- Cited *Cromwell v. Ward* – CSA decision: Quoted from Court's Order, especially as to uniqueness of property as the first prong.

As to actual deliberation:

- Commented on clear, well-laid out briefs submitted
- Petitioner – four sites available based on search ring (by right); only one usable; variances required
- Petitioner cited setting (trees), distance, only site identified by Planning – as to uniqueness
- People's Counsel – not unique; service ring is not proof of uniqueness; special exception sites could possibly be more within spirit and intent; may not need variances
- Discussed difficulty of variance cases
- As to "neighborhood" - created by Sprint with ring; Council did not say the ring is the neighborhood
- Trees do not make it unique

Additional discussion as to Federal Communications Act – Board not saying that tower can't be built; but that it can't be built here; not denying tower but denying variance request at this location. *Amherst* decision – can control but not deny.

- Discussed "need" – need in area, but no evidence that special exception sites had been considered.
- As to practical difficulty – unanimous decision that, inasmuch as property is not unique, Board need go no further as to practical difficulty or unreasonable hardship. However, even if

uniqueness had been found, property owner can use property; not for tower, without variances, but can be used.

- Sites available by right require variances; no evidence of review of special exception locations.

Final vote and decision:

L. Wescott – variance relief should be denied.
M. Adams – concurred with LW – denied
L. Barranger – also agrees that variances should be denied.

Petition for Variances is **DENIED.**

NOTE: These minutes, which will become part of the case file, are intended only to indicate for the record that a public deliberation took place this date regarding this zoning case. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board. Time for filing for judicial review to begin running from date of written Order.

Respectfully submitted

Kathleen C. Bianco, **Administrator**
County Board of Appeals

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
CLOSING MEMORANDUMS FILED BY COUNSEL

DATE: March 3, 2003

TO: L. Barranger
L. Wescott
M. Adams

FROM: Kathi

SUBJECT: Case No. 02-159-A / *In the Matter of: Sprint – Back River Neck Road*
Closing Memos – Deliberation assigned for March 20, 2003 at 9:00 a.m.

The subject case is scheduled for public deliberation on Thursday, March 20, 2003 at 9:00 a.m. A copy of the deliberation notice was previously forwarded to you.

The following memos were filed in lieu of closing argument:

1. Memorandum of People's Counsel filed by Peter Max Zimmerman and Carole S. Demilio; and

2. Memorandum of Petitioners, Sprint PCS filed by G. Scott Barhight, Esquire, and Jennifer R. Busse, Esquire, on behalf of Petitioners.

Kathi

Attachments (2)

FILE

Kathleen Bianco - Cell Tower on Back River Neck Road

From: "James L. Mitchell" <jammitch@bcpl.net>
To: "Katherine Bianco" <kbianco@co.ba.md.us>
Date: 2/22/02 11:45 AM
Subject: Cell Tower on Back River Neck Road
CC: "Ken BRAZEROL" <KAB45@MSN.COM>

Ms. Bianco,

Our association was approached about the cell tower matter last year (pre 9-11) and we chose to table the issue until we received additional information or had clear evidence or information regarding negative environmental impact or if it affected neighboring residents and a member of HNCA requested our support to protect there property ... none of which has occurred to date to my knowledge. The issue has apparently surface again via an appeal to stop the cell tower filed by the peoples council and we are concerned we may have missed something. Several members of our organization have requested we do additional research into this matter...many of which support the tower. Any information you can provide would be most helpful so we may have an informed discussion on this issue with our members. Also, per our conversation, my mailing address is: - Jim Mitchell V.P. Holly Neck Conservation Association, 1241 Engleberth Rd., Baltimore Md 21221 - However you may save the postage and E-mail the court dates and summary of the case if you wish. Respectfully Jim Mitchell HNCA jammitch@bcpl.net

02-159-A

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: January 24, 2008

TO: Timothy Kotroco, Director
Permits & Development Management

FROM: Linda B. Fliegel
Board of Appeals

SUBJECT: **UPPER COURT CLOSED APPEAL CASE FILES**

NAME	*CASE NUMBER*	*DECISION OF COURT*
BACK RIVER LLC	02-159-A	COURT OF SPECIAL APPEALS AFFIRMED BOA
BENDER VOGEL, LLC	CBA-05-141 PDM-XI-990	CIRCUIT COURT AFFIRMED BOARD OF APPEALS
GRACE'S OVERLOOK	CBA-04-130 PDM-VIII-800	COURT OF SPECIAL APPEALS AFFIRMED THE BOARD

RE: PETITION FOR VARIANCE 810 Back River Neck Road, SW/S Back River Neck Rd, 330' SE of Pottery Farm Rd 15th Election District, 5th Councilmanic Legal Owner: Back River, LLC Contract Purchaser: Sprint PCS *Petitioner(s)*	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY Case No. 02-159-A

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

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. **All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.**

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of December, 2001 a copy of the foregoing Entry of Appearance was mailed to Jennifer R. Busse, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

June 26, 2003

RECEIVED
JUN 26 2003
BALTIMORE COUNTY
BOARD OF APPEALS

HAND DELIEVERED

Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

Re: Back River LLC., Buck Jones, President, etc
Case No.: 03-C-03-005849AE

Dear Madam Clerk:

Enclosed please find the original Response to Petition for Judicial Review being filing by the People's Counsel for Baltimore County.

Thank you for your anticipated consideration in this matter.

Sincerely,

Carole S. Demilio
Deputy People's Counsel for Baltimore County

CSD/rmw

Enclosures

cc: Syeda B. Naqvi, Esquire
Kathleen Bianco, Administrator

IN THE MATTER OF: BACK RIVER, LLC, BUCK JONES – LEGAL OWNER, SPRINT PCS – PETITIONER and CONTRACT PURCHASER	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
PETITION FOR VARIANCE 810 BACK RIVER NECK RD SWS BACK RIVER NECK RD, 330' SE OF POTTERY FARM RD 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	*	CASE NO. 02-159-A

* * * * * *

CERTIFICATE OF SERVICE

Petitioner and Contract Purchaser, Sprint, PCS, by and through its attorneys, G. Scott Barhight, Jennifer R. Busse, and Whiteford, Taylor & Preston, L.L.P., hereby certifies under the penalties of perjury that a copy of its Memorandum submitted to the Board of Appeals was provided, via hand delivery, on March 3, 2003, to :

Carol S. DeMilio, Esq.
Deputy People's Counsel for Baltimore County
Old Courthouse
Room 47
Towson, Maryland 21204

RECEIVED
MAR 04 2003
BALTIMORE COUNTY
BOARD OF APPEALS

G. Scott Barhight, Esq.
Jennifer R. Busse, Esq.
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Suite 400
Towson, Maryland 21204
410-832-2000

Attorneys for Petitioner and
Contract Purchaser, Sprint PCS

274430

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2004, a copy of the foregoing Reply Brief for Appellants was mailed via first class-mail, postage prepaid to:

C. Lynn Barranger
Panel Chair
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Carole S. Demilio
Deputy People's Counsel
Old Courthouse
400 Washington Avenue, Room 47
Towson, MD 21204

Syeda Raza /sep

Syeda B. Raza

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NOV 10 2004
BALTIMORE COUNTY
BOARD OF APPEALS

DC\DOC\249822v1

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

February 13, 2003

Jennifer R. Busse, Esquire
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: *In the Matter of: Sprint – Back River Neck Road*
Case No. 02-159-A /Extension of Time for Briefs

Dear Ms. Busse:

In response to your letter of February 12, 2003, and as confirmation of our telephone conversation this date, your request for an extension for filing of briefs in the subject matter has been granted. Briefs are now due from counsel on Monday, March 3, 2003.

Should you have any questions, please call me.

Very truly yours,

Kathleen C. Bianco
Administrator

c: Carole S. Demilio, Esquire

FILE

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on Recycled Paper

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L.L.P.

210 WEST PENNSYLVANIA AVENUE
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410 832-2000
FAX 410 832-2015
www.wtplaw.com

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

JENNIFER R BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

February 12, 2003

TRANSMISSION BY FAX - 410-887-3182
Ms. Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Sprint - Back River Neck Road
Board of Appeals Hearing #02-159-A

Dear Ms. Bianco:

Please accept this letter as my request for an extension of the deadline for the submission of briefs in this matter. I spoke with Carole Demilio today. She has no objection to this request. Currently, briefs are due to be filed on Monday, February 24, 2003. I would like approval to extend this deadline to Monday, March 3, 2003. I am aware that the public deliberations in this matter has been scheduled for Thursday, March 20, 2003. Please let me know whether the Board approves of this request.

Thank you for your consideration in this matter.

Sincerely,

Jennifer R. Busse

JRB:sll
cc: Carole DeMilio, Esquire
Ms. Ad'ean Hepburn *(Sprint Site WA54XC461)*

273190

HOLLY NECK CONSERVATION ASSOCIATION, INC.

P.O. Box 16666 • Essex, MD 21221-0666

September 20, 2002

RE: 02-159-A, Back River Neck Road Cell Tower Site Variance

Board of Appeals

Others commitments may prohibit me from attending the hearing on this matter. I have authorized Bill Bafatis, our zoning chairman, to present our position and answer any question you may have regarding this matter. He is a member in good standing and was present during the presentation, general discussion and the voting by our membership on this issue.

Sincerely,

Jim Mitchell
President, HNCA

SEP-20-2002(FRI) 10:43 GOLDEN RING BARRACKS 410 780 0830 P.002

THE BOARD OF APPEALS.

PLEASE ACCEPT AND REVIEW THESE DOCUMENTS AND ADVISE IF WE HAVE COMPLIED WITH THE NEEDS OF RULE 8 SO THEY MAY BE ADMITTED IN THIS CASE. I HAVE NOT CONFIRMED THAT MR. BAFATIS IS AVAILABLE. Will you ACCEPT JUST THE LETTER?

Thank You

Jim Mitchell

I MAY BE REACHED AT THE FOLLOWING NUMBERS

W- 410-686-3101

H- 410-391-7368

C- 410-938-2249

PAGER- 410-909-4920

HOLLY NECK CONSERVATION ASSOCIATION, INC.

P.O. Box 16666 • Essex, MD 21221-0666

September 20, 2002

RE: 02-159-A, Back River Neck Road Cell Tower Site Variance

Board of Appeals

The Holly Neck Conservation Association (HNCA) membership has considered the variance required for the Back River Neck cell tower site. Sprint engineers and Mike Lutz gave presentations to the membership on March 18, 2002 and Buck Jones, Free-State General Contractors, Inc, gave a presentation to the membership on July 15, 2002.

Specific questions about the variance requested, directly impacted neighbors, immediate and long-range impact on the environment, exact location, height, and cell service providers were asked by the HNCA membership. All of the questions were answered satisfactorily and accepted by the membership.

The Holly Neck Conservation Association (HNCA) would like you to consider the following points in granting a variance for the proposed Back River Neck cell tower site.

A.) The Holly Neck and Back River Neck peninsulas are only land accessible by Holly Neck and Back River Neck Roads. In the past, hurricanes, snowstorms and tropical rains have rendered these areas as islands. Phone service and power have been out-of-service for extended periods of time and the roads have been impassable for days. Cell phone service would provide a necessary life-line for the peninsula's residents.

B.) The Holly Neck and Back River Neck peninsulas attract boaters, fisherman, cyclists, hikers, golfers, outdoorsmen, nature lovers, bird watchers, and horseback riders. Cell phone service would provide an emergency link-up for police, fire and medical services.

C.) The directly impacted neighbors of the cell tower site are not in opposition to the variance being granted and it is our understanding they have signed the appropriate required documentation.

D.) The requested variance for this cell tower site should be awarded as a <u>public safety consideration only</u>. This specific variance award should set no precedent. Future variance requests should be reviewed on a case by case basis with zoning, environmental and county regulations strictly adhered to and enforced.

The Holly Neck Conservation Association, Inc. (HNCA) membership voted on July 15, 2002, based on the above considerations, and unanimously support the granting of the requested variance for the proposed cell tower site. This letter was read allow again to the general membership at the Sept 16, 2002 general meeting and again supported unanimously.

Sincerely,

Jim Mitchell
President, HNCA

P.003 410 780 0830 GOLDEN RING BARRACKS SEP-20-2002(FRI) 10:44

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

WHITEFORD, TAYLOR & PRESTON
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210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

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ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

May 29, 2003

RECEIVED
MAY 30 2003
BALTIMORE COUNTY
BOARD OF APPEALS

Jim Michaels, Esquire
Jackson & Campbell
1120 20th Street, N.W.
Washington, D.C. 20036

Re: Sprint Site WA54XC461 - 810 Back River Neck Road

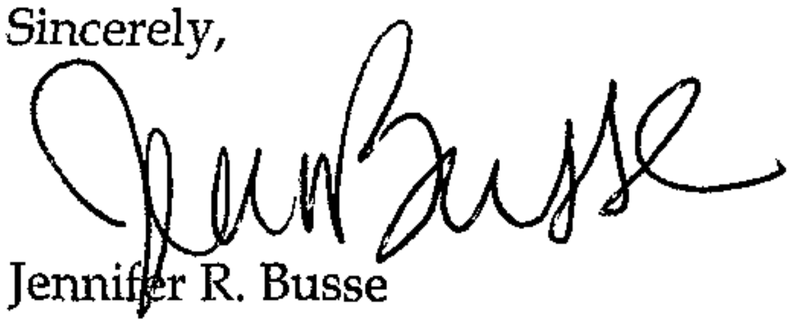
Dear Jim:

Pursuant to our telephone conference yesterday, enclosed please find a copy of the site plan in the above-referenced matter, which was accepted before the Board of Appeals as Petitioner's Exhibits 8A and 8B. Please let me know if I can be of any further assistance to you in transitioning this file. For your review, I am also enclosing a copy of the transcripts from both days of hearing in this matter, September 25, 2002 and January 21, 2003. As we discussed during our telephone conference, Ms. Kathy Bianco at the Baltimore County Board of Appeals will be able to assist you with reviewing all of the exhibits submitted by both parties, and obtaining copies of same. You informed me that you are in receipt of a copy of the Board's May 14, 2003 Order, and are aware that an appeal must be filed by June 13, 2003.

Also during our telephone conference yesterday, you requested a copy of the original Petition filed in this matter. However, as you will learn from a reading of the transcript, the variances requested for the tower setback changed due a request by Baltimore County Department of Environmental Protection and Resource Management (DEPRM). Therefore, the original Petition filed is now incorrect. Nevertheless, if you look at the site plan filed as Petitioner's Exhibits 8A and 8B, the zoning relief requested under Note 18 explains the revised set-backs.

Please feel free to contact me with any questions or concerns.

Sincerely,



Jennifer R. Busse

JRB:sll

Enclosures
cc: Ms. Kathleen Bianco
Ms. Kathy Farrell
Ms. Ad'ean Hepburn
Ms. Yvette Arseneaux
Mr. Peter Fastnacht
Mr. Buck Jones
Ms. Marianne Kiernan

280566

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
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1025 CONNECTICUT AVENUE, NW
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1317 KING STREET
ALEXANDRIA, VIRGINIA 22314-2928
TELEPHONE 703 836-5742
FAX 703 836-0265

March 3, 2003

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BALTIMORE COUNTY
BOARD OF APPEALS

VIA HAND DELIVERY
Ms. Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Sprint - Back River Neck Road
Board of Appeals Hearing #02-159-A

Dear Ms. Bianco:

Enclosed please find one (1) original and three (3) copies of Sprint's Memorandum to the Board in the above-referenced matter.

Thank you for your consideration in this matter.

Sincerely,

Jennifer R. Busse

JRB:sll
cc: (enclosing one copy of Sprint's Memorandum to each)
Carole DeMilio, Esquire (via hand delivery)
Ms. Kathy Farrell (via first class mail)
Ms. Ad'ean Hepburn (via first class mail)
Mr. Peter Fastnacht (via first class mail)

273190v2

WHITEFORD, TAYLOR & PRESTON
L.L.P.

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 832-2015
www.wtplaw.com

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BALTIMORE, MARYLAND 21202-1626
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TELEPHONE 703 836-5742
FAX 703 836-0265

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

July 2, 2003

Ms. Kathleen C. Bianco, Administrator
County Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Sprint - Back River Neck Road
Board of Appeals Hearing #02-159-A

Dear Ms. Bianco:

Please withdraw the appearance of Jennifer R. Busse, G. Scott Barhight and Whiteford, Taylor & Preston, LLP on behalf of the petitioner in the above-referenced matter. Thank you for your cooperation. Please do not hesitate to contact me with any questions or concerns.

Sincerely,

Jennifer R. Busse

JRB:tdm
cc: G. Scott Barhight, Esq.
Mr. Buck Jones
James R. Michal, Esquire

283455

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JUL 03 2003
BALTIMORE COUNTY
BOARD OF APPEALS

VoiceStream WIRELESS

02 MAR 14 PM 2:01

March 5, 2002

County Board of Appeals
Old Courthouse, Room #49
400 Washington Avenue
Baltimore, Maryland 21204

Subject: Case No. 02-159-A
Petition for Variance
SW/S Back River Neck Road
330' SE of c/l Pottery Farm Road
(810 Back River Neck Road)
15th Election District
5th Councilmanic District

To Whom It May Concern:

I understand that this case, heard by the Zoning Commissioner, has been appealed. I am interested in attending the hearing. Please notify me when the hearing is scheduled.

Thank you.

Sincerely,

Hillorie S. Morrison

Hillorie S. Morrison
Zoning Associate

12050 Baltimore Avenue Beltsville, MD 20705

To: Arnold Jablon, Director
Dept. of Permits and Development Management
111 W. Chesapeake Ave.
Towson, MD 21204

Re: PETITION FOR VARIANCE
SW/S Back River Neck Rd., 330' SE of Pottery Farm Rd.
(810 Back River Neck Rd.)
15th Election District, 5th Councilmanic
Back River LLC - Petitiners
Case No.: 02-159-A

Dear Mr. Jablon,

Please enter an appeal of the Back River Neck Peninsula Community Assoc., Inc. to the County Board of Appeals from the findings of Fact and Conclusion of Law of Baltimore County Zoning Commissioner dated Jan. 4, 2002 in the above-entitled case. Enclosed is our check in the amount of $210 for the filing fee. Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Sincerely,

BACK RIVER NECK PENINSULA COMMUNITY ASSOCIATION, INC.

By Jackie Nickel, President
721 Rockaway Beach Ave., Balto. MD 21221
410-686-1358

Jackie Nickel 1/24/02

RECEIVED
JAN 31 2002
By

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

January 11, 2002

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

Arnold Jablon, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Hand-delivered

Re: PETITION FOR VARIANCE
810 Back River Neck Road, SW/S Back River Neck Road, 330' SE of Pottery Farm Road
15th Election Dist., 5th Councilmanic
BACK RIVER, LLC, Legal Owner
SPRINT PCS, Contract Purchaser
Case No.: 02-159-A

Dear Mr. Jablon:

Please enter an appeal of the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated January 4, 2002 of the Baltimore County Deputy Zoning Commissioner in the above-entitled case.

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

RECEIVED
JAN 14 2002
By GDZ

PMZ/CSD/caf

cc: Jennifer R. Busse, Esq., and G. Scott Barhight, Esq., Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Suite 400, Towson, MD 21204, Attorneys for Petitioners

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Richard L Smith	KCI Technologies, Inc. 10 North Park Dr. 21030
MARIANNE KIERNAN	KCI Technologies, Inc. 14502 Greenview Drive Sk 424 Laurel MD 20708
PETER FASTNACHT	IWA 169 CONASTOGA TR SPARTA NJ 07871
BUCK JONES	810 BACK RIVER NECK ROAD
John Burke	Whiteford Taylor & Preston
G. Scott Barhight	210 W. Pennsylvania Ave.
Hassan Ichalil	6905 Rockledge Dr, Bethesda MD. 20817

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on Recycled Paper

Case Number #02-159-A

PLEASE *PRINT* LEGIBLY

PROTESTANT'S SIGN-IN SHEET

Name	Address	City, State	Zip Code
LEROY SENNETT	1716 BEACHWOOD AVE	MD.	21221

3039/318
Site 461

Baltimore County Government
Department of Permits and
Development Management

111 West Chesapeake Ave.
Towson, Md. 21204

410-887-3335

May 14, 2001

Whiteford, Taylor, & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Back River Neck
810 Back River Neck Road
DRC Number 031201S; Dist. 15C5

Dear Sir or Madam:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Section 26-132 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 26-171 and Section 26-211 of the Baltimore County Code, and to make recommendations to the Director, Department of Permits and Development Management (PDM).

The DRC has, in fact, met in an open meeting on April 30, 2001, and made the following recommendations:

The DRC has determined that your project meets the requirements of a limited exemption under Section 26-171 (A) (7).

Now that you have received an A-7 limited exemption, please proceed with building permit application.

A copy of this letter must be presented when submitting engineering/construction plans to this office, and/or when applying for a building permit.

Please note that compliance with divisions 3, 4, and 5 of the Development Regulations are required, as is compliance with all applicable zoning regulations. Phase 2 review fees may apply, depending on the amount of site disturbance, and/or the requirement of a Public Works Agreement. Also, sidewalks are required whenever the site is within the Metropolitan District.

Herein, find a commercial site plan checklist that will serve as a guide when preparing plans for building permit applications. Please be advised, plans not meeting minimum checklist requirements will not be accepted for filing. This will consequently delay building permit approval. Please note, the "conceptual" plan required for DRC review, does not necessarily meet the checklist guidelines. Therefore, it should not be assumed that the DRC plan is acceptable for building permit applications.

Should you have any questions regarding the above, please contact the Zoning Review Section at 410-887-3391.

I have reviewed the recommendations carefully, and I have determined to adopt the recommendations set forth above. It is this 14th day of May 2001, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permit that may be required for this project, your application will be processed subject to the conditions set forth above, and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Sincerely,

Arnold Jablon
Director

AJ:DTR:dak
c: File

6905 Rockledg Dr # 100
Bethesda, MD 20817

301-571-4192

Hassan Khalil

Experience

Aug 2000-present — Sprint PCS, Bethesda, MD

RF Design Engineer

- RF Design responsibilities for Baltimore, Harford , and Carroll counties.
- Complete RF design for Greater Baltimore market.
- Site Visits to evaluate antenna layouts and co-location with other RF systems.
- Review Drive test data, and traffic analysis.

April 1998- July 2000. — Expert Wireless solutions Fort Lee, NJ

Team leader for a group of 10 engineers assigned to Sprint PCS project

- Reviewing the data collected by the team.
- Visit the sites to insure accuracy of equipment setup.
- calibrate all equipment used to perform the drive tests.
- Make recommendation to Sprint PCS engineers.

1995-Jan 1998 — STI Technology, Falls Church, VA

Network Engineer

- Design Local area networks.
- Perform software and hardware installation.
- Monitor network for trouble shooting and to insure performance.
- Make recommendation to the customers on how to improve their network.

1993-1995 — Optimum Solutions, Reston, VA

Network Administrator

- Responsible for an Ethernet network of 50 computers.
- Monitor security and performance.
- Trouble shoot and resolve system failure.
- Perform maintenance and upgrading of the network.

Education

1992 — Tesst Institute of Technology, Alexandria, VA

* Degree in electronics and communication technology.

1995 — George Washington Univ. Washington, DC

* Completed the Microsoft network engineering program.

1998

* Completed a wireless communication course organized by Nortel.

1999

Ref No 3

* Completed A CDMS course organized by eXpert Wireless solutions.

Technologies	CDMA, GSM and TDMA
Hardware	Grayson Tx/Rx, Expert Tx/Rx 2000, Watkin Johnsons repeaters, HP Scanner.
Tools	PlaNET, MaxPlan, MapInfo, Actix Analyzer, and HP.
Software	Microsoft Windows & DOS.

Peter Fastnacht
169 Conestoga Trail
Sparta, New Jersey 07871
973-729-6272

OBJECTIVE: To secure a real estate management position where my diversified skills and extensive experience can contribute to the success of an organization while providing the opportunity for personal advancement.

PROFILE: Highly motivated manager with proven ability to efficiently direct operations and perform in demanding situations.

Versatile team player with strong interpersonal and communication skills.

Conscientious, reliable employee possessing problem-solving abilities.

EXPERIENCE:

1995 -Present Integrated Wireless Alliance, Blauvelt, NY
President

- Own and operate a site acquisition company providing service to the wireless industry. Working with companies in the NY metropolitan area, NJ, and Maryland.

1984- 1995 NYNEX MOBILE COMMUNICATIONS COMPANY
Real Estate Manager

- Managed site acquisitions and zoning efforts in the New York/North Jersey metropolitan area interacting extensively with attorneys and construction officials.

- As Team leader in Westchester (1 ½ years) and New Jersey (1 year, was responsible for project management including facilities design and radio and equipment engineering.

Accomplishment:

- Team received Nynex Chairman's Award for building a record number of cell sites in one year (1992).

1970 -1984 NEW JERSEY BELL TELEPHONE COMPANY
Account Executive National Accounts
Account Executive
Communications Consultant
Sales Representative

- Advanced rapidly within organization from sales position to managing national accounts.
- Made recommendations to customers based on their individual needs.

Accomplishments:

- Received numerous awards for salesmanship. (1977- 1983).

EDUCATION:
1962 – 1964 R.C.A. INSTITUTE OF ELECTRONIC TECHNOLOGY
Associates Degree

P.1 EX4

Hassan Khalil

6909 Rockledge Dr # 100
Bathesda, MD 20817
301-571-4192

Experience

Aug 2000-present — Sprint PCS, Bethesda, MD

RF Design Engineer

- Responsible for the system design in Baltimore, Carroll, Harford, and Anne Arundel County.
- Site Visits to evaluate antenna layouts and co-location with other RF systems.
- Review Drive test data, and traffic analysis.

April 1998- July 2000. — Expert Wireless solutions, Fort Lee, NJ

Team leader for a group of 10 engineers assigned to Sprint PCS project

- Reviewing the data collected by the team.
- Visit the sites to insure accuracy of equipment setup.
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- Make recommendation to Sprint PCS engineers.

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- Perform software and hardware installation.
- Monitor network for trouble shooting and to insure performance.
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1993-1995 — Optimum Solutions, Reston, VA

Network Administrator

- Responsible for an Ethernet network of 50 computers.
- Monitor security and performance.
- Trouble shoot and resolve system failure.
- Perform maintenance and upgrading of the network.

Education

1992 — George Mason University

* Bachelor Degree in Electrical Engineering

1995 — George Washington Univ. Washington, DC

* Completed the Microsoft network engineer program.

1998

* Completed a wireless communication course organized by Nortel.

Ex 10

1999

* Completed A CDMS course organized by eXpert Wireless solutions.

Technologies	CDMA, TDMA
Hardware	Grayson Tx/Rx, Expert Tx/Rx 2000, Watkin Johnsons repeaters, HP Scanner.
Tools	PlaNET, MaxPlan, MapInfo, Actix Analyzer, dB Planner and HP Scanner
Software	Microsoft Windows.

MARIANNE KIERNAN, P.E.
ASSOCIATE

Pet
No
10

Years Experience:
With this Firm 3
Other Firms 6

Registration:
1997, Professional Engineer, Virginia
2000, Professional Engineer, Maryland

Ms. Kiernan is an Associate, Civil Engineer, currently responsible for the management of telecommunication sites of KCI's Laurel Office. She has been involved in numerous cellular telecommunication projects and other site development projects where her responsibilities have included development of full zoning, site and construction documents. She also has extensive experience in hydraulics, hydrology and subdivision design including stormwater management and construction inspection. Her background also includes project coordination and management, preparation of technical manuals, expert testimony and development of coordination of design standards.

Representative Telecommunication Projects in Maryland, Virginia, Washington, D.C., for AT&T Wireless Services, Sprint PCS, Crown Castle, VoiceStream, Nextel, and Metricom.

- Parklawn Guy Tower
- Filene Center
- Clarksburg Tag Tower
- Crown Hughesville
- Annandale Tower
- Central Avenue
- Cablevision W475.5
- Brinklow W545.1
- Colesville W546.1
- Parkville B008.1
- Clements Property W532
- Crown South Annapolis
- Easton Property
- Williamsburg Shopping Center
- Montclair/Forest Park
- Knights of Columbus
- Naval Warfare Center
- Frederick County Tower
- Pepco Tower W371.2
- Parliament House W3813.1
- Bar Baltimore BAC 052A
- Herring Run BAC 055B
- Bernard E. Mason Apts. BAC 076A
- Tycom WT BAC 090A
- ATC Parkville BAN 086A
- Dale City Tower
- Comsite Tower W544.1
- Waldorf Tag Tower
- TCG Lendall Lane
- Crown Burke VFD
- Maryland American WT
- Glendale W404.1
- Colesville W546.1
- Germantown W563
- Miller Road Tower B896.1
- Pyle Property W550
- Laurel Block
- BGE Communication Tower
- Parklawn Guy Tower
- Crown Monopole, Airpark
- Dale City Tower
- Wesley Grove
- Old Chapel South
- Pepco Travilah W235.1
- Sterling Crown Site
- Crown Clifton Park BAC 093A
- Adams Chapel Church BAC 054B
- Steel & Wire Products BAC 070E
- Ruxton Florist BAN 111
- Edgemere BAN 099A

Flood Insurance Studies and Rate Maps Review, Western United States.
Federal Emergency Management Agency (FEMA). Assistant Engineer. Reviewed data submitted to FEMA for incorporation into Flood Insurance Study Reports and Flood Insurance Rate Maps for western states. Review included studies and repeat studies prepared by FEMA consultants, revision requests to existing reports and maps by communities and individuals and other technical reports.

Fuel Oil Storage System Replacement, Washington, D.C. *U.S. Navy, Naval Facilities Engineering Command.* Inspector. Provided on-site inspection and technical support during removal of underground storage tanks and contaminated soil, and installation of fuel oil storage and supply system at Building 18, Heat Plant, at Bolling Air Force Base.

Design of Regional Pond C-20, International Town and Country Club, Fairfax County, Virginia. *Fairfax County Department of Public Works.* Project Manager. Involved the design of a regional stormwater management facility along a tributary of Flatlick Branch in the Cub Run watershed located in the western portion of Fairfax County in the Sully District. The wet retention pond will provide two-year detention and will be built on the property of the International Town and Country Club (ITCC).

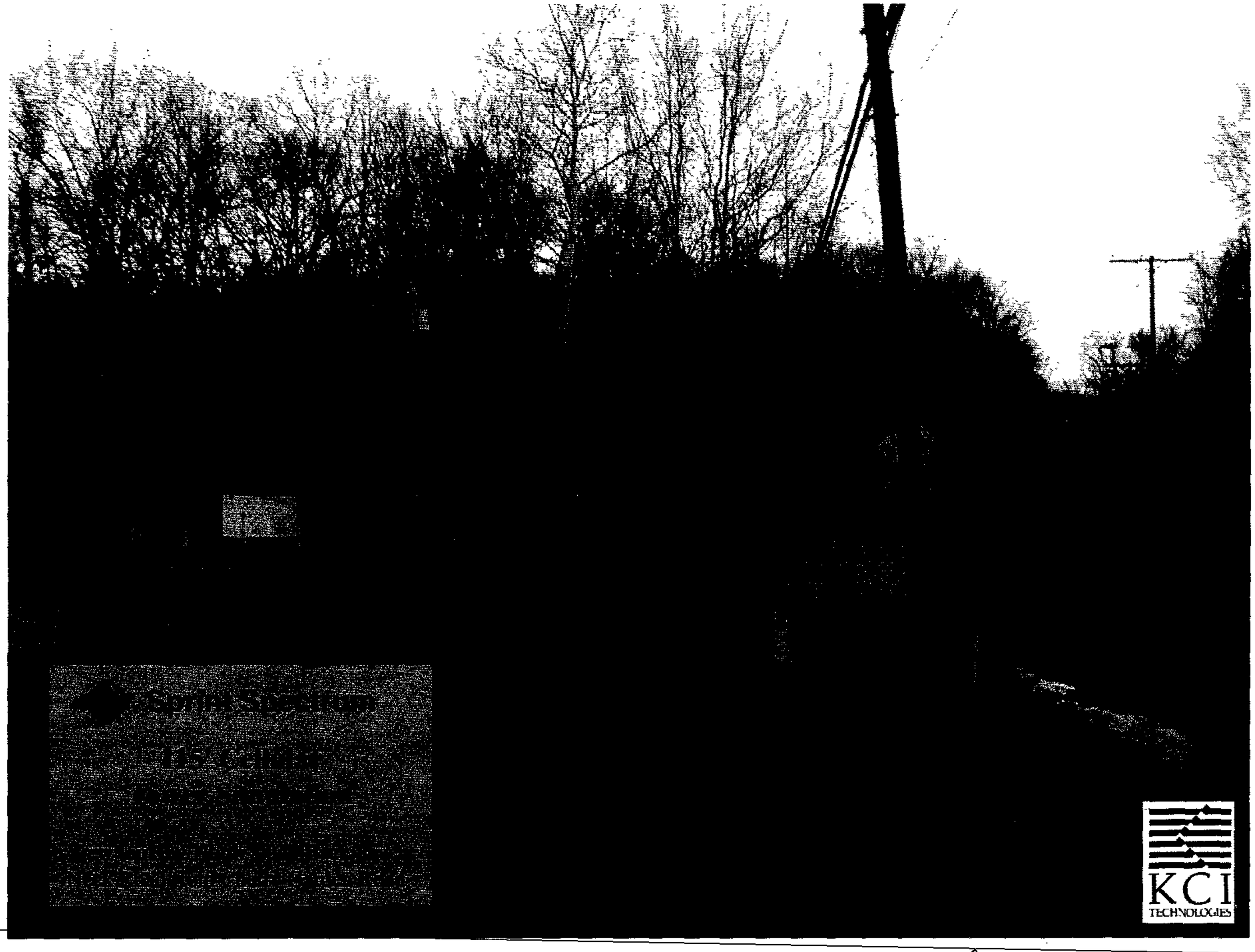
Storm Drainage Improvement Design for Prince George's County, Maryland. *Department of Environmental Resources.* Design Engineer. Analyzed conditions of 102-acre watershed of which 30 percent is fully-developed, single-family residential units and public roads. Designed storm drainage improvement for undersized roadway culvert crossings and stream channelization to address flooding and yard use concerns raised by local residents. Performed hydrologic/hydraulic analyses for existing and ultimate development conditions of the watershed using the U.S. Soil Conservation Service's "Technical Release 55", TR-20 and the U.S. Army Corps of Engineers' HEC-2 computer program.

Regional Stormwater Management Facility Design, Maryland. *Centex Homes and Maryland National Capital Park and Planning Commission.* Design Engineer. Designed regional stormwater management facility to provide quantity and quality controls for a 285-acre development watershed in Montgomery County.

Single-Family Subdivision Site Design, Maryland. *Lakewood Estates Limited Partnership.* Design Engineer. Designed utilities, storm drain system, stormwater management facility, 100-year floodplain analyses and roadway culvert crossing for 26-acre private subdivision in Montgomery County.



DLN011 A



Rob 11/6



Pol 11c

DECEMBER 19, 2001

TO WHOM IT MAY CONCERN,

WE ARE AWARE OF THE PROPOSED TOWER GOING UP AT OUR NEIGHBOR'S PROPERTY, SITUATED AT 810 BACK RIVER NECK ROAD. WE DO NOT OPPOSE TO THE TOWER.

THANK YOU,

Willis D. Gibson

WILLIS & ELLEN GIBSON
808 BACK RIVER NECK ROAD
BALTIMORE, MD 21221

12

DECEMBER 19, 2001

TO WHOM IT MAY CONCERN,

WE ARE AWARE OF THE PROPOSED TOWER GOING UP AT OUR NEIGHBOR'S PROPERTY, SITUATED AT 810 BACK RIVER NECK ROAD. WE DO NOT OPPOSE TO THE TOWER.

THANK YOU,

ELSIE LUCIANO
806 BACK RIVER NECK ROAD
BALTIMORE, MD 21221

Elsie Luciano

No 13

KCI TECHNOLOGIES

ENGINEERS • PLANNERS • SCIENTISTS • CONSTRUCTION MANAGERS

14502 GREENVIEW DRIVE, SUITE 424 · LAUREL, MD 20708 · 410-792-8086 · (FAX) 410-792-7419

Marianne Kiernan, PE - KCI Technologies, Inc.
Senior Associate – Laurel Division Chief

Years Experience: (firm/other): 4 / 6

Education:
1991 / BS / Civil Engineering, Villanova University

Registration:
1997 / Professional Engineer, Virginia
2000 / Professional Engineer, Maryland
OSHA HAZWOPER Certification; 40 Hour HAZWOPER Training
American Society of Civil Engineers

Experience :
Ms. Kiernan is a Senior Associate and Division Chief of KCI's Laurel, Maryland office. Her experience includes the design and management of projects involving telecommunication facilities, residential subdivisions, commercial, hydrology and hydraulics, and subdivision design including stormwater management and construction inspection. Her background includes project coordination, construction document preparation and technical review of floodplain studies. Ms. Kiernan has performed design and planning tasks for over 300 telecommunication sites and has served as an expert witness for zoning cases in Montgomery County, Baltimore County, and Anne Arundel County.

Telecommunications Services, Maryland, Virginia, Washington, D.C., AT&T Wireless Services. Project Manager. Providing multi-discipline engineering and site development for short-term, multi-task, survey, design and construction contracts for AT&T for over two (2) years. These tasks have been completed at sites throughout Maryland, Virginia, and Washington, D.C. Typical project services have involved: *Site Development and Surveys* - complete site and Global Positioning Surveys (GPS) of site and building projects; design has involved zoning plans, expert witness testimony, site development plans, site assessments, permitting and full construction documents, including stormwater management, erosion and sediment control, grading, and dimension plans. *Towers and Structural Engineering* – managed structural surveys of proposed sites for wireless communication including existing buildings, water tanks, radio towers, and monopoles; design of structural supports for antennas; design of equipment platforms for rooftop applications; structural analysis of radio tower and monopoles; design of equipment rooms inside building; design of foundations for exterior equipment shelters.

Telecommunication Services, Maryland and Virginia, Bechtel Telecommunication for AT&T Wireless Services. Project Manager in charge of design for over 100 telecommunication facilities. Ms. Kiernan was responsible for overseeing field surveys, zoning plan preparation, geotechnical investigations, and structural analysis and inspection services.

Omnipoint Communications CAP Operations, LLC, Beltsville, Maryland. Project Manager. Coordinated preparation of design and property surveys, design of site development plans, and administrative plats for various properties to serve as cellular tower and monopole sites. Design included grading, filing of variances, special exceptions, and permitting.

Telecommunication Services, Maryland, D.C. and Virginia, Cingular Wireless (formerly Cellular One). Project Manager. Management for multiple cell and telecommunications sites.

Metricom, Crown Atlantic, MESA Communications, various locations, Maryland. Project Manager. Provided engineering and survey services for multiple locations.

Telecommunication Services, Maryland Virginia, Sprint PCS. Project Manager in charge of design for over 30 telecommunication facilities. Ms. Kiernan was responsible for overseeing field surveys, zoning plan preparation, geotechnical investigations, and structural analysis, inspection services, and performing expert witness testimony.

Pat Ex 15

Baltimore County
Department of Environmental Protection
and Resource Management

401 Bosley Avenue, Suite 416
Towson, Maryland 21204

May 7, 2002

Mr. Buck Jones
Back River LLC
500 Vogts Lane
Baltimore, MD 21221

Re: Permit application B481568
Cell Tower behind 810 Back River Neck Road

Dear Mr. Jones:

Environmental Impact Review (EIR) has reviewed the above-referenced permit application for a proposed cell tower and has placed the application on hold because the submitted plot plan shows its location to be within 100' of an existing stream. Chesapeake Bay Critical Area (CBCA) regulations require that the limit of disturbance (LOD) would have to be 100' away from the stream, otherwise a Critical Area Administrative Variance (CAAV) would be required. After talking to you by phone, it was agreed that the LOD will be no closer than 100' from the stream. That is to say the fence around the "compound" shall be placed at least 100' from the stream. In order for the subject permit application to be approved by EIR, please sign and return a copy of this letter to indicate your understanding of the CBCA regulations.

Contact me at 410-887-3980 if you have any questions regarding this matter.

Sincerely,

Keith Kelley
Natural Resource Specialist
Environmental Impact Review

I have read and do hereby agree to implement the above requirements to bring my property into compliance with Chesapeake Bay Critical Area regulations.

Buck Jones — 5-10-02
Signature — Date

Kdk#15/jonescelltower

Printed with Soybean Ink
on Recycled Paper

P. 1 of 16

FREE-STATE GENERAL CONTRACTORS, INC.

500 VOGTS LANE • BALTIMORE, MARYLAND 21221 • (410) 574-9337
M.H.I.C. = 20286
www.freestatehomes.com

JULY 15,2002

BALTIMORE COUNTY DEPARTMENT
OF PLANNING
TOWSON, MD 21204

RE: PERMIT NO. B481568C
810 BACK RIVER NECK ROAD 21221

TO WHOM IT MAY CONCERN,

IN PROCESSING THE ABOVE MENTIONED PERMIT, ONE OF THE STIPULATIONS WAS FOR THE PLANNING DEPARTMENT TO LOOK AT THE PERMIT AND DETERMINE IF THEY DIEMED IT NECESSARY TO LANDSCAPE AROUND THE TOWER. THE PLANNING DEPARTMENT REVIEWER DID REVIEW THE PLANS AND FOUND IT WAS NOT NECESSARY TO REQUIRE LANDSCAPING. THIS WAS DUE TO THE SITE BEING 700 + FEET OFF OF THE ROAD AND BEHIND THE BUILDINGS. THE REVIEWER THEN CALLED OVER TO JOE MERRY IN ZONING AND GAVE THE O.K. FOR JOE TO SIGN OFF IN THE COMPUTER, SO THAT WE COULD RECEIVE THE PERMIT. THE PERMIT WAS RECEIVED ON 5/30/02.

THE SITUATION IS THAT SPRINT IS REQUESTING A WAIVER BE SIGNED REGARDING THE LANDSCAPING. THEY ARE CONCERNED THAT THE COUNTY COULD IN FACT COME BACK AFTER THE TOWER HAS BEEN COMPLETED AND NOT FINAL THE PERMIT, HENCE NOT ALLOWING IT TO OPERATE UNTIL SUCH TIME THAT THEY DO THE LANDSCAPING. WE ARE REQUESTING THAT SOMEONE FROM PLANNING SIGN THE WAIVER ATTACHED BELOW THAT STATES NO LANDSCAPING WILL BE REQUIRED. THANK YOU IN ADVANCE FOR YOUR ASSISTANCE.

SINCERELY,

BUCK JONES

WAIVER

NO LANDSCAPING WILL BE REQUIRED REGARDING PERMIT NO. B481568C. THE LANDSCAPING HAS BEEN WAIVED.

Signature — SIGNATURE
Chief Development Review — TITLE
07/24/02 — DATE

Pet Ex 17

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

August 29, 2002

Buck Jones
Back River, LLC
810 Back River Neck Road
Baltimore, Maryland 21221

Dear Mr. Jones:

RE: Zoning Verification, Relocation of Monopole, Case 02-159-A, 15th Election District

Your letter of August 21, 2002 to Mr. Arnold Jablon concerning the above referenced matter has been referred tome for reply. Having reviewed your submittal, it is the opinion of this Office that moving the subject tower 60ft. in an easterly direction as depicted on the provided site plan is within the spirit and intent of the above captioned zoning order. This letter should appear on all future site plans filed with this Office for review concerning this property.

If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

Joseph C. Merrey
Planner II
Zoning Review

Printed with Soybean Ink
on Recycled Paper

SEPTEMBER 19, 2002

TO WHOM IT MAY CONCERN,

WE ARE AWARE OF THE PROPOSED TOWER GOING UP AT OUR NEIGHBOR'S PROPERTY, SITUATED AT 810 BACK RIVER NECK ROAD. WE UNDERSTAND THAT DUE TO ENVIROMENTAL ISSUES THE TOWER LOCATION HAS BEEN MOVED FORWARD BY SIXTY (60) FEET. WE DO NOT OPPOSE THE TOWER.

THANK YOU,

Willis D. Gibson

Ellen Gibson

WILLIS & ELLEN GIBSON
808 BACK RIVER NECK ROAD
BALTIMORE, MD 21221

#Petr
10

SEPTEMBER 19, 2002

TO WHOM IT MAY CONCERN,

I'M AWARE OF THE PROPOSED TOWER GOING UP AT OUR NEIGHBOR'S PROPERTY, SITUATED AT 810 BACK RIVER NECK ROAD. I UNDERSTAND THAT DUE TO ENVIROMENTAL ISSUES THE TOWER LOCATION HAS BEEN MOVED FORWARD BY SIXTY (60) FEET. I DO NOT OPPOSE THE TOWER.

THANK YOU,

Elsie Luciano

ELSIE LUCIANO
806 BACK RIVER NECK ROAD
BALTIMORE, MD 21221

Pet 1.

*******COMMUNITY MEMBERS******

Dear Community Members,

As you are aware, cellular service has not been available to some and very poor to others, in our area, until now. The opportunity of a tower has been presented, which would be located at 810 Back River Neck Road (the old back river supply). It will be a welcome sight for most, but unfortunately not for all. This letter is to inform you, the community members, of this opportunity, as it may be our last, to vote for yourselves in this matter.

If you are in favor of the tower, please sign the petition below, as it may prove helpful in the deciding vote.

John M Feerstein	2025 Sue Creek Dr.	JOHN M FEERSTEIN
Keith Schrieffer	622 RIVERSIDE DR	KEITH D. SCHRIEFFER
Donald C Chiles	307 Elvesleah Ave	DONALD C CHILES
Neeran Singh	1521 Hopewell Avenue	Neeran Singh
Rickey Ball	1801 Cape May Rd	Rickey Ball
Ronald L Moore	13 S. Marilyn Ave	Ronald L. Moore
Vishan Dudnauth	2240 Aberdeen Rd. Baltimore MD 21221	Vishan Dudnauth
Elliott Bowen	338 Sassafras Rd 21221	Elliott Bowen
Patrick Deigle	300 Sassafras Rd 21221	Patrick Deigle

Pet'r #1.C

*******COMMUNITY MEMBERS******

Dear Community Members,

As you are aware, cellular service has not been available to some and very poor to others, in our area, until now. The opportunity of a tower has been presented, which would be located at 810 Back River Neck Road (the old back river supply). It will be a welcome sight for most, but unfortunately not for all. This letter is to inform you, the community members, of this opportunity, as it may be our last, to vote for yourselves in this matter. If you are in favor of the tower, please sign the petition below, as it may prove helpful in the deciding vote.

2043 Sue Ave Balto MD 21221
810 Corktree Rd Balto MD 21220
1902 Poplar Rd 21221
1116 E. Riverside Ave Balt MD 21221
1936 Silve Lane 21221
1920 Holly Neck 21221
313 Grey Hound Rd
2116 Riverside Rd 21221
703 Hoce Ave
1912 POPLAR RD
1928 Poplar Rd 21221
1004 Maple Rd
1108 BACK River Neck Rd 21221
2814 Holly Neck Rd 21221
1924 Popular rd 21221
1924 Poplar Rd 21221
1220 BACK RIVER NECK RD 21221
600 KALLA DRIVE, HARRISBURG, PA. 17109
903 Balto Yacht Club Rd Balto 21221 Md
407 Back River Neck Rd 21221
7300 Vandermast Rd 21221
1625 21221
1337 Riverside Av. Balto, MD 21221

PG 1D

Dennis L Peterson 850 BALTO. YACHT CLUB RD 21221
Autumn M. Bean 738 SEAWALL Rd. Balto. MD 21221
Wilsie Price 1400 I Straw Flower Rd Balto Md 21221 &
NICOLE BRANNEN 1EBBARG Ct BALTO MD 21221
PATRICIA SIMMONS 2202 Silver LN BALTO MD 21221
FRANK Schepens 5107 MERIDY AVE BALTO MD. 21236 - BALTO YACHT CLUB MEMBER
Debbie Weiss 1231 Bayside Rd Balt. 21221
Mike Wells 1231 Bayside Rd 21221
Kim Lewis 33 Leyland Ct. 21221
CAD SHARE 1100 EBBARK
Charles Starkey 2023 Holly Neck Rd Balt Md 21221
Donna Starkey 2023 Holly Neck Rd Balt Md 21221
Arlene M Odle 2023 Holly Neck Rd Balt Md 21221
Laurence B Odle 2023 Holly Neck Rd Balt Md 21221
KURT KRAUSZ 1332 RIVERSIDE AVE 21221
Catherine May 1330 Riverside 21221
Alfred E. Clancy III 1221 Bayside Rd 21221
James Gorman 2122 Holy Neck Rd. 21221
Bob Hutsch 2334 Poplar Rd 21221
Joyce Hutsch 2334 Poplar Rd
Greg Simmons 2202 Silver Lane Rd. 21221
2018 River Rd 21221
Rhoda Gonzales 1211 Englebert Rd 21221
Charles Thelwell 1124 Maple Rd 21221
Leonard W Kinnard 6823 Hopkins Rd 21220
Denise Michalosky 2347 Barrison Pt Rd 21221
CHRIS FEARD 2422 Golupski Rd 21221
John Reed 2018 Silver Lane Rd. 21221
Glenn & Heidi Bittner 1150 E. Riverside Ave 21221
Susan Marsh 2538 Island View Rd 21221
Theresa Boynton 1922 Silver Lane 21221
NATHAN MILES 1126 E. RIVERSIDE AVE BALTO MD 21221
ANN FARACE 311 Greyhound Rd 21221
FAMILY MILES, 1126 EAST RIVERSIDE AVE, BALTO, MD 21221
TERRY HOLT 318 MAPLE AVE BALT MD. 21221
BRENDA CHAPMAN 2212 Vandervoort Dr. 21221
GARY MC GUIRE 2212 Vandervoort Dr 21221
Marlene Harris 1033 Cedar Creek Rd 21221
Kenta Walford 348 Savannah Rd 21221
Ken Burton 367 Upper Dr 21221
Agnes J. Navarra 1115 E Riverside 21221
Eldridge S. Waggner JR. 1929 Silver La. Balto. Md. 21221
Debbie Lale 2108 Silver Lane Balto. Md 21221
Lynda Berry 1531 Denton Rd. Balto. MD 21221
Billy Pennington 2523 Holly Neck Rd Balto. MD. 21221
Amber Waggner 1929 Silver lane Balto. MD 21221

*******COMMUNITY MEMBERS******

Dear Community Members,

As you are aware, cellular service has not been available to some and very poor to others, in our area, until now. The opportunity of a tower has been presented, which would be located at 810 Back River Neck Road (the old back river supply). It will be a welcome sight for most, but unfortunately not for all. This letter is to inform you, the community members, of this opportunity, as it may be our last, to vote for yourselves in this matter.

If you are in favor of the tower, please sign the petition below, as it may prove helpful in the deciding vote.

PATRICIA A. SLIGH 1229 BAYSIDE RD ESSEX, MD 21221 Patricia A Sligh
JACKIE L. MILES 1126 E. Riverside Ave 21221 Jackie L. Miles
Kathy Cohen 1114 E. Riverside Av 21221 Kathleen Cohen
Tina Miller 1111 Country Terrace 21221 Tina Miller
JOHN BACK 2420 HOLLY NECK RD 21221 John Back
Jose Plummer 2103 Holly neck Rd 21221 Jose Plummer
Selena McKissick 2244 Vandermgst Ln 21221 Selena McKissick
SUSAN BILZ 1526 DENTON Rd 21221 Susan Bilz
DONALD SIGWART 1822 HOLLY NECK RD 21221
PEG PITTMAN 2 BROWNS COVE 21221
Meghan Bramwell 1218 E. Riverside Ave 21221 Meghan Bramwell
[redacted] 1116 CEDAR CREEK RD 21221
JOE HARRIS 1033 CEDAR CREEK Rd 21221 Joe Harris
Bob Strykan 3cy long Cove 21221
MIKE STOTT [redacted] PHILLIPS D 21221
Ken Folio 1214 62 St. 21221
[illegible] 2024 POPLAR RA 21221 SKIP LEWIS
[illegible] 8331 Flowley R, 21234
BILL GEARE 2514 BACKRIVER NECK Rd 21221
Erin Land 365 MITCHELL RD 21231
[illegible] 2024 RIVERVIEW ROAD 21221
Dave Harris [redacted] 2024 RIVERVIEW RD. 21221
[illegible] 1141 Engelbarth Rd Balto MD 21221
BILL HEISE 2221 HOLLY NECK RD. BALTO. MD. 21224

Patricia
12

(redacted)

Wayne Radcliffe 2300 Golupski Rd Wayne Radcliffe
Matt Bucher 1348 Riverside Ave Matt Bucher
Karen Bo[redacted] 2553 Bradison Pt Rd Balto, MD 21221
[redacted] 1830 Hollynecck Rd
[redacted] 6503 Corkley Rd 21237
Gene Zinkhan 1107 Maple Rd 21221
Chris Owensby 20 Pelczar Ave Baltomore, Md 21221
Lisa Dziuk 1114 E Riverside Ave Balto MD 2122[illegible]
George Zahradka III 2300 Golupski 21221
[redacted] 2212 Riverview Rd 21221
David Stiller 1130 Fantat Rd 21221
Pedro Portella 1005 Cedar Creek Rd 21221
Rodney Cann 552 W. Wardlyn Rd. 21221
Joe Byrnes 2731 Holly Beach Rd 21221
Daniel Hart 11332 Raphael Rd. Upper Falls MD 21156
Michael R. Mund 906 Hemmitt Ave
Michael D. Jones 2400 Golupski Rd. Essex, Md. 21221
Paul W. Rogers 1653 Frenchs Ave Essex MD 21221
Stephen M. Peterson 900 Baltimore Yacht Club Rd. 21221
Dennis S. Peterson 850 Baltimore Yacht Club Rd. 21221
William D. Heise 2221 Holly Neck Rd Essex, Md 21221
James Miller 1231 Englebreth Rd Essex Md. 21221
Mark Hoffman 1021 Maple Rd " " "
Curtis Bubolo 2201 Rivemiew Rd " " "
Dave Anderson 2434 Hollyneck Rd Essex MD 21221
Cleveland M Reynolds 1572 Williams Ave Balto Md 21221
[redacted] 2630 Holley Beach Rd
[redacted] 2114 Poplar Rd 21221
Ronald T Swett Jr. 2114 Trek Avon Rd. Ronald T Swett
Camille Mary 2638 Holly Beach Rd 21221
[redacted] 2018 Rich Rd. 21221
Richard McLaren 2016 Holly Neck Rd. 21221
Marilyn Murr 833 Cedar Grove Rd, 21221
Dave Mathews 1300 Eve Green Ln 21221
Bernard Bicham 1329 Wildwood Beach Rd 21221
Tina M. Forbes 2523 Holly Neck Rd. 21221
David Cohen 1114 E Riverside Ave 21221 David Cohen
Frank Bonhoff 1116 E Riverside Ave 21221 Frank Bonhoff
Shirley Bonhoff 1116 E Riverside Ave 21221 Shirley Bonhoff
William Forbes 2523 hollyneck Rd. Balto Md 21221
Richard Dobrzykowski 111 Country Terrace RD
Ed Zubris 313 Kelly-Case Lane Essex MD 21221
Michael Reed 922 Garden Dr. Essex Md. 21221
[redacted] 2812 Holly Neck Rd Essex, md 21221
Shawn Lechert 610 Mansfield Rd Essex MD 21221

HOLLY NECK CONSERVATION ASSOCIATION, INC.

P.O Box 16666 • Essex, MD 21221-0666

September 20, 2002

RE: 02-159-A, Back River Neck Road Cell Tower Site Variance

Board of Appeals

Others commitments may prohibit me from attending the hearing on this matter. I have authorized Bill Bafatis, our zoning chairman, to present our position and answer any question you may have regarding this matter. He is a member in good standing and was present during the presentation, general discussion and the voting by our membership on this issue.

Sincerely,

Jim Mitchell
President, HNCA

Attested:

By: Kathleen Filar
Kathleen Filar, Secretary
Holly Neck Conservation Assoc., Inc.

Pet'k
Ex

S G R & H PA Fax:410-332-0269 Sep 20 '02 15:29 P.03

SEP-20-2002(FRI) 12:43 GOLDEN RING BARRACKS 410 780 0830 P 003

HOLLY NECK CONSERVATION ASSOCIATION, INC.

P.O. Box 16666 • Essex, MD 21221-0666

September 20, 2002

RE: 02-159-A, Back River Neck Road Cell Tower Site Variance

Board of Appeals

The Holly Neck Conservation Association (HNCA) membership has considered the variance required for the Back River Neck cell tower site. Sprint engineers and Mike Lutz gave presentations to the membership on March 18, 2002 and Buck Jones, Free-State General Contractors, Inc, gave a presentation to the membership on July 15, 2002.

Specific questions about the variance requested, directly impacted neighbors, immediate and long-range impact on the environment, exact location, height, and cell service providers were asked by the HNCA membership. All of the questions were answered satisfactorily and accepted by the membership.

The Holly Neck Conservation Association (HNCA) would like you to consider the following points in granting a variance for the proposed Back River Neck cell tower site.

A.) The Holly Neck and Back River Neck peninsulas are only land accessible by Holly Neck and Back River Neck Roads. In the past, hurricanes, snowstorms and tropical rains have rendered these areas as islands. Phone service and power have been out-of-service for extended periods of time and the roads have been impassable for days. Cell phone service would provide a necessary life-line for the peninsula's residents.

B.) The Holly Neck and Back River Neck peninsulas attract boaters, fisherman, cyclists, hikers, golfers, outdoorsmen, nature lovers, bird watchers, and horseback riders. Cell phone service would provide an emergency link-up for police, fire and medical services.

C.) The directly impacted neighbors of the cell tower site are not in opposition to the variance being granted and it is our understanding they have signed the appropriate required documentation.

D.) The requested variance for this cell tower site should be awarded as a <u>public safety consideration only</u>. This specific variance award should set no precedent. Future variance requests should be reviewed on a case by case basis with zoning, environmental and county regulations strictly adhered to and enforced.

The Holly Neck Conservation Association, Inc. (HNCA) membership voted on July 15, 2002, based on the above considerations, and unanimously support the granting of the requested variance for the proposed cell tower site. This letter was read allow again to the general membership at the Sept 16, 2002 general meeting and again supported unanimously.

Sincerely,

Jim Mitchell
President, HNCA

Attested:

By: Kathleen Filar
Kathleen Filar, Secretary
Holly Neck Conservation Assoc., Inc.

Pet'n
2/c

SEP-20-2002(FRI) 12:43 GOLDEN RING BARRACKS 410 780 0880 P 004
$ G R & H PA Fax:410-332-0269 Sep 20 '02 15:29 P.02

Peter Fastnacht
169 Conestoga Trail
Sparta, New Jersey 07871
973-729-6272

OBJECTIVE: To secure a real estate management position where my diversified skills and extensive experience can contribute to the success of an organization while providing the opportunity for personal advancement.

PROFILE: Highly motivated manager with proven ability to efficiently direct operations and perform in demanding situations.

Versatile team player with strong interpersonal and communication skills.

Conscientious, reliable employee possessing problem-solving abilities.

EXPERIENCE:

1995 -Present Integrated Wireless Alliance, Blauvelt, NY
President

- Own and operate a site acquisition company providing service to the wireless industry. Working with companies in the NY metropolitan area, NJ, and Maryland.

1984- 1995 NYNEX MOBILE COMMUNICATIONS COMPANY
Real Estate Manager

- Managed site acquisitions and zoning efforts in the New York/North Jersey metropolitan area interacting extensively with attorneys and construction officials.

- As Team leader in Westchester (1 ½ years) and New Jersey (1 year, was responsible for project management including facilities design and radio and equipment engineering.

Accomplishment:

- Team received Nynex Chairman's Award for building a record number of cell sites in one year (1992).

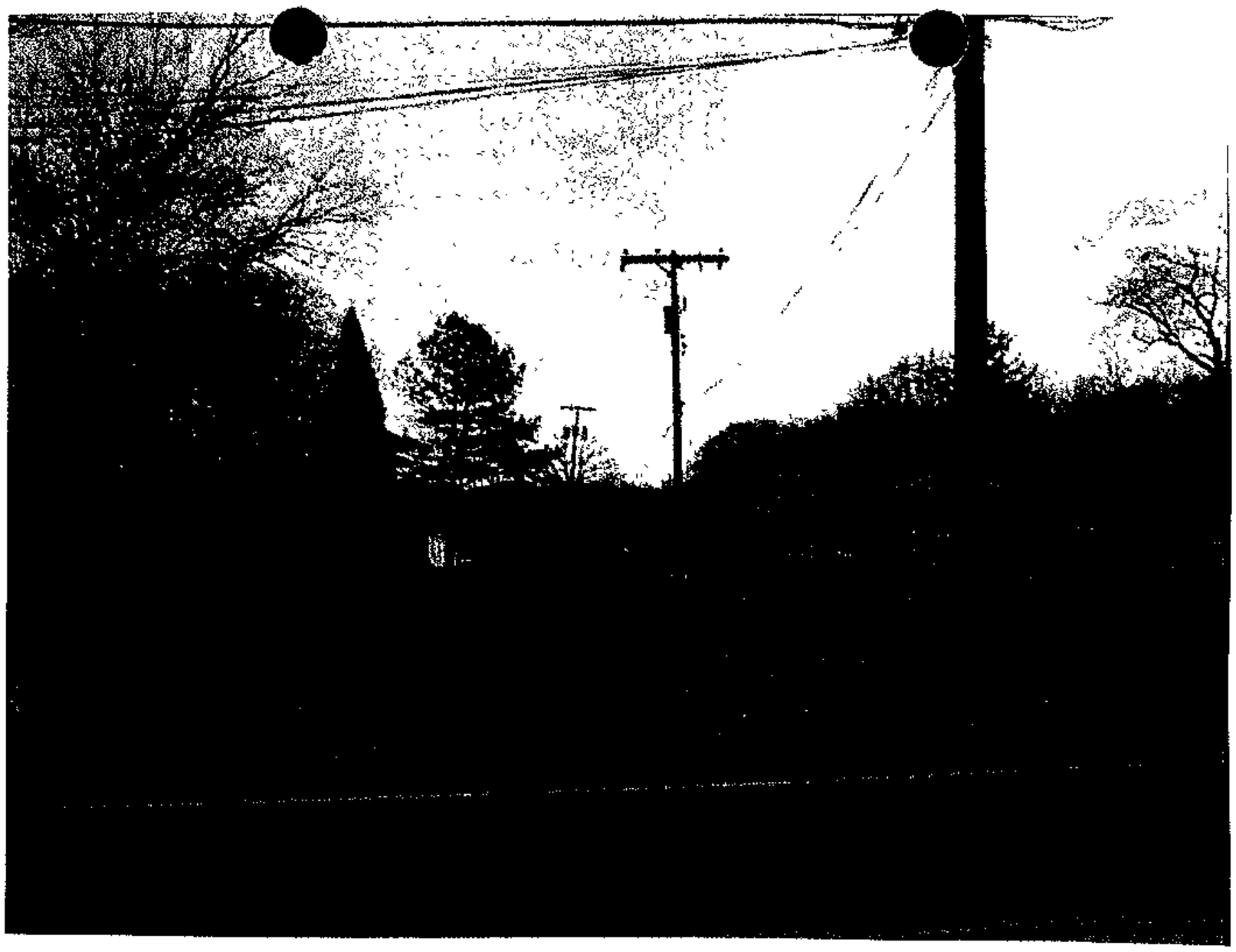
1970 -1984 NEW JERSEY BELL TELEPHONE COMPANY
Account Executive National Accounts
Account Executive
Communications Consultant
Sales Representative

- Advanced rapidly within organization from sales position to managing national accounts.
- Made recommendations to customers based on their individual needs.

Accomplishments:

- Received numerous awards for salesmanship. (1977- 1983).

EDUCATION:
1962 – 1964 R.C.A. INSTITUTE OF ELECTRONIC TECHNOLOGY
Associates Degrce



EAST SIDE OF BACK RIVER NECK ROAD LOOKING INTO OTHER PIECE OF M.L ZONED PROPERTY IN THE AREA. THIS PROPERTY IS SOUTH OF PROPOSED SITE



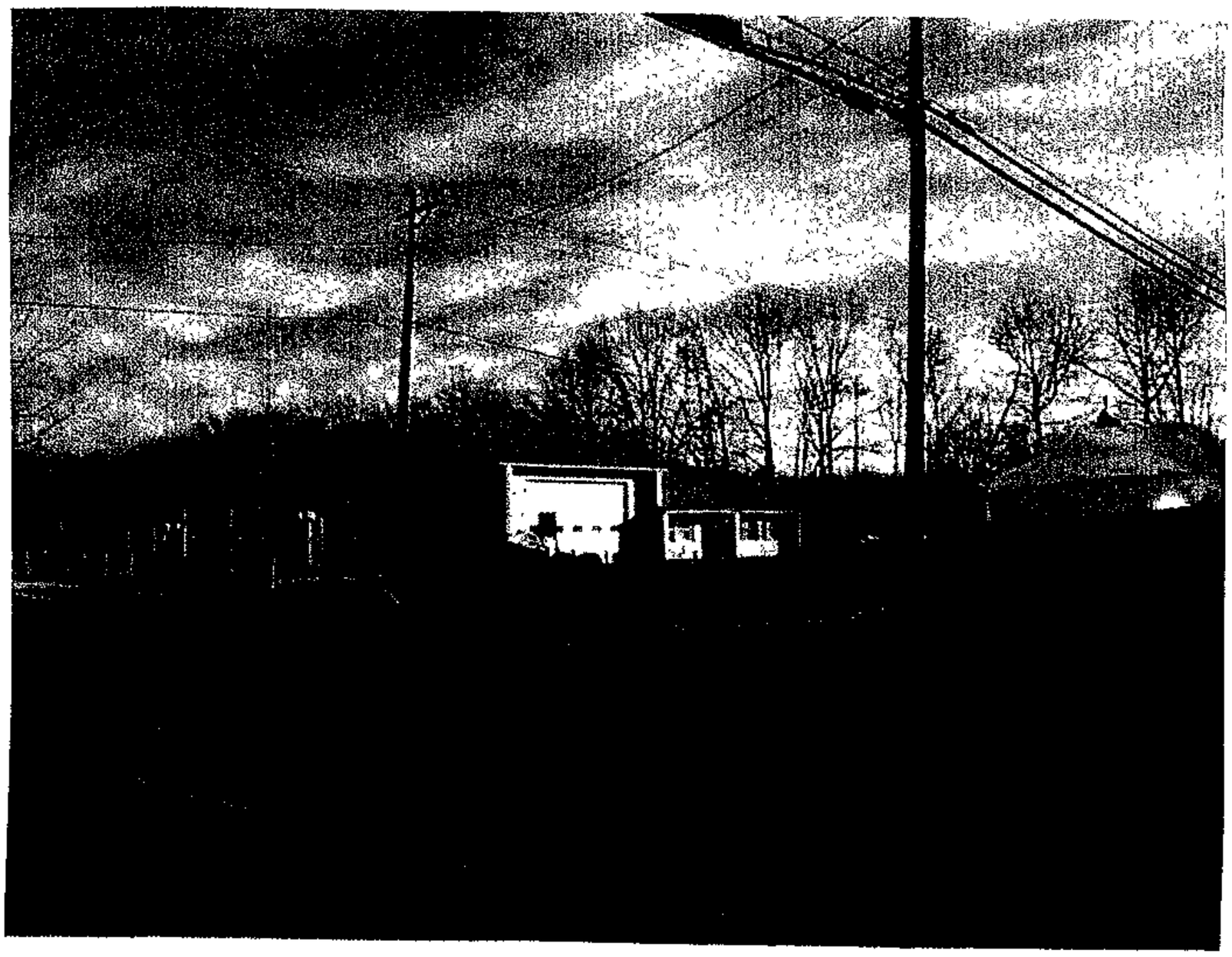
EAST SIDE OF BACK RIVER NECK ROAD LOOKING AT B.L ZONED PROPERTY, PROPERTY IS NORTH OF CHERRY GARDEN ROAD, NOTE - FOREST IN REAR

7A

Petition 5a



LOOKING EAST ACROSS BACK RIVER NECK NECK ROAD AT COMMUNITY CENTER, PROPOSSED SITE ACROSS STREET FROM COMMUNITY CENTER.



MEDIC CENTER SOUTH OF COMMUNITY CENTER ACROSS STREET FROM PROPOSED SITE.

Pat's 5b 78

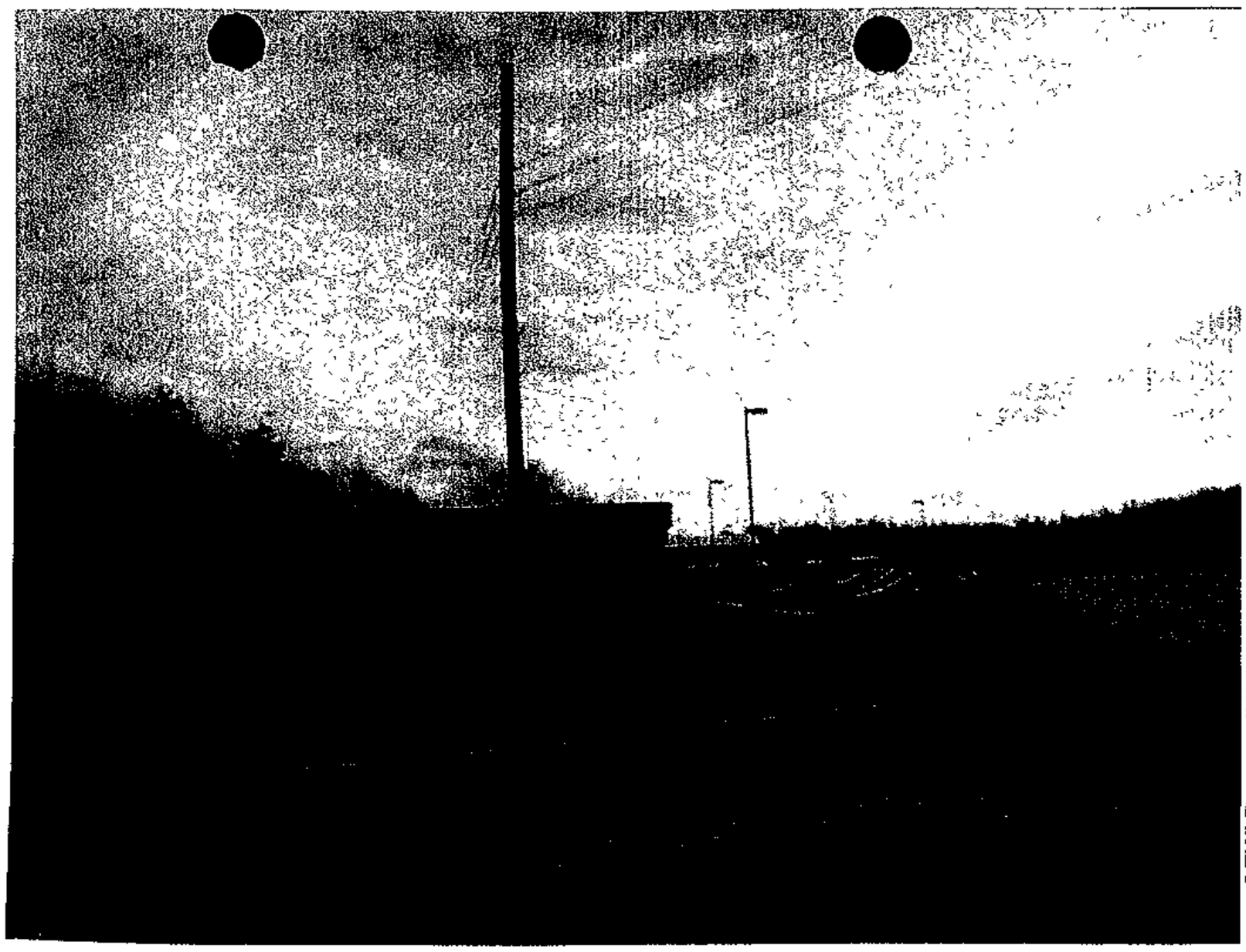


LOOKING NORTH ON BACK RIVER MEDIC STATION
TO EAST, PROPOSED SITE TO WEST THRU TREES



LOOKING NORTH ON BACK RIVER PROPOSED SITE IS SOUTH
EAST OF PICTURE. NOTE - HEAVY FOREST AREAS ON BOTH SIDES

Pet'r
5c
7C



DRIVING SOUTH ON BACK RIVER NECK ROAD, HEAD START STRUCTURE ON EAST SIDE OF BACK RIVER NECK COMMUNITY CENTER IN BACKGROUND



WEST SIDE OF BACK RIVER NECK ROAD LOOKING EAST AT FRUIT STAND, HEAD START BUILDING ACROSS STREET, PROPOSSED SITE IN BACK GROUND

Pet'r
5d 79



WEST SIDE OF BACK RIVER NECK ROAD LOOKING AT B.L ZONED PROPERTY, CHERRY GARDEN ROAD, NORTH SIDE OF B.L PROPERTY NEXT TO FOREST



LOOKING NORTH ON BACK RIVER NECK ROAD. NOTE - FOREST ON BOTH SIDES

Page 76



ON BACK RIVER NECK ROAD LOOKING EAST AT
B & T HARDWARE, CAPE MAY ROAD NORTH SIDE
OF B & T HARDWARE.



ON BACK RIVER NECK ROAD LOOKING AT SOUTH
SIDE OF B & T HARDWARE STORE

Pg 7F
5h



PUMPING STATION WEST SIDE OF BACK RIVER NECK ROAD
CLOSE TO INTERSECTION OF BACK RIVER NECK RD AND 702



CHERRY DAY NURSERY SOUTH OF PUMPING STATION
ON WEST SIDE OF BACK RIVER NECK ROAD

Pet 1
59 76



EAST SIDE OF BACK RIVER NECK ROAD ACROSS STREET
FROM CHERRY DAY AND PUMPING STATION



DRIVING SOUTH ON BACK RIVER NECK ROAD, CHERRY DAY
NURSERY NORTH OF PICTURE, NOTE FORREST TO WEST
(RIGHT) OF PICTURE

Page 5 of 74



DRIVING SOUTH ON BACK RIVER NECK ROAD
END OF 702 TO WEST (RIGHT) OF PICTURE.
NOTE FOREST COVER BOTH SIDES OF ROADS

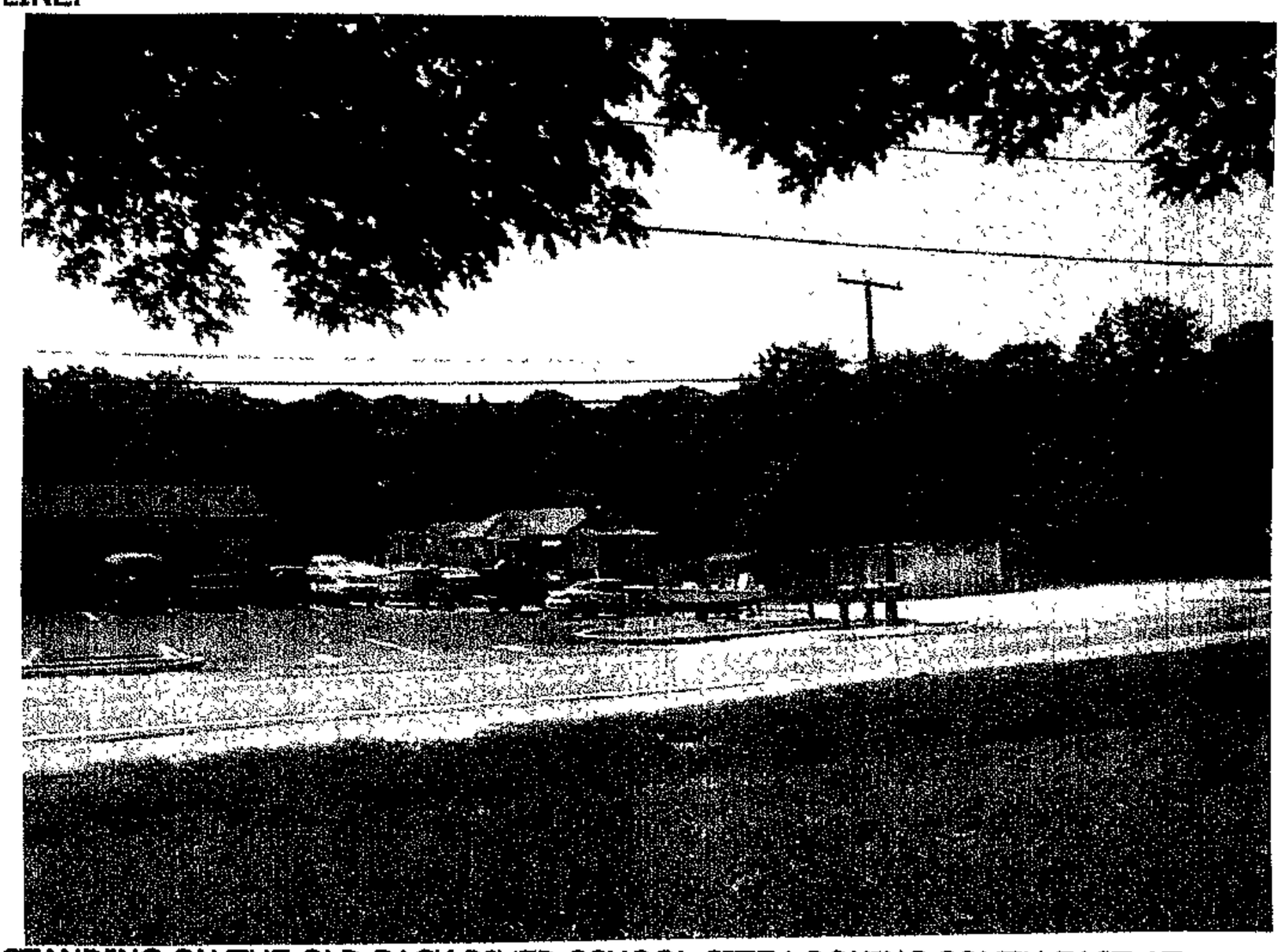


DRIVING NORTH ON BACK RIVER NECK ROAD
BEGINNING OF 702 TO WEST (LEFT) OF PICTURE

Pet. Ex. 51



STANDING ON THE OLD BACK RIVER SCHOOL SITE LOOKING EAST AT OWNERS STRIP SHOPPING CENTER, TOWER WILL BE APPROXIMATELY 750' BEHIND FRONT PROPERTY LINE.



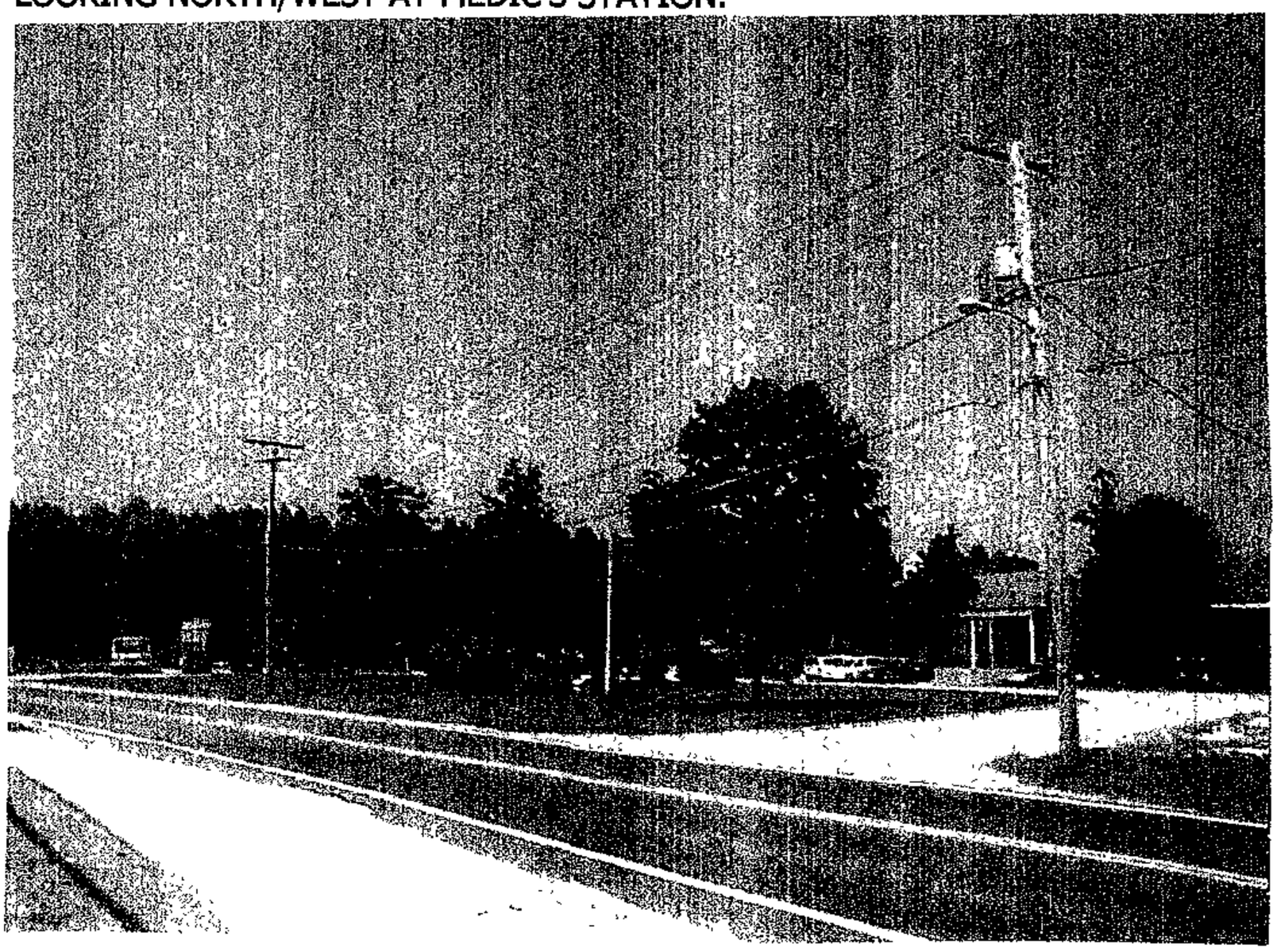
STANDING ON THE OLD BACK RIVER SCHOOL SITE LOOKING SOUTH EAST AT CORNER OF OWNERS PROPERTY AND AT THE ONLY TWO RESIDENTS HOME'S CLOSE TO OWNERS PROPERTY.

6A

Pete Ba



STANDING ON BACK RIVER NECK ROAD AT NORTH EDGE OF OWNERS PROPERTY LOOKING NORTH/WEST AT MEDIC'S STATION.



STANDING ON THE NORTH EDGE OF OWNERS PROPERTY LOOKING SOUTH/EAST ACROSS BACK RIVER NECK ROAD AT SITE OF OLD BACK RIVER SCHOOL (SCHEDULED TO BE RAZED IN JULY).

Pet'r
6/A



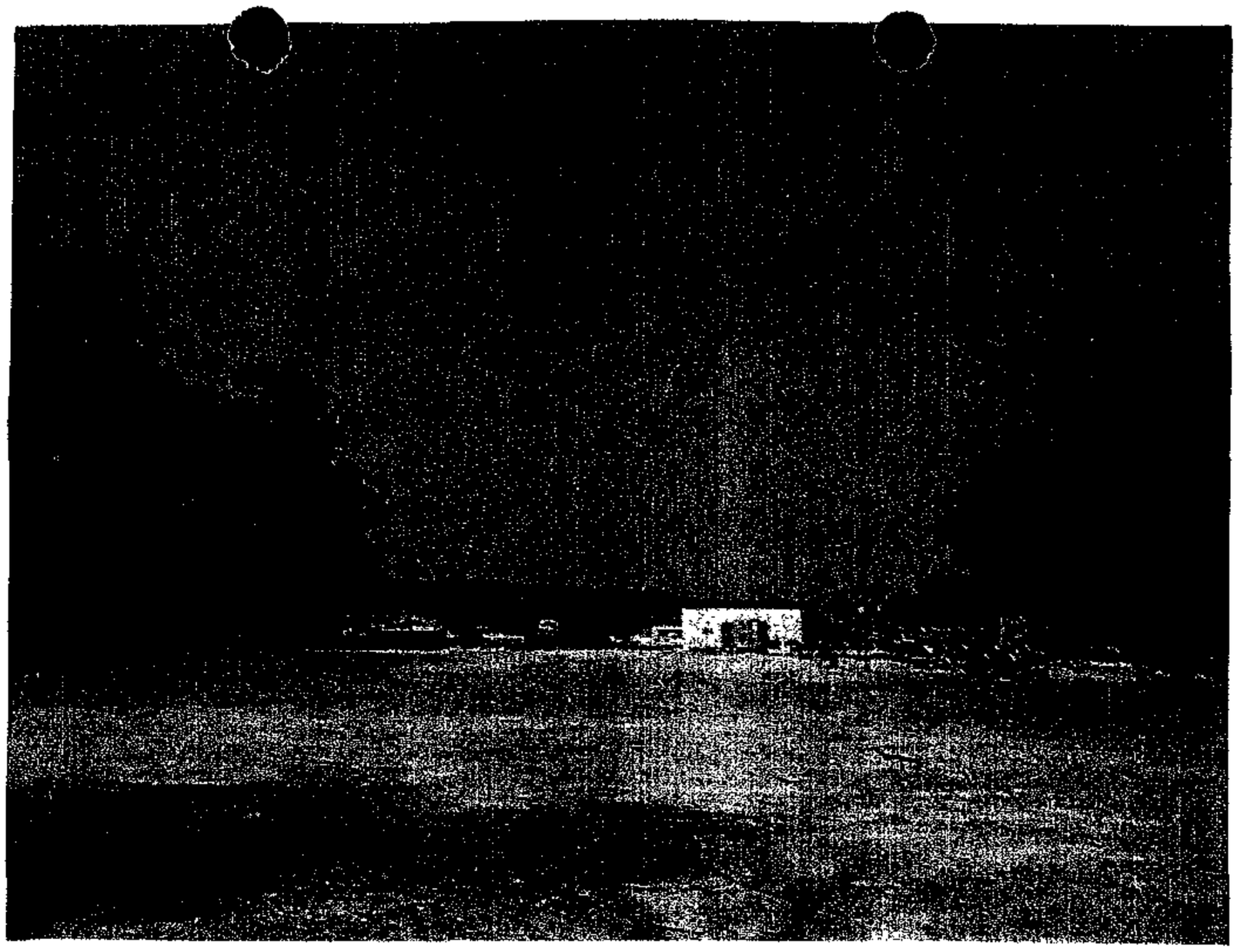
STANDING AT POINT WHERE PROPOSED TOWER IS TO BE INSTALLED LOOKING NORTH/WEST AT PROPERTY EDGE AND PROPERTY NEXT DOOR.



STANDING APPROXIMATELY 350' WEST OF TOWER SITE NOTED BY ORANGE CONE LOOKING EAST AT PROPERTY BEHIND AND BOTH SIDES OF TOWER SITE.

Page 6C

6C

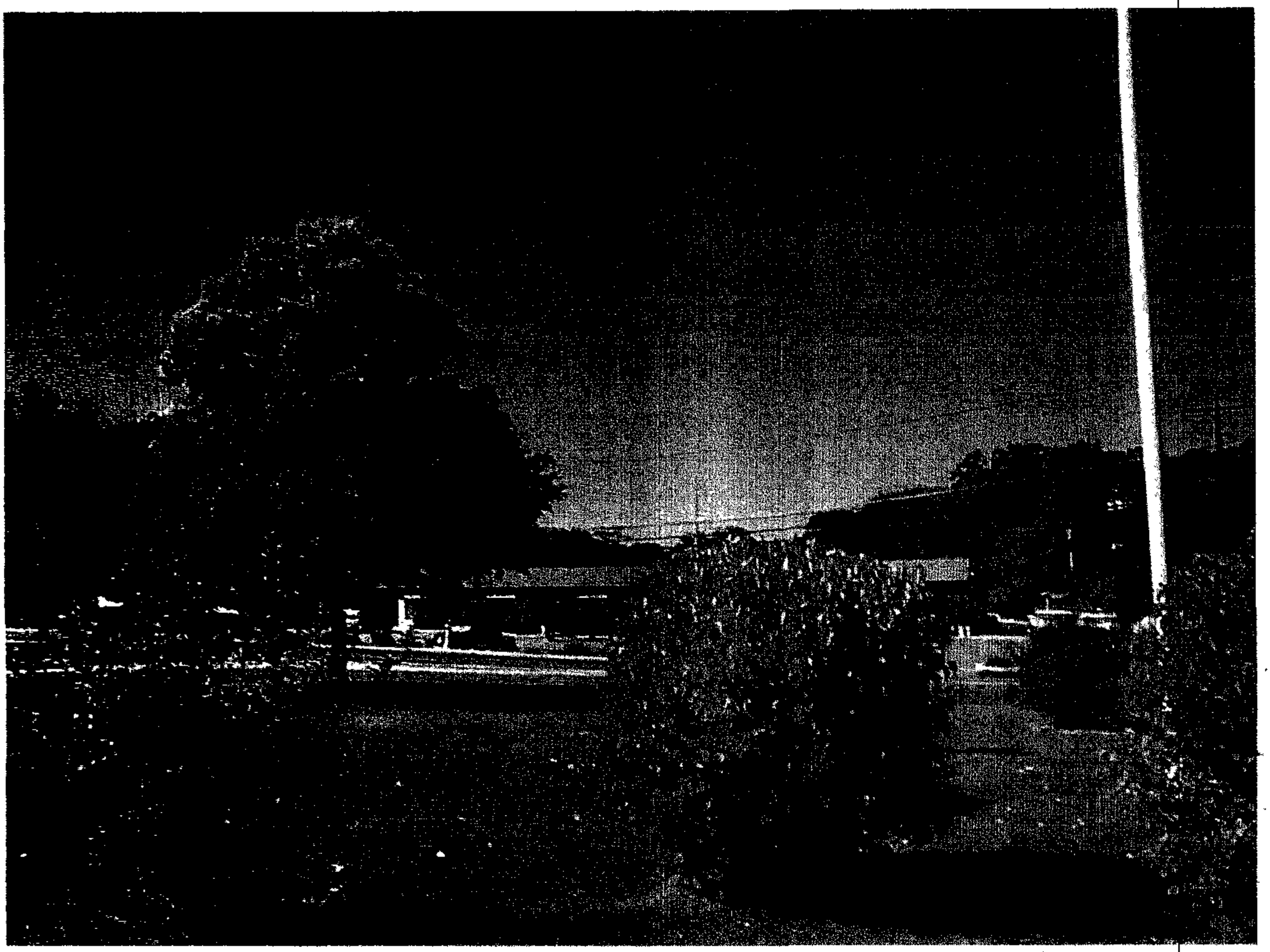


STANDING AT POINT WHERE PROPOSED TOWER IS TO BE INSTALLED LOOKING WEST AT BACK OF OWNERS SHOP'S.

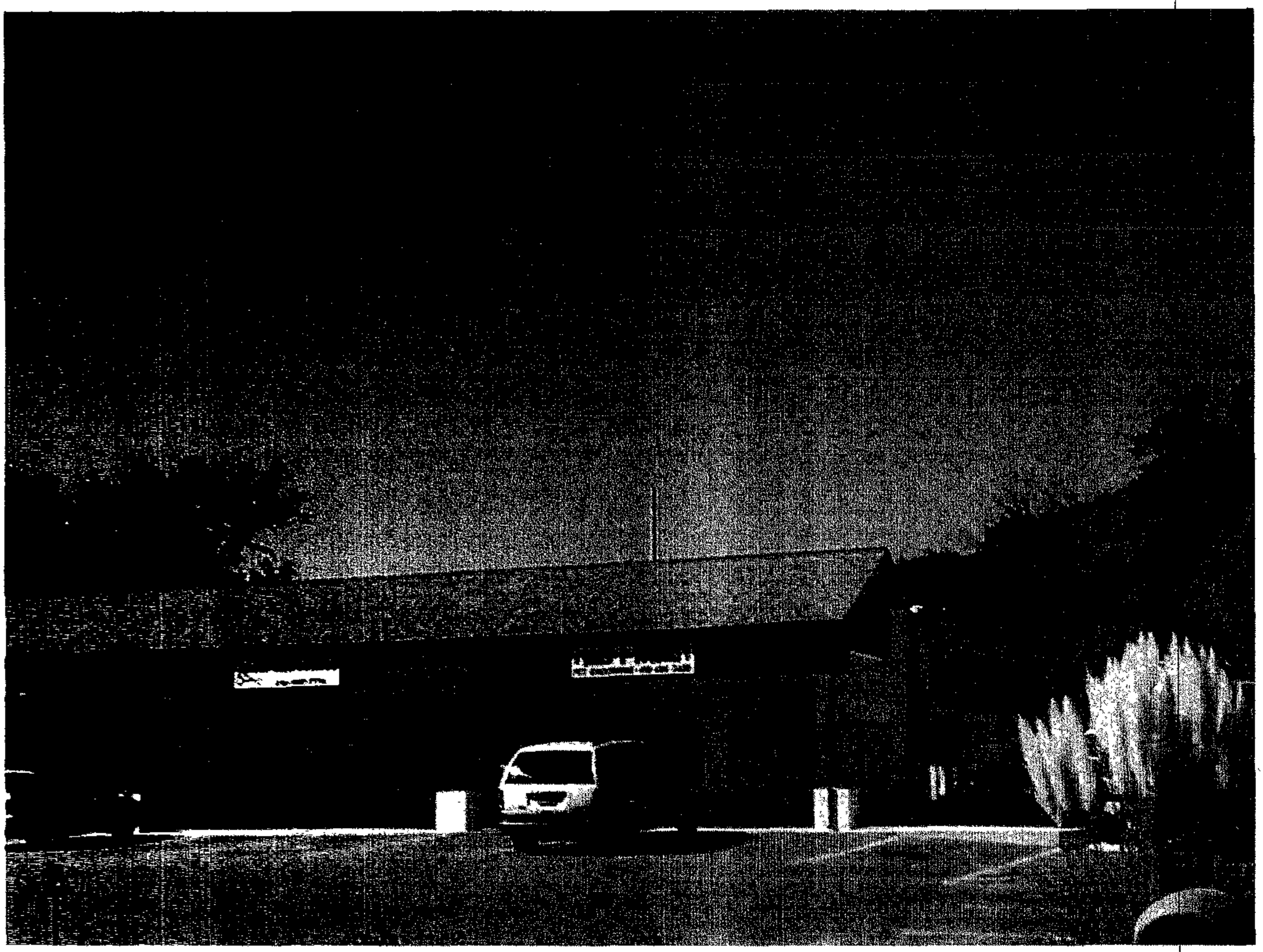


STANDING AT POINT WHERE TOWER IS PROPOSED TO BE INSTALLED LOOKING SOUTH/WEST ALONG PROPERTY LINE OF OWNERS PROPERTY AND PROPERTY NEXT DOOR.

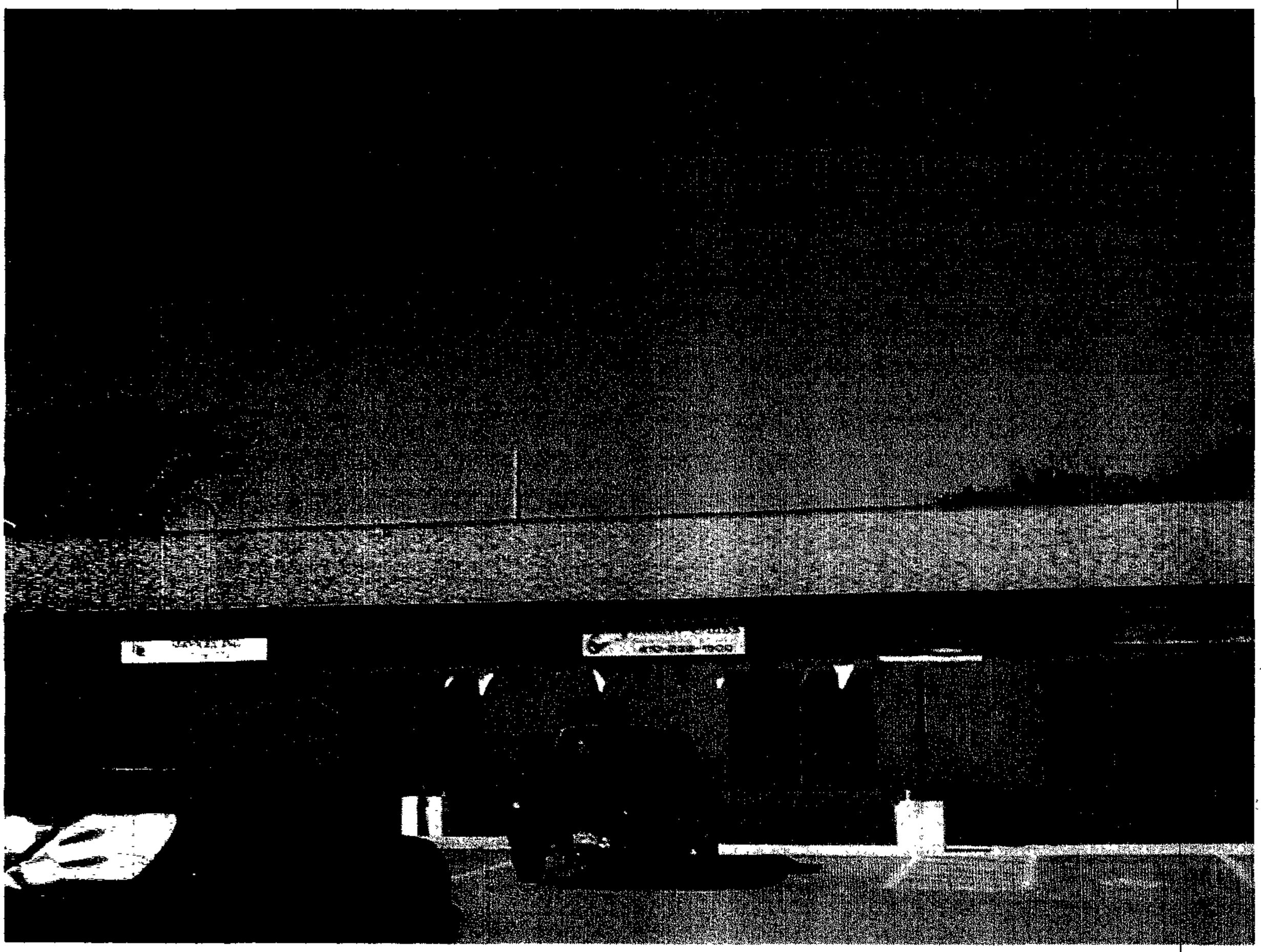
Pack 6d 8D



Pt 7A



Point #7b



Page # 7C



Patch 7d



Hassan Khalil

6909 Rockledge Dr # 100
Bathesda, MD 20817
301-571-4192

Experience

Aug 2000-present — Sprint PCS, Bethesda, MD

RF Design Engineer

- Responsible for the system design in Baltimore, Carroll, Harford, and Anne Arundel County.
- Site Visits to evaluate antenna layouts and co-location with other RF systems.
- Review Drive test data, and traffic analysis.

April 1998- July 2000. — Expert Wireless solutions, Fort Lee, NJ

Team leader for a group of 10 engineers assigned to Sprint PCS project

- Reviewing the data collected by the team.
- Visit the sites to insure accuracy of equipment setup.
- calibrate all equipment used to perform the drive tests.
- Make recommendation to Sprint PCS engineers.

1995-Jan 1998 — STI Technology, Falls Church, VA

Network Engineer

- Design Local area networks.
- Perform software and hardware installation.
- Monitor network for trouble shooting and to insure performance.
- Make recommendation to the customers on how to improve their network.

1993-1995 — Optimum Solutions, Reston, VA

Network Administrator

- Responsible for an Ethernet network of 50 computers.
- Monitor security and performance.
- Trouble shoot and resolve system failure.
- Perform maintenance and upgrading of the network.

Education

1992 — George Mason University

* Bachelor Degree in Electrical Engineering

1995 — George Washington Univ. Washington, DC

* Completed the Microsoft network engineer program.

1998

* Completed a wireless communication course organized by Nortel.

1999

* Completed A CDMS course organized by eXpert Wireless solutions.

Technologies	CDMA, TDMA
Hardware	Grayson Tx/Rx, Expert Tx/Rx 2000, Watkin Johnsons repeaters, HP Scanner.
Tools	PlaNET, MaxPlan, MapInfo, Actix Analyzer, dB Planner and HP Scanner
Software	Microsoft Windows.

WAS4XC461A

Federal Aviation Administration
Eastern Region, AEA-520
1 Aviation Plaza
Jamaica, NY 11434-4809

ISSUED DATE: 10/22/01

AIRSPACE SAFETY ANALYSIS CORP.
SPRINT SPECTRUM, L.P.
1903 PHOENIX BLVD SUITE 250
ATLANTA GA 30349

AERONAUTICAL STUDY
NO: 01-AEA-2822-OE
PRIOR STUDY
NO: 01-AEA-2821-OE

405766
WAS4XC461

** DETERMINATION OF NO HAZARD TO AIR NAVIGATION **

The Federal Aviation Administration has completed an aeronautical study under the provisions of 49 U.S.C., Section 44718 and, if applicable, Title 14 of the Code of Federal Regulations, part 77, concerning:

Description: ANTENNA TOWER
1850-1865/1930-1945 MHZ 1640 WATTS
Location: BALTIMORE MD
Latitude: 39-17-13.68 NAD 83
Longitude: 076-25-45.74
Heights: 126 feet above ground level (AGL)
145 feet above mean sea level (AMSL)

Pet No 5

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking and/or lighting are accomplished on a voluntary basis, we recommend it be installed and maintained in accordance with FAA Advisory Circular 70/7460-1K Change 1.

This determination expires on 04/22/03 unless:

(a) extended, revised or terminated by the issuing office or
(b) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case the determination expires on the date prescribed by the FCC for completion of construction or on the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE POSTMARKED OR DELIVERED TO THIS OFFICE AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, frequency(ies) or use of greater power will void this determination. Any future construction or alteration,

Pet 12

including increase in heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

A copy of this determination will be forwarded to the Federal Communications Commission if the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at 718-553-4530. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 01-AEA-2922-OE.

For Norman Gay

William E. Merritt
Specialist, Airspace Branch

(DNE)

** TOTAL PAGE.08 **

BALTIMORE COUNTY, MARYLAND
Interoffice Correspondence

DATE: April 25, 2001

TO: Donald T. Rascoe, Development Manager
Department of Permits and Development Management

FROM: Tower Review Committee

SUBJECT: Sprint PCS - Back River Neck Road
DRC Number 031201 S - Sprint Site #461

The Tower Review Committee (TRC) met on April 18, 2001 to review and discuss the proposal for a new 115-foot monopole to be located at 810 Back River Neck Road, Baltimore, Maryland. In attendance were several representatives from Sprint as well as representatives from the law firm of Whiteford, Taylor and Preston. The actual applicant name is APC Reality and Equipment Company, LLC, 6905 Rockledge Drive, Suite 400, Bethesda, Maryland, 20817. Sprint representatives presented to the Tower Review Committee requested coverage maps for technical evaluation and pictures of the affected area.

Planning Considerations

Sprint proposes to construct a 115' monopole at the rear of the property located at 810 Back River Neck Road. This site is zoned ML which allows a telecommunication tower as a matter of right. The Office of Planning has reviewed the proposed plan and at the April 18, 2001 meeting requested that the Applicant submit to them a landscape plan of the site prior to resubmitting the plan to the Development Review Committee (DRC).

Engineering Considerations

We have reviewed the technical data supplied by Sprint PCS and are in agreement that based on the coverage maps supplied by Sprint PCS, that the need for additional coverage within the area has been validated. This holds true for in-building as well as in-car coverage at the -85 dB level in the surrounding neighborhoods to the Rocky Point and Breezy Point areas. This information relative to the coverage maps was supplied by Sprint PCS at the April 18, 2001 meeting.

As a result of the documentation submitted and our own physical review of the area, we can find no other available structures that would afford the necessary RF requirements requested. In addition, we find no reason to request additional engineering analysis and based on our own drive tests of the area find that the usable RF signal from several cell carriers is poor to non-existent. For these reasons, we recommend the construction of the

proposed 115-foot monopole at the specified site of 39-17-14 latitude by 76-25-38 longitude.

Community Considerations

The Community Representative, Mr. Bob Page, could not be reached for this meeting; however, the Back River Neck Peninsula Community Association President, Mr. Keith Roberts, has sent a formal correspondence stating their opposition to the construction of the tower. The letter (copy attached) is dated March 23, 2001 and was received by your office on March 26, 2001. Representatives from Sprint PCS claimed they have also talked to the community; however, no documentation of this claim was submitted to the committee.

Final Recommendation

The Tower Review Committee believes that Sprint PCS has provided ample documentation that the 115-foot monopole to be located at 810 Back River Neck Road, is indeed required for their network. In addition, while conducting physical tests of the area we have not found any further prospects for co-location that would give adequate RF coverage. After consideration by the members of the Tower Review Committee present for the meeting it was determined that we recommend the tower to the DRC as long as the tower meets the construction criteria of holding two (2) additional carriers and has approval for landscaping by the Office of Planning.

Tower Review Committee

Charles C. Dennis, Electronic Services / Telecommunications
Ervin McDaniel, Office of Planning
A. Bob Page, Community Member TRC
Richard Sterba, Office of Budget and Finance

CC: Jennifer Busse Esq.
Whiteford, Taylor and Preston
210 West Pennsylvania Ave.
Towson, Maryland 21204

III

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

To: Arnold "Pat" Keller
Director
Office of Planning

DATE: December 16, 1998

FROM: Karin Brown
Community Planning
Office of Planning

SUBJECT: Location of cell tower sites

On December 9, 1998, you sent an e-mail that asked for an evaluation of possible cell tower sites. On Tuesday, December 15, Gary and I went to look at two sites. Our preliminary findings are as follows:

My Friends Tavern Site

The site adjacent to My Friends Tavern is not suitable for a cell tower location. The site is zoned BL and is located on the southerly tip of a peninsula. Except for the tavern, the area is surrounded by residentially used and zoned land. Because the terrain is flat, the tower would be visible from all sides, including the three surrounding waterways Back River, Deep Creek, Duck Creek, as well as Cox Point Park, which is across Duck Creek.

The Baltimore County Zoning Regulations (BCZR), permit wireless communication towers up to 200 feet high by right in BL zones. Section 426 of the BCZR, which provides performance standards for wireless communication towers, requires that the use be set back 200 feet from any residential zone line. The site is too small to accommodate such requirement.

Back River Neck Road Site

The site is located on Back River Neck Road, opposite the former Back River Elementary School. The site is zoned ML and is improved with two structures. The adjacent properties are zoned BL, DR 3.5 and RC 20. There are two residential structures to the north; the school building, which is presently used by the Department of Recreation and Parks and a Headstart facility, are across the street from the site. The property in question has long been an eyesore in the community. The two abandoned buildings were boarded up, the parking area was littered with debris and abandoned equipment. It has recently been purchased by Buck Jones who is in the process of renovating the buildings and "cleaning up" the site.

S:\COMPLAN\LOUISE\memocelltower1.doc

Pet'r Ex 10
12

Pet'r Ex 10
9

This site would be an excellent location for a wireless communication tower. It is deep enough to minimize the visibility of the tower from the road. Existing tree growth would buffer much of the tower from the view of the residential dwellings that are located north-west from the anticipated tower location.

We asked Mr. Jones to contact the Back River Neck Improvement Association to inform them about his plans. Additionally, we informed him that we would expect significant landscaping and the overall visual improvement of the site. He was agreeable to both suggestions. Should Mr. Jones go forward with his plans, we would also ask him to place the tower as far back from the road as possible.

Karin Brown

KB:lsn

S:\COMPLAN\LOUISE\memo\towerl.doc

TOTAL P.06

TOTAL P.03

KCI TECHNOLOGIES

ENGINEERS • PLANNERS • SCIENTISTS • CONSTRUCTION MANAGERS

14502 GREENVIEW DRIVE, SUITE 424 · LAUREL, MD 20708 · 410-792-8086 · (FAX) 410-792-7419

Marianne Kiernan, PE - KCI Technologies, Inc.
Senior Associate – Laurel Division Chief

Years Experience: (firm/other): 4 / 6

Education:
1991 / BS / Civil Engineering, Villanova University

Registration:
1997 / Professional Engineer, Virginia
2000 / Professional Engineer, Maryland
OSHA HAZWOPER Certification; 40 Hour HAZWOPER Training
American Society of Civil Engineers

Experience :
Ms. Kiernan is a Senior Associate and Division Chief of KCI's Laurel, Maryland office. Her experience includes the design and management of projects involving telecommunication facilities, residential subdivisions, commercial, hydrology and hydraulics, and subdivision design including stormwater management and construction inspection. Her background includes project coordination, construction document preparation and technical review of floodplain studies. Ms. Kiernan has performed design and planning tasks for over 300 telecommunication sites and has served as an expert witness for zoning cases in Montgomery County, Baltimore County, and Anne Arundel County.

Telecommunications Services, Maryland, Virginia, Washington, D.C., AT&T Wireless Services. Project Manager. Providing multi-discipline engineering and site development for short-term, multi-task, survey, design and construction contracts for AT&T for over two (2) years. These tasks have been completed at sites throughout Maryland, Virginia, and Washington, D.C. Typical project services have involved: *Site Development and Surveys* - complete site and Global Positioning Surveys (GPS) of site and building projects; design has involved zoning plans, expert witness testimony, site development plans, site assessments, permitting and full construction documents, including stormwater management, erosion and sediment control, grading, and dimension plans. *Towers and Structural Engineering* – managed structural surveys of proposed sites for wireless communication including existing buildings, water tanks, radio towers, and monopoles; design of structural supports for antennas; design of equipment platforms for rooftop applications; structural analysis of radio tower and monopoles; design of equipment rooms inside building; design of foundations for exterior equipment shelters.

Telecommunication Services, Maryland and Virginia, Bechtel Telecommunication for AT&T Wireless Services. Project Manager in charge of design for over 100 telecommunication facilities. Ms. Kiernan was responsible for overseeing field surveys, zoning plan preparation, geotechnical investigations, and structural analysis and inspection services.

Omnipoint Communications CAP Operations, LLC, Beltsville, Maryland. Project Manager. Coordinated preparation of design and property surveys, design of site development plans, and administrative plats for various properties to serve as cellular tower and monopole sites. Design included grading, filing of variances, special exceptions, and permitting.

Telecommunication Services, Maryland, D.C. and Virginia, Cingular Wireless (formerly Cellular One). Project Manager. Management for multiple cell and telecommunications sites.

Metricom, Crown Atlantic, MESA Communications, various locations, Maryland. Project Manager. Provided engineering and survey services for multiple locations.

Telecommunication Services, Maryland Virginia, Sprint PCS. Project Manager in charge of design for over 30 telecommunication facilities. Ms. Kiernan was responsible for overseeing field surveys, zoning plan preparation, geotechnical investigations, and structural analysis, inspection services, and performing expert witness testimony.

Baltimore County
Department of Environmental Protection
and Resource Management

401 Bosley Avenue, Suite 416
Towson, Maryland 21204

May 7, 2002

Mr. Buck Jones
Back River LLC
500 Vogts Lane
Baltimore, MD 21221

Re: Permit application B481568
Cell Tower behind 810 Back River Neck Road

Dear Mr. Jones:

Environmental Impact Review (EIR) has reviewed the above-referenced permit application for a proposed cell tower and has placed the application on hold because the submitted plot plan shows its location to be within 100' of an existing stream. Chesapeake Bay Critical Area (CBCA) regulations require that the limit of disturbance (LOD) would have to be 100' away from the stream, otherwise a Critical Area Administrative Variance (CAAV) would be required. After talking to you by phone, it was agreed that the LOD will be no closer than 100' from the stream. That is to say the fence around the "compound" shall be placed at least 100' from the stream. In order for the subject permit application to be approved by EIR, please sign and return a copy of this letter to indicate your understanding of the CBCA regulations.

Contact me at 410-887-3980 if you have any questions regarding this matter.

Sincerely,

Keith Kelley
Natural Resource Specialist
Environmental Impact Review

I have read and do hereby agree to implement the above requirements to bring my property into compliance with Chesapeake Bay Critical Area regulations.

Buck Jones — 5-10-02
Signature — Date

Kdk#15/jonescelltower

Petit
16

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500 VOGTS LANE • BALTIMORE, MARYLAND 21221 • (410) 574-9337
M.H.I.C. = 20286
www.freestatehomes.com

JULY 15,2002

BALTIMORE COUNTY DEPARTMENT
OF PLANNING
TOWSON, MD 21204

RE: PERMIT NO. B481568C
810 BACK RIVER NECK ROAD 21221

TO WHOM IT MAY CONCERN,

IN PROCESSING THE ABOVE MENTIONED PERMIT, ONE OF THE STIPULATIONS WAS FOR THE PLANNING DEPARTMENT TO LOOK AT THE PERMIT AND DETERMINE IF THEY DIEMED IT NECESSARY TO LANDSCAPE AROUND THE TOWER. THE PLANNING DEPARTMENT REVIEWER DID REVIEW THE PLANS AND FOUND IT WAS NOT NECESSARY TO REQUIRE LANDSCAPING. THIS WAS DUE TO THE SITE BEING 700 + FEET OFF OF THE ROAD AND BEHIND THE BUILDINGS. THE REVIEWER THEN CALLED OVER TO JOE MERRY IN ZONING AND GAVE THE O.K. FOR JOE TO SIGN OFF IN THE COMPUTER, SO THAT WE COULD RECEIVE THE PERMIT. THE PERMIT WAS RECEIVED ON 5/30/02.

THE SITUATION IS THAT SPRINT IS REQUESTING A WAIVER BE SIGNED REGARDING THE LANDSCAPING. THEY ARE CONCERNED THAT THE COUNTY COULD IN FACT COME BACK AFTER THE TOWER HAS BEEN COMPLETED AND NOT FINAL THE PERMIT, HENCE NOT ALLOWING IT TO OPERATE UNTIL SUCH TIME THAT THEY DO THE LANDSCAPING. WE ARE REQUESTING THAT SOMEONE FROM PLANNING SIGN THE WAIVER ATTACHED BELOW THAT STATES NO LANDSCAPING WILL BE REQUIRED. THANK YOU IN ADVANCE FOR YOUR ASSISTANCE.

SINCERELY,

BUCK JONES

Pat 17

WAIVER

NO LANDSCAPING WILL BE REQUIRED REGARDING PERMIT NO. B481568C.
THE LANDSCAPING HAS BEEN WAIVED.

Lyndon Franklin — Chief Development Review — 07/24/02
SIGNATURE — TITLE — DATE

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

August 29, 2002

Buck Jones
Back River, LLC
810 Back River Neck Road
Baltimore, Maryland 21221

Dear Mr. Jones:

RE: Zoning Verification, Relocation of Monopole, Case 02-159-A, 15th Election District

Your letter of August 21, 2002 to Mr. Arnold Jablon concerning the above referenced matter has been referred tome for reply. Having reviewed your submittal, it is the opinion of this Office that moving the subject tower 60ft. in an easterly direction as depicted on the provided site plan is within the spirit and intent of the above captioned zoning order. This letter should appear on all future site plans filed with this Office for review concerning this property.

If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

Joseph C. Merrey
Planner II
Zoning Review

Peter
18

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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
pdmlandacq@co.ba.md.us

December 21, 2001

Jennifer R Busse
Whiteford Taylor & Preston
210 W Pennsylvania Avenue
Towson MD 21204

Dear Ms. Busse:

RE: Case Number: 02-159-A, 810 Back River Neck Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on October 19, 2001.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure 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. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W Carl Richards, Jr.

W. Carl Richards, Jr. GDZ
Supervisor, Zoning Review

WCR: gdz

Enclosures

c: Buck Jones, President, Back River LLC, 810 Back River Neck Road, Baltimore 21221
Howard Lyer, Sprint PCS, 1 International Blvd, Ste 800, Mahwah NJ 07495
People's Counsel

Pet 19

Printed with Soybean Ink

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: Todd G. Taylor TGT

DATE: 12/26/01

SUBJECT: Zoning Item 159
Address 810 Back River Neck Road

Zoning Advisory Committee Meeting of 11/26/01

____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

____ The Department of Environmental Protection and Resource Management requests an extension for the review of the above-referenced zoning item to determine the extent to which environmental regulations apply to the site.

__X__ The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

____ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).

____ Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).

__X__ Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

____ Additional Comments:

Reviewer: Mike Kulis Date: 12/27/01

12/28/c

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

JAN - 7

TO: Arnold Jablon, Director
Department of Permits & Development Mgmt.

DATE: December 20, 2001

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For December 3, 2001
Item No. 159

The Bureau of Development Plans Review has reviewed the subject zoning item.

The property to be developed is located adjacent to tidewater. The developer is advised that the proper sections of the *Baltimore County Building Code* must be followed whereby elevation limitations are placed on the lowest floor (*including basements*) of residential (*commercial*) development.

See the revised map dated November 17, 1993, panel number 240010 0445 C of the Flood Insurance Rate Map (copy attached), for tidal flood zones A9, B, and C on this site. The minimum flood protection elevation is 10.4 feet for any work on this site.

In accordance with *Bill No. 18-90, Section 26-276*, filling within a flood plain is prohibited.

The engineer shall verify the contour elevations shown on the plan and provide spot elevations at the northwest and southwest property corners, the proposed tower location, concrete pad, and access road elevations.

RWB:HJO:jrb

cc: File

ZAC-12-3-2001-ITEM NO 159-12202001

Baltimore County
Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

12/28

December 10, 2001

Department of Permits and
Development Management (PDM)
County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTENTION: Gwen Stephens

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF November 26, 2001

Item No.: See Below

Dear Ms. Stephens:

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.

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

151, 152, 155, 156, 157, 159, 161, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, and 175

REVIEWER: LIEUTENANT JIM MEZICK, Fire Marshal's Office
PHONE 887-4881, MS-1102F

cc: File

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Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 12.3.01

Mr. George Zahner
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. [redacted] JNP

Dear. Mr. Zahner:

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.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

L. J. Gredlein

for Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

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

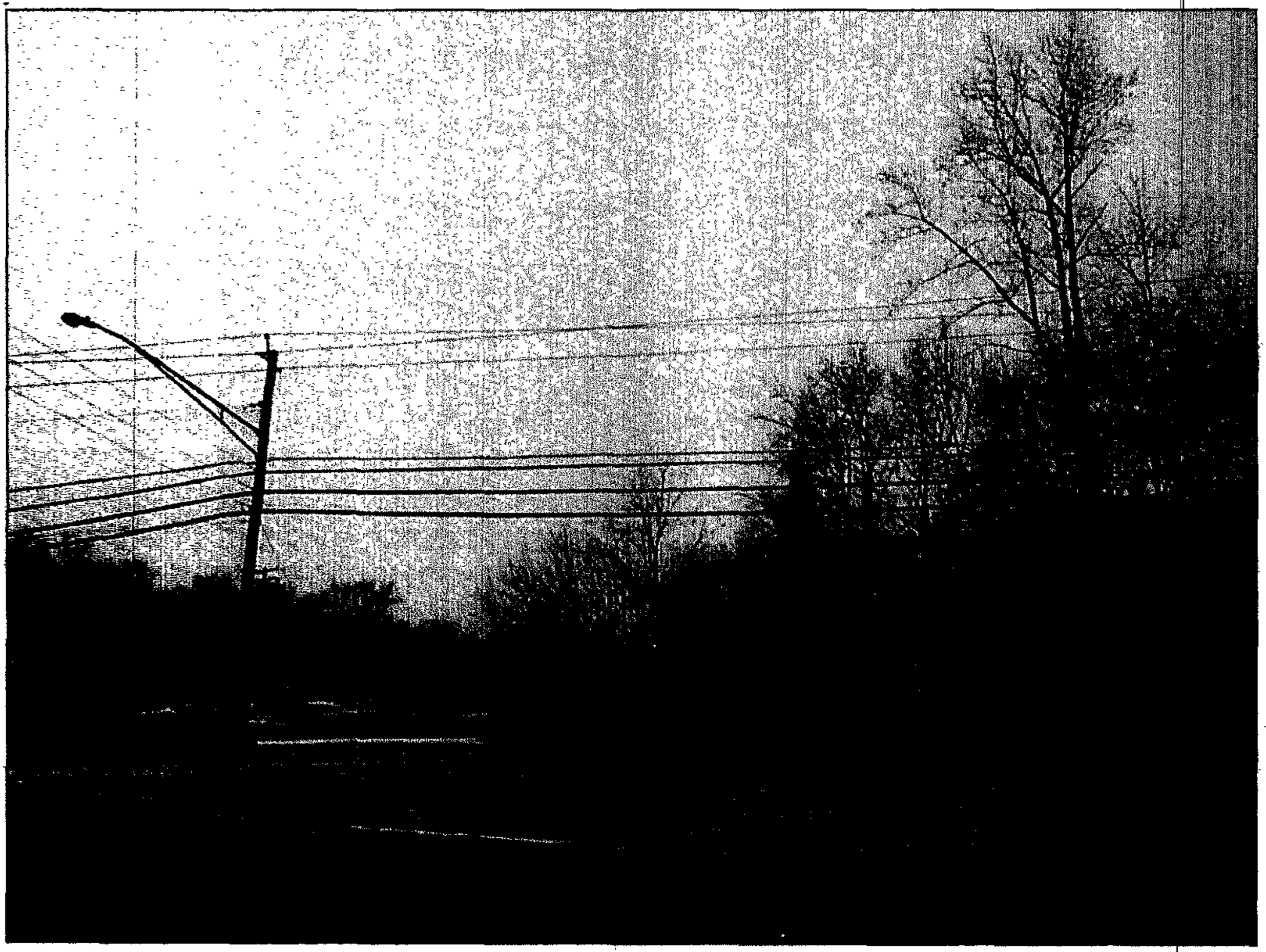
120A



P 20B



P20C



Jack Dillon
543 Park Avenue
Towson, Maryland 21204
(410) 321-0021

PROVIDE PROFESSIONAL PLANNING AND ZONING ASSISTANCE IN THE AREAS OF LAND USE, LAND USE ANALYSIS, SITE EVALUATION AND DESIGN.

EMPLOYMENT HISTORY

THE VALLEYS PLANNING COUNCIL, Inc.
EXECUTIVE DIRECTOR
MAY 1997 - PRESENT

PRIVATE CONSULTANT
MARCH 1996 - PRESENT

BALTIMORE COUNTY, MARYLAND
Office of Planning, Community Planning Division,
Senior Planner and Deputy Division Chief
Rural and 3rd District and 5th District Planner
August 1987 - February 1996 (retired)

Office of Planning, Community Planning Division
Planner II – 2nd and 3rd District Area Planner
June 1981 – August 1987
Administrator of Baltimore County Agricultural Land Preservation Program (1979-1981)

Office of Planning, Comprehensive Planning Division, Environmental
Studies Section
Planner II – Environmental Planner
October 1974 - June 1981

Prior to October 1974 was with the Baltimore County Zoning Office
June 1967 - September 1974 and February 1962 - May 1967
I was with the Department of Public Works assigned to special projects at the Johns Hopkins University and The Baltimore City / County Analyzer Office.

EDUCATION:

MORGAN STATE UNIVERSITY
Graduate Program in Landscape Architecture
1992 - 1994 (not complete)

UNIVERSITY OF MARYLAND
Graduated Para Legal
1978

UNIVERSITY OF BALTIMORE
Graduated B.S. Degree in Business Management
Planning Courses At Johns Hopkins University
1969

ADDITIONAL EDUCATION

DUNDALK COMMUNITY COLLEGE
Media/TV Production
1984-1986

UNIVERSITY OF BALTIMORE SCHOOL OF LAW
1969 - 1970

GEORGIA INSTITUTE OF TECHNOLOGY
Institute in Urban Planning
1969

JOHNS HOPKINS UNIVERSITY
Appraisal of Real Estate
1975

OTHER PROFESSIONAL EXPERIENCE

CATONSVILLE COMMUNITY COLLEGE
Visiting Lecturer - Zoning and Subdivision Design
Spring 1991

UNIVERSITY OF MARYLAND, SCHOOL OF SOCIAL WORK AND URBAN PLANNING
Visiting Lecturer - Use of Video in the Art of Planning
February 1987

TOWSON STATE UNIVERSITY
Department of Geography and Environmental Planning
Instructor of Two Three Credit Courses Entitled Principals of Zoning
And Planning Implementation
February 1972 - December 1981

Member of The American Planning Association

SIGNIFICANT PROFESSIONAL ACCOMPLISHMENTS

Planner and Author/CO Author of a variety of Reports and Planning Studies, Including:

The Enduring Rural Landscape – VPC, September 2001
The Essex/Middle River Community Assessment 1995
The Owings Mills Open Space Concept Plan 1995
Hanover Pike Corridor Plan 1993
Hereford A Preliminary Analysis 1987
The Reisterstown Road Corridor Study 1987
Plan for Owings Mills, Maryland 1984
The Old Court Road Corridor Study 1984
Site Selection for The Northwest Area Multipurpose Center 1982

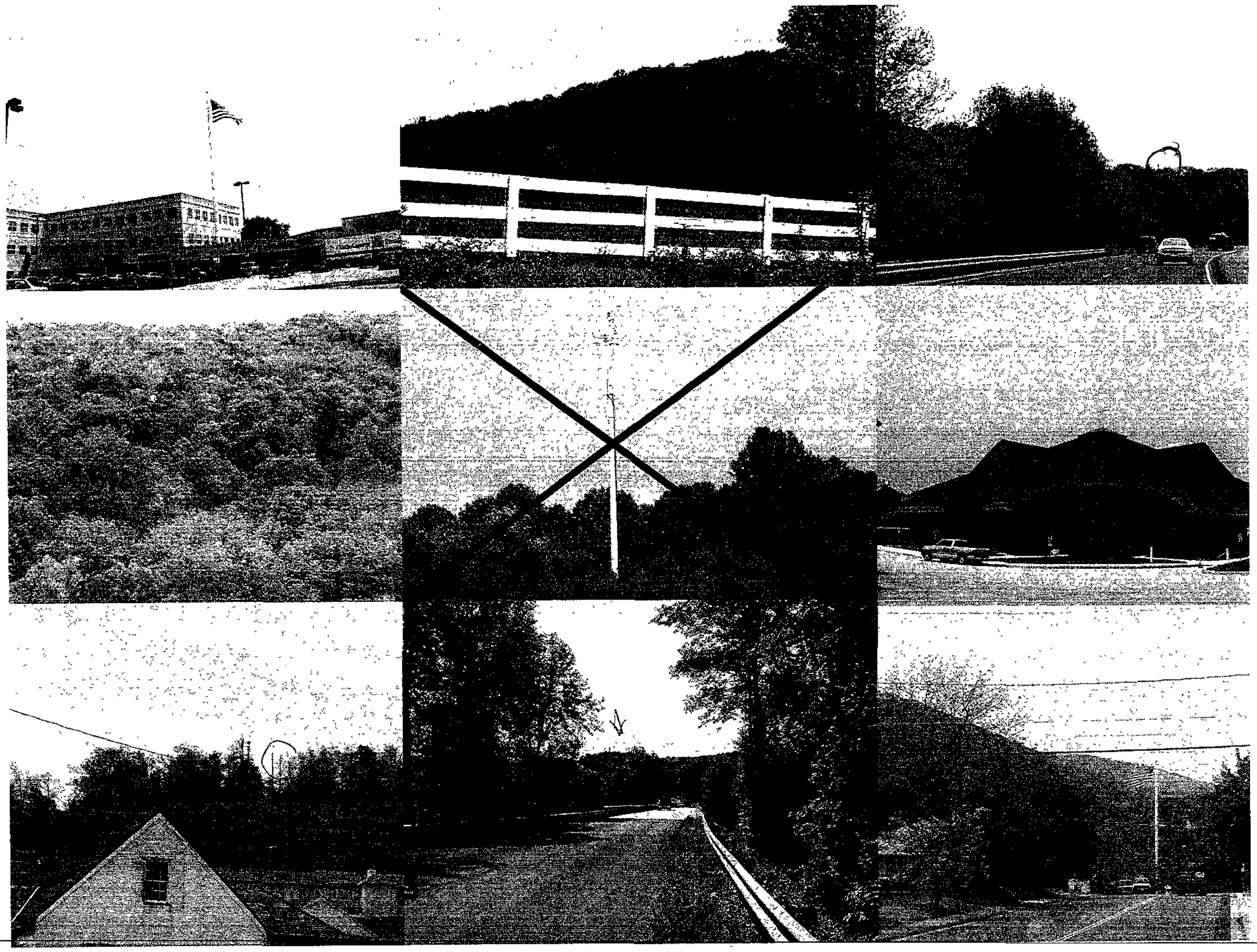
Proposed Amendment To Baltimore County Zoning Regulations - Sludge
Disposal in Baltimore County 1982
Areas of Critical of State Concern in Baltimore County 1979
Planner responsible for the organization and administering the Agricultural Land Preservation Program for
Baltimore county 1979 - 1981
Primary Draftsman of The Four Resource Conservation Zones for
Baltimore County, which have become the basis for controlling growth
In rural Baltimore County, 1975
Development and Adminstration of the Video Production unit within The office of
Planning.
Producer of Video "The Grove" which won a National
Association of Counties Award in 1993.

Court and Agency Proceedings:

Since 1965 I have provided testimony as an expert witness before the Baltimore County
Planning Board, various Legislative Sub-Committees in Annapolis, The Baltimore County
Council, The Baltimore County Zoning Commissioner, The Baltimore County Board of Appeals, The
Calvert County Board of Appeals, The District Court of Maryland and The Circuit Court of Maryland, and
I have presented testimony before the Planning Commission For The Town of Ocean City, and the
Dorchester County Board of Appeals.

October, 2001

PC 3



character. To the extent that other elements of this master plan's rural strategy succeed in preserving land for agriculture and other rural uses, these landscapes can also be protected, through proper coordination.



Actions

1. Complete the comprehensive countywide inventory of historic resources, giving particular attention to documenting historic resources that not only meet cultural-history qualifications but also retain sufficient visual integrity to qualify as potential historic districts.
2. Protect off-site "viewsheds" in designated historic areas, including revisions to the development process.
3. Coordinate scenic route designation and design standards with rural historic landscape protection.
4. Integrate rural landscape protection with the designation and implementation of heritage areas and rural legacy areas.

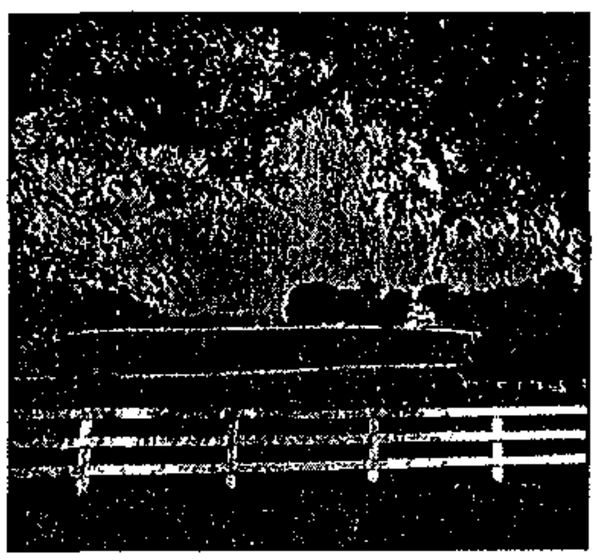
SCENIC RESOURCES

INTRODUCTION

The county's scenic resources consist of scenic corridors, scenic views, and gateways. Most of the county's scenic corridors and views are located in rural areas. Gateways can occur within either urban or rural areas, and in fact, frequently occur at the boundary between urban and rural areas (Map 37).

POLICY

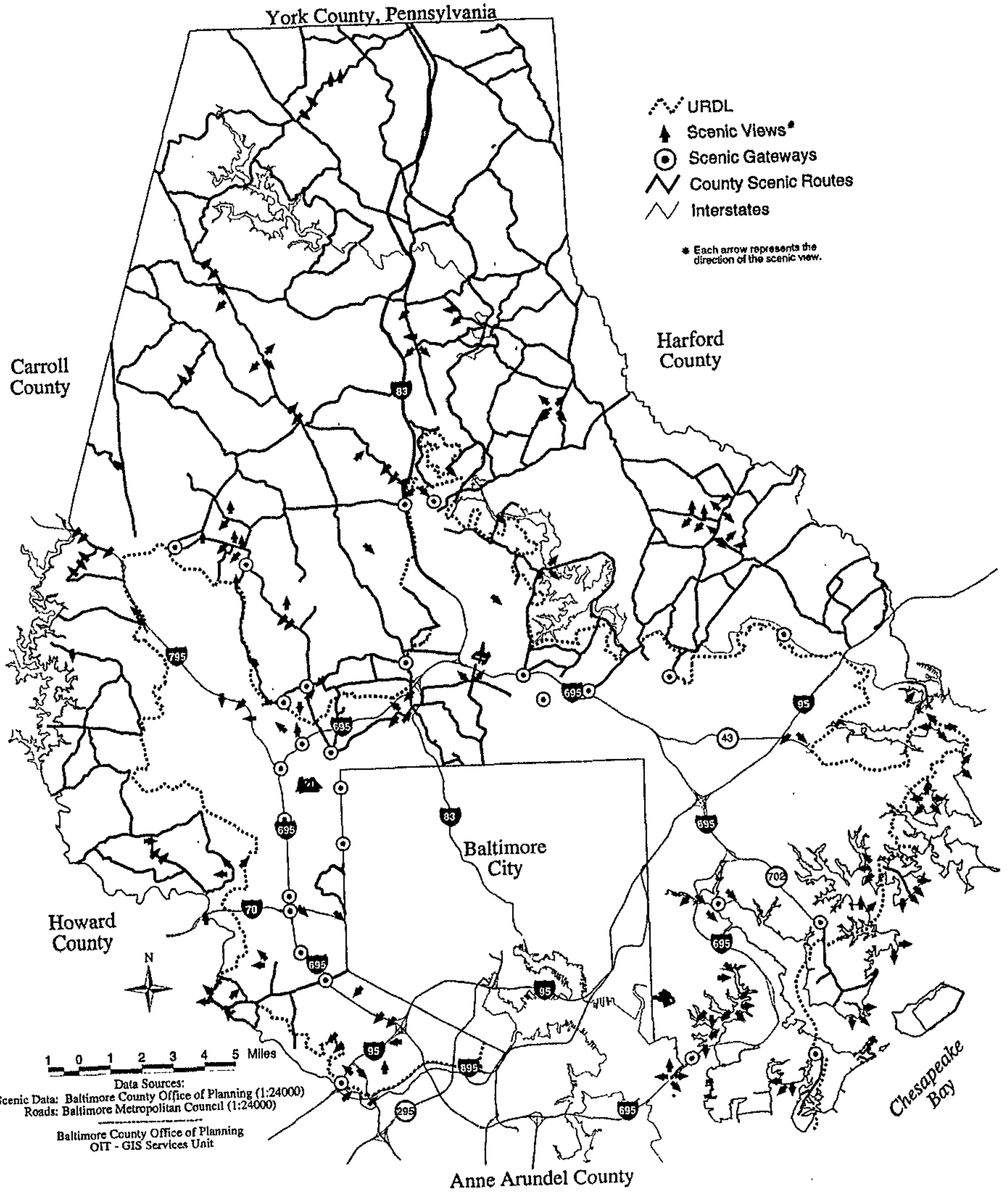
- Preserve and enhance the county's significant scenic resources as designated on the scenic resources map, including scenic corridors, scenic views and gateways, as an essential component contributing to the county's quality of life.



The majority of the county's scenic resources are located in the rural area.

Issue: Preserving Scenic Corridors and Views

The *Baltimore County Master Plan 1989-2000* depicted scenic routes and views on the development policy maps, taking the first steps toward recognizing and identifying the distinctive visual elements that make Baltimore County so desirable to residents and attractive to visitors. The scenic views depicted do not represent a comprehensive county inventory,



MAP 37
SCENIC RESOURCES



it rather a beginning that must be built upon. Following the adoption of e 1989 master plan, the county produced a series of scenic route maps r each councilmanic district that combined the significant visual and storical elements into self-guided scenic tours. In 1991, the county adopted set of development guidelines to begin the process of protecting the unty's scenic resources. These advisory guidelines have helped.to raise e level of awareness and have recommended development alternatives at are sensitive to scenic issues, but they cannot assure complete protection the county's visual resources.

ıe Maryland State Highway Administration is currently undertaking a ıtewide evaluation of its designated scenic routes. The National Byways ogram, created through the "Intermodal Surface Transportation Efficiency ct" (ISTEA) provided the impetus, and some of the funding, for this deavor. This program is continued in the Transportation Equity Act for e 21st century (TEA 21), 1998. The National Byways program can be ed at the local level to assist in a variety of scenic preservation activities, cluding conducting scenic corridor management studies, which are required r nomination to National Byway status. Once a road is designated a ıtional Byway, grants for preservation, enhancement, and interpretive tivities can be sought.

ctions

Prepare corridor plans that specify management techniques for scenic resources.

- Coordinate scenic resource identification and management practices with the Maryland State Scenic Byways Program and the National Road Program.
- Establish criteria for inclusion and define levels of preservation or enhancement activities. Areas where significant public dollars for easements have already been spent should be identified and analyzed for scenic value.
- Involve community organizations in the identification of scenic resources and planning for their preservation. Local public support for preservation activities is required for participating in federal programs.

Evaluate proposed improvements to state and county roads, bridges, and other infrastructure for their impact on scenic resources. Where public safety allows, the narrow and/or winding character of the road is part of the scenic experience and should be preserved.

THE COUNTY WILL PREPARE CORRIDOR PLANS THAT SPECIFY MANAGEMENT TECHNIQUES FOR SCENIC RESOURCES.

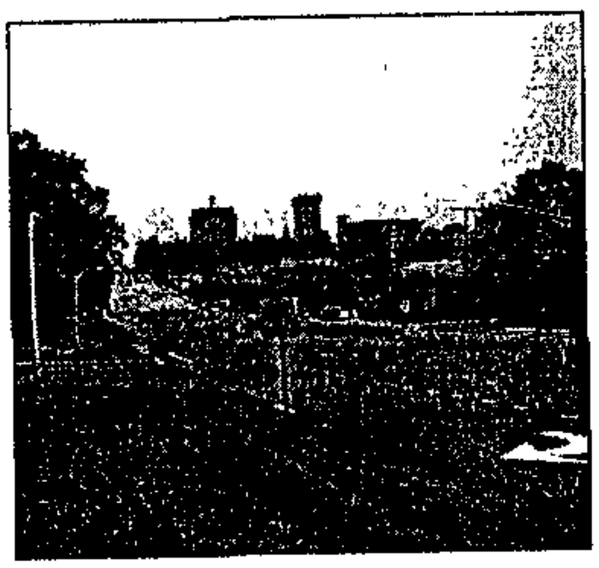


3. Promote the county's scenic resources and encourage county residents to value them.
   - Frequently, scenic resources are intrinsically linked to historic and cultural resources. Promote activities that preserve these historic and cultural resources to aid in protecting scenic quality.
   - In conjunction with the county's tourism initiatives, revise the scenic route maps and include self-guided tours of significant scenic resources.
   - Consider a coordinated and nationally recognized and approved sign system of markers and plaques to identify and provide interpretation of scenic and historic resources.

Issue: Development in Gateway Areas

A gateway refers to the location where the area surrounding a transportation corridor clearly changes. Gateways are important elements of the county's visual fabric, contributing to the sense of the transition between urban and rural development and to community identity. Examples of urban/rural gateways include the entry to the Cromwell Valley from Towson north of the Beltway, and crossing the ridge northbound on I-83 past Shawan Road. Other existing gateways include crossing the Back River Bridge into Essex, and exiting from the Beltway into Towson.

The specific design treatment of development in these visually sensitive gateway area localities will vary greatly. The basic objective should be to emphasize the transitional character of the gateway, by strengthening the sense of arrival and/or unifying the distinctive character of each side. In some locations, it may be desirable to create gateways as a community conservation measure that promotes the identity of a particular community.

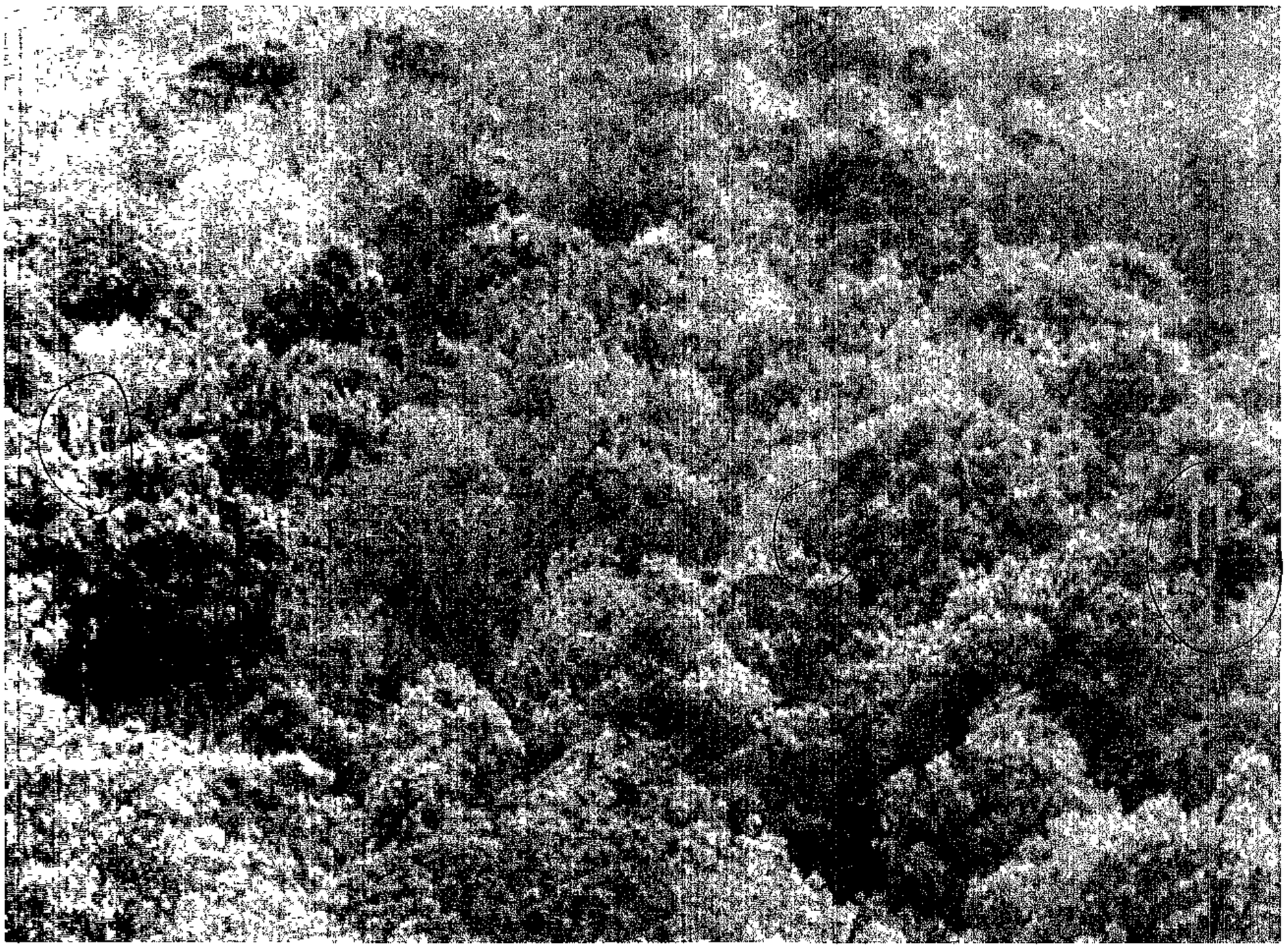


This entry into Towson from the beltway is an example of a gateway.

Actions

1. Identify additional gateways and formulate appropriate design guidelines as part of local community plans and streetscape projects. Provide general guidelines in the *Comprehensive Manual of Development Policies*.
2. For designated gateways, examine the design aspects of proposed development as part of the development review process.

PC# 5



Back River Neck Peninsula ~~ASSOCIATION~~ Inc.
Community

RESOLVED: That at the annual meeting of the Back River Neck Peninsula Community Association INC. held on Jan. 15, 2002 [DATE], it was decided by the Association that responsibility for review and action on all zoning matters for the period 1/15/2002 - 1/15/2003 be placed in the (Board of Directors) (Zoning Committee) consisting of the following members, each of whom is hereby authorized to testify on behalf of the Association before the County Board of Appeals or other duly constituted zoning agency, body, or commission:

Leroy Sennett
Carl Maynard
Jackie Nickel
Helen Bryant
EDWARD RYBCZYNSKI

AS WITNESS OUR HANDS AND SEAL THIS 19 day of September, 2002

ATTEST:

Marion E. MacLachlan
Secretary

Back River Neck Association
Peninsula Community
Jackie Nickel
President

PC 6a

BACK RIVER NECK PENINSULA COMMUNITY ASSOCIATION INC.

RESOLVED: That the position of the BACK RIVER NECK PENINSULA COMMUNITY INC Association as adopted by the (Board of Directors) & (Zoning Committee) on the zoning matter known as:

is that:

SEE ATTACHED

AS WITNESS OUR HANDS AND SEAL THIS 19 day of SEPT., 2002.

ATTEST: BACK RIVER NECK PENINSULA COMMUNITY Association INC

Marion E. Mackrehan
Secretary

Jackie Nickel
President

PC 6h

September 19, 2002

APPEAL TO VARIANCES
810 Back River Neck Road, SW/S Back River
Neck Road, 330' SE Pottery Farm Road
15th. Election Dist. 5th. Councilman
BACK RIVER, LLC, LEGAL OWNER
SPRINT PCS, Contract Purchaser
Case No. : 02-159-A

Back River Neck Peninsula Community Association, Inc.

A. We consider variance requests for relief on all set backs contrary to the sprit and intent of zoning, in that future case rulings could and would be based on the same and similar percentages for relief on zoning regulations dealing with set backs through out Baltimore County's zoning regulations.

B. Smart Growth Sect. 4A00.1 a cell tower at this location is not in keeping with the preservation of natural environmental and scenic resources. Having a tower at the gate way of this community is contrary to BCZR Sect 4A00.2 in that it violates objectives of the 2010 Master Plan (see Master Plan, pages 184 &193).

C. We are of the opinion that the foot print of a tower on the face of the earth at this location would have a negative affect towards the efforts of the state of Maryland Legacy Program on the Back River Neck Peninsula with it's metropolitan/industrial appearance.

D. In the abstract we view permitting a tower even without the requested variances contrary to Baltimore County 2010 Master Plan as stated on page one last line of that document "county's commitment to natural resource protection. A few hundred yards from this property's rear property line is Muddy Gut Habitat Protection Area designated by Baltimore County, consideration has to be given to bird strikes as well deterrents used to keep nesting from occurring on the ideal high perches of a cell tower that eagles, osprey and all sorts hawks do in fact take advantage of.

E. Across Back River Neck Road, less than two hundred feet from the north east corner from of this property is Pottery Farm Park; although not at present on registry as a designated historical site the activity of a former owner; a potter, Peter Hermann is historically documented for art to his craft, the land at present is preserved; however, the aesthetic value of this area would be seriously compromised with the construction of a cell tower so near, contrary to historic programs established by Baltimore County.

F. The very short list for tower locations generated by Baltimore County's area planner in the 5th. district, letter of December 16, 1998 we feel carries no weight to having a cell tower erected at 810 Back River Neck Road. All rational of rejecting the Friends Tavern site referenced applies to this partition to say nothing of the additional burdens that this particular venture is encumbered with. There are numerous parcels through out the area that could qualify as a tower site according to BCZR 426.9.C., if studied by "cooperate ventures technical experts" that could even possibly have a tower greater than two hundred and fifty feet, affording service to a much larger base of users, according to testimony given by petitioner's consultants location and height are factors to servicing the most amount of users. In the relevant studied area presented by Sprint are two Board of Education parcels that can qualify as a tower site that are demography nearer to the population base of lower Back River Neck Peninsula i.e.: south east side Back River Neck Road towards the communities nities of Sue Creek and Holly Neck, Traveling further south in the eastward direction down Holly Neck Road are several ML/BL parcels being used as mariners or yacht clubs that can qualify as a tower site without variance either within the studied area or very near, again closer to the larger population base of "The Lower Neck".

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY , SS:

TO WIT :

I hereby swear upon penalty of perjury that I am currently a duly elected member of the (Board of Directors) (Zoning Committee) of the Back River Neck Community Peninsula Association Inc.

ATTEST : (sign) Jackie Nickel Back River Neck Peninsula Association Inc.
(print) Jackie Nickel

Marion E. Maclachan
Secretary

Jackie Nickel
President

9/19/02
Date

RCbc

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY , SS:

TO WIT :

I hereby swear upon penalty of perjury that I am currently a duly elected member of the (Board of Directors) (Zoning Committee) of the Back River Neck Community Peninsula Association Inc.

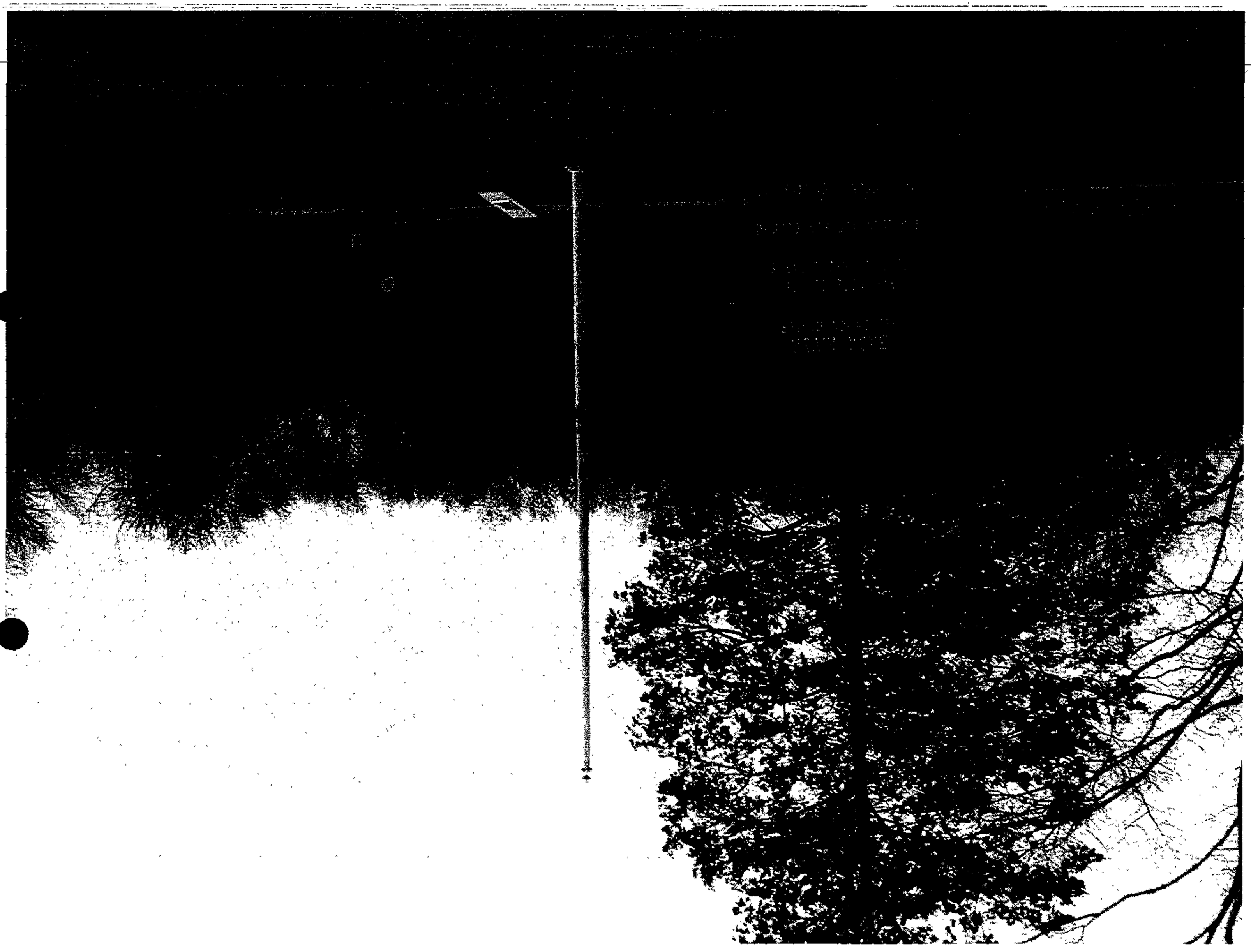
ATTEST : (sign) Leroy W. Sennett Back River Neck Peninsula Association Inc.

(print) LEROY W. SENNETT

Marian E. MacKechnan
Secretary

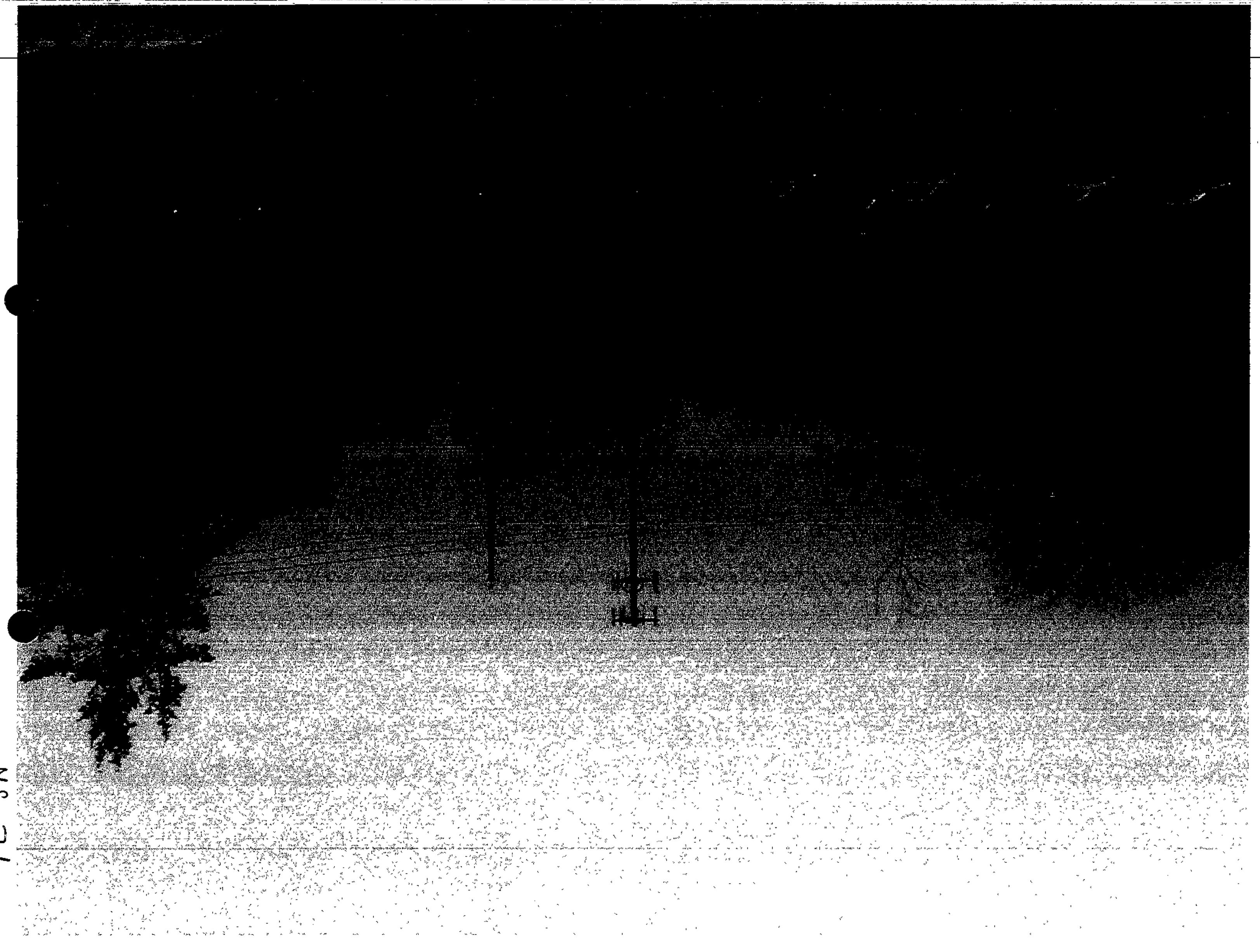
Julie Nickel
President

9/19/02
Date

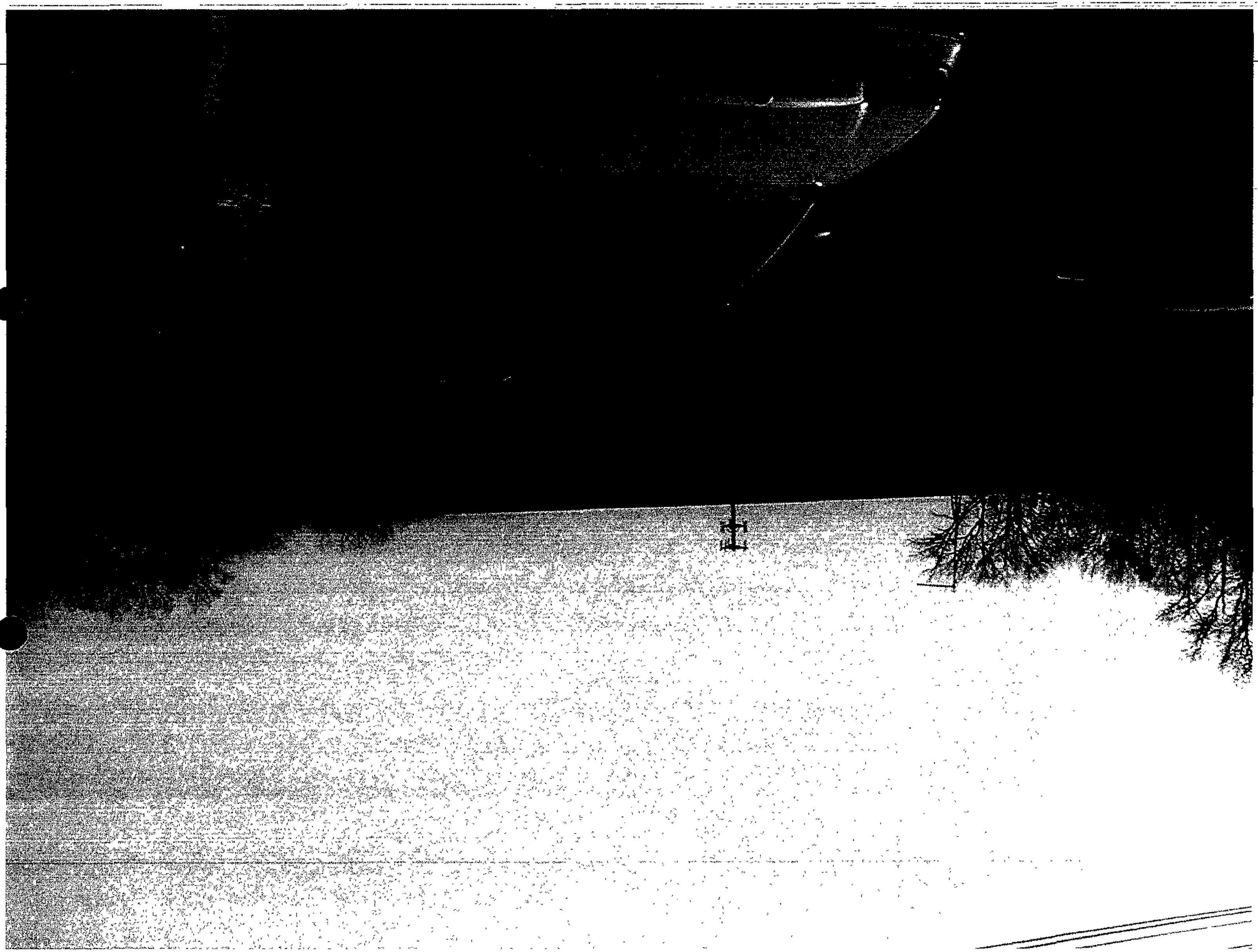


PC 7A

PC 7B

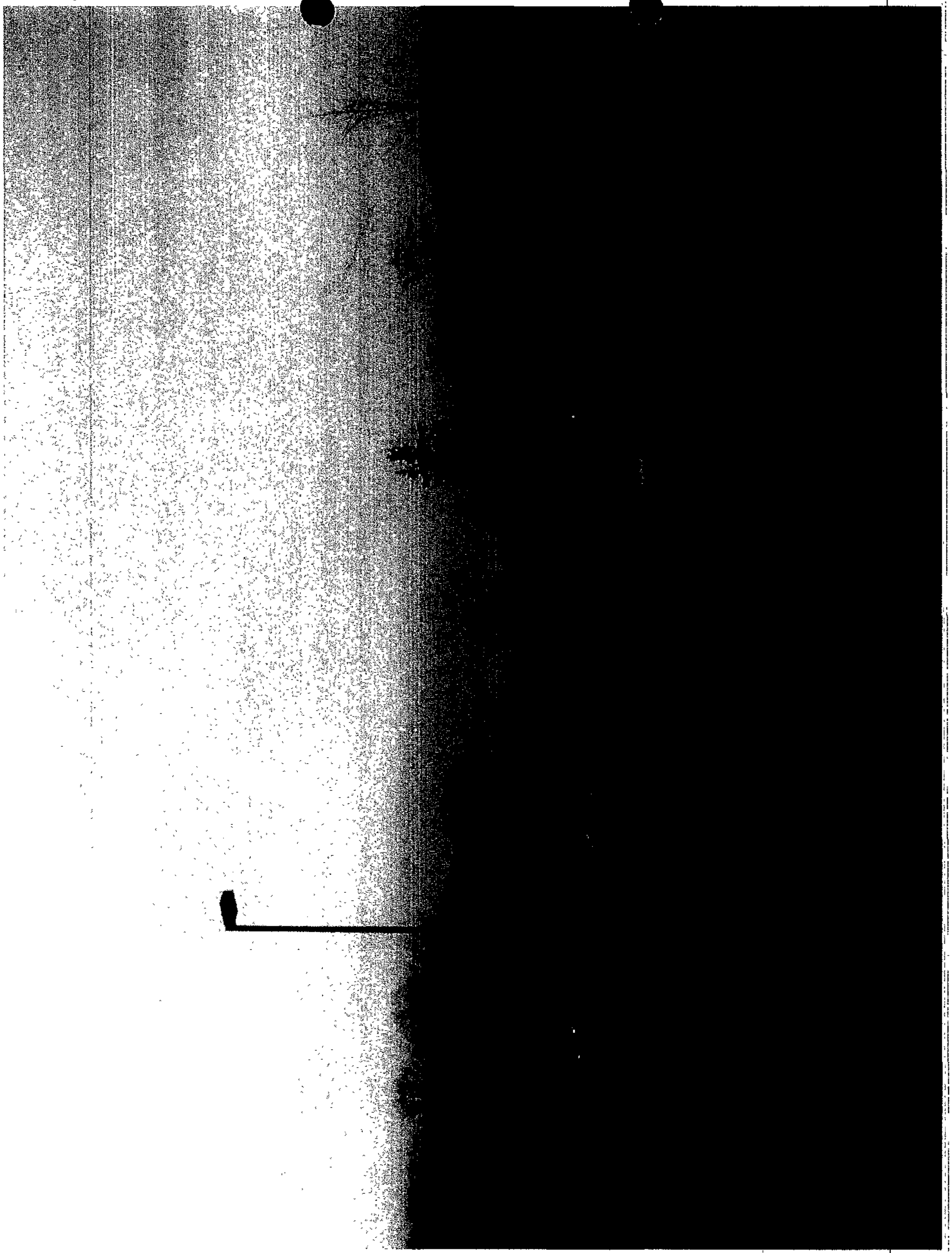


Pc SA



Pc 8B

PC 8C



PC ED

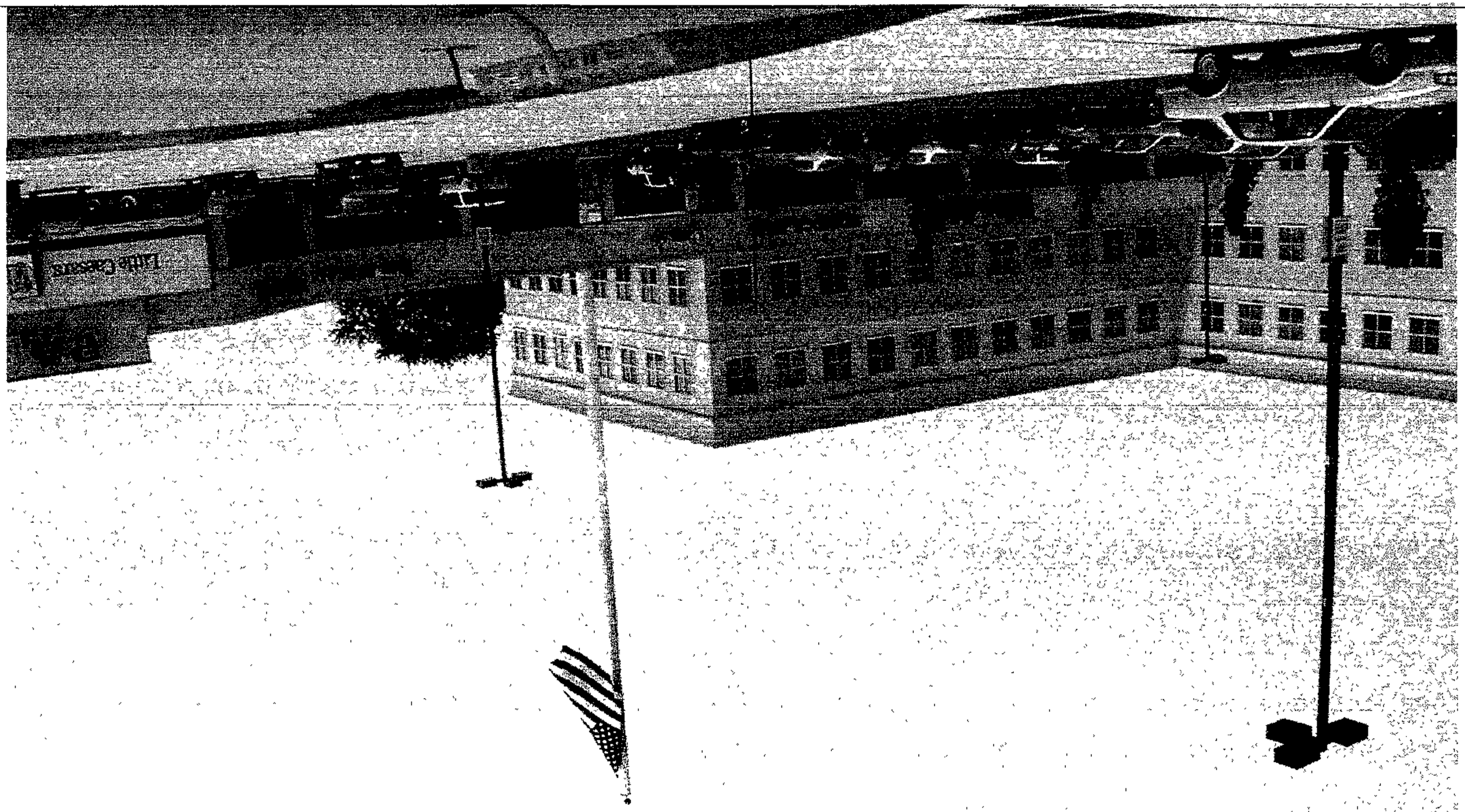


fig 9

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Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search

Account Identifier: **District -** 15 **Account Number -** 1502574106

Owner Information

Owner Name:	BOARD OF EDUCATION OF BALTIMORE COUNTY	**Use:**	EXEMPT
		Principal Residence:	NO
Mailing Address:	940 YORK RD DIV OF PHY FACILITIES TOWSON MD 21204	**Deed Reference:**	1) / 4367/ 81 2)

Location & Structure Information

Premises Address	Zoning	Legal Description
POTTERY FARM RD		29.750 AC SS POTTERY FARM RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
98	19	217						82	Plat Ref:

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		29.75 AC	01

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2002	As Of 07/01/2003
Land:	189,650	189,650		
Improvements:	0	0		
Total:	189,650	189,650	189,650	189,650
Preferential Land:	*0*	*0*	*0*	*0*

Transfer Information

Seller:		**Date:**	**Price:**
Type:		**Deed1:**	**Deed2:**
Seller:		**Date:**	**Price:**
Type:		**Deed1:**	**Deed2:**
Seller:		**Date:**	**Price:**
Type:		**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2002	07/01/2003
County	*000*	*0*	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: COUNTY AND STATE
Exempt Class:

Special Tax Recapture:

* NONE *

10

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Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search

Account Identifier: **District -** 15 **Account Number -** 1502190698

Owner Information

Owner Name:	BALTIMORE COUNTY MD	**Use:**	EXEMPT
		Principal Residence:	NO
Mailing Address:	COURT HOUSE TURKEY NK JHS REC SITE BALTIMORE MD 21204	**Deed Reference:**	1) / 4517/ 390 2)

Location & Structure Information

Premises Address
BACK RIVER NECK RD

Zoning

Legal Description
5.250 AC ES
BACK RIVER NECK RD
N POTTERY FARM RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
98	19	217						82	Plat Ref:

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		5.25 AC	01

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2002	As Of 07/01/2003
Land:	57,400	57,400		
Improvements:	0	0		
Total:	57,400	57,400	57,400	57,400
Preferential Land:	0	0	0	0

Transfer Information

Seller:	BOARD OF EDUCATI ON	**Date:**	09/17/1965	**Price:**	$0
Type:	UNKNOWN	**Deed1:**	/ 4517/ 390	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2002	07/01/2003
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: COUNTY AND STATE
Exempt Class:

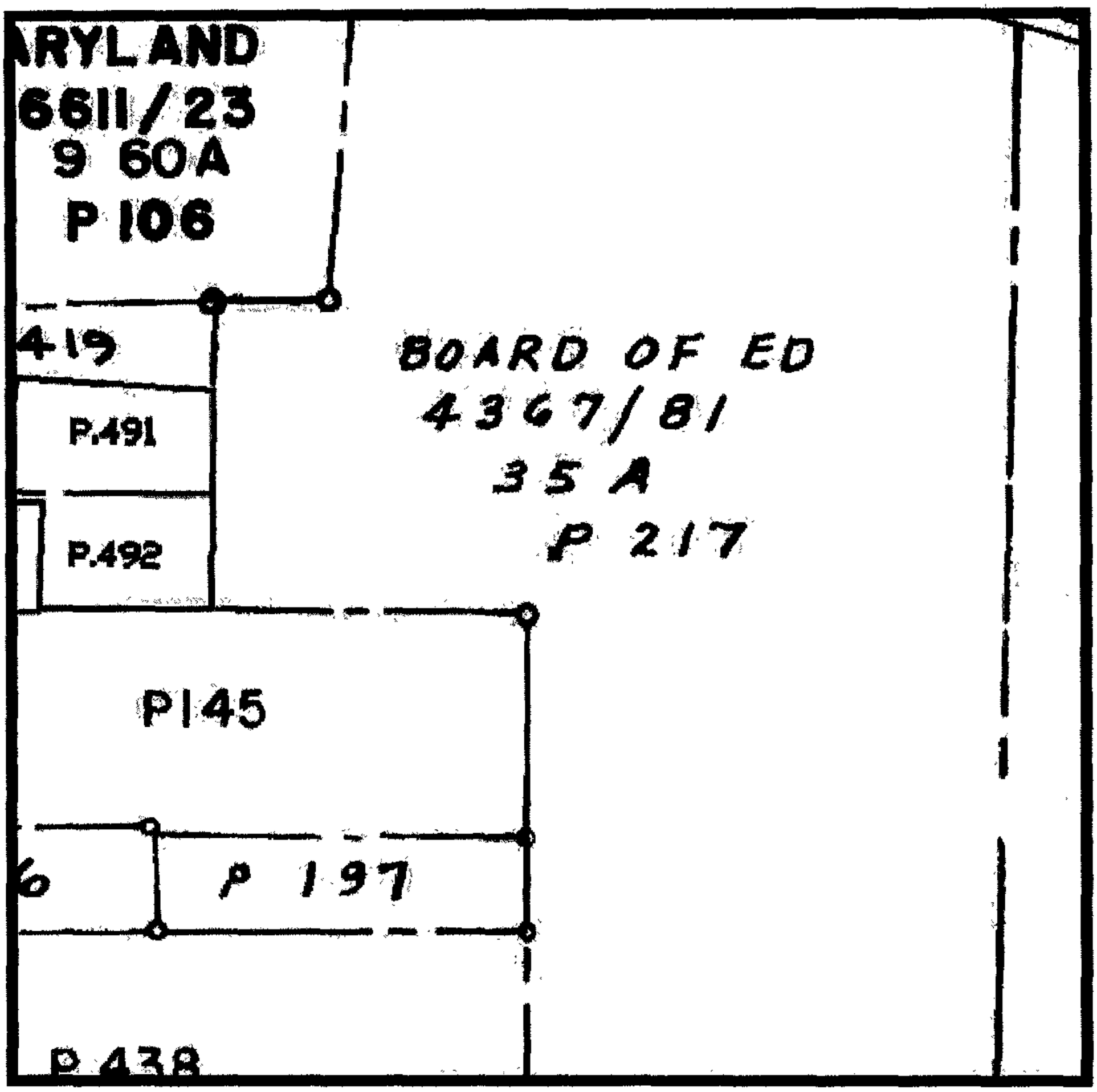
Special Tax Recapture:

* NONE *

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

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New Search

District - 15 **Account Number** - 1502190698



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Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search

Account Identifier: **District -** 15 **Account Number -** 1900011866

Owner Information

Owner Name:	BALTIMORE COUNTY MARYLAND	**Use:**	EXEMPT COMMERCIAL
		Principal Residence:	*NO*
Mailing Address:	26-SP--15-160 BALTIMORE MD 21204	**Deed Reference:**	1) / 6611/ 23 2)

Location & Structure Information

Premises Address	***Zoning***	**Legal Description**
801 BACK RIVER NECK RD	DR5.5	9.605 AC ES BACK RIVER NECK RD SE COR POTTRY FRM RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No: Plat Ref:
98	19	106						82	

Special Tax Areas **Town**
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1942	40,563 SF	9.60 AC	01

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2002	As Of 07/01/2003
Land:	336,100	336,100		
Improvements:	1,850,700	1,088,100		
Total:	2,186,800	1,424,200	2,186,800	1,424,200
Preferential Land:	*0*	*0*	*0*	*0*

Transfer Information

Seller:	BOARD OF EDUCATI ON OF BALTO CO	***Date:***	*10/21/1983*	***Price:***	*$0*
Type:	NOT ARMS-LENGTH	**Deed1:**	/ 6611/ 23	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2002	07/01/2003
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: COUNTY AND STATE
Exempt Class: OTHER

Special Tax Recapture:

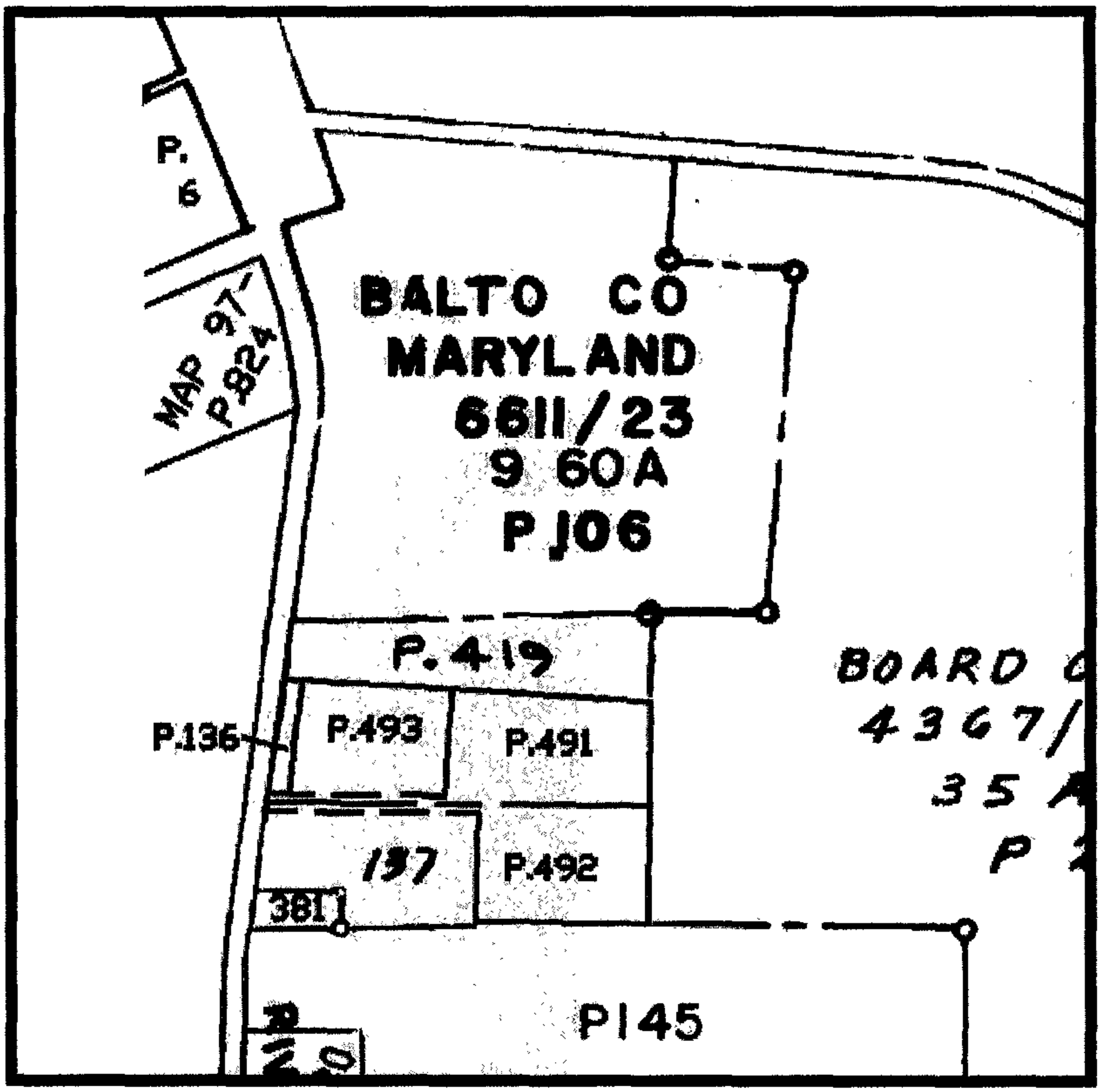
* NONE *

PC 11

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search

District - 15**Account Number** - 1900011866



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Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search

Account Identifier: **District** - 15 **Account Number** - 2300004470

Owner Information

Owner Name: BACK RIVER LLC
Use: COMMERCIAL
Principal Residence: NO
Mailing Address: 500 VOGTS LN
BALTIMORE MD 21221-1634
Deed Reference: 1) /13577/ 535
2)

Location & Structure Information

Premises Address
810 BACK RIVER NECK RD

Zoning
BLML

Legal Description
4.316 AC
BACK RIVER NCK RD WS
COR OF LUCIANO DR

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
97	24	824						82	Plat Ref:

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000	13,719 SF	4.31 AC	06

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2002	As Of 07/01/2003
Land:	146,500	146,500		
Improvements:	128,600	145,600		
Total:	275,100	292,100	275,100	280,766
Preferential Land:	0	0	0	0

Transfer Information

Seller:		**Date:** 03/09/1999	**Price:** $250,000
Type: NOT ARMS-LENGTH		**Deed1:** /13577/ 535	**Deed2:**
Seller:		**Date:**	**Price:**
Type:		**Deed1:**	**Deed2:**
Seller:		**Date:**	**Price:**
Type:		**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2002	07/01/2003
County	000	0	0
State	000	0	0
Municipal	*000*	*0*	0

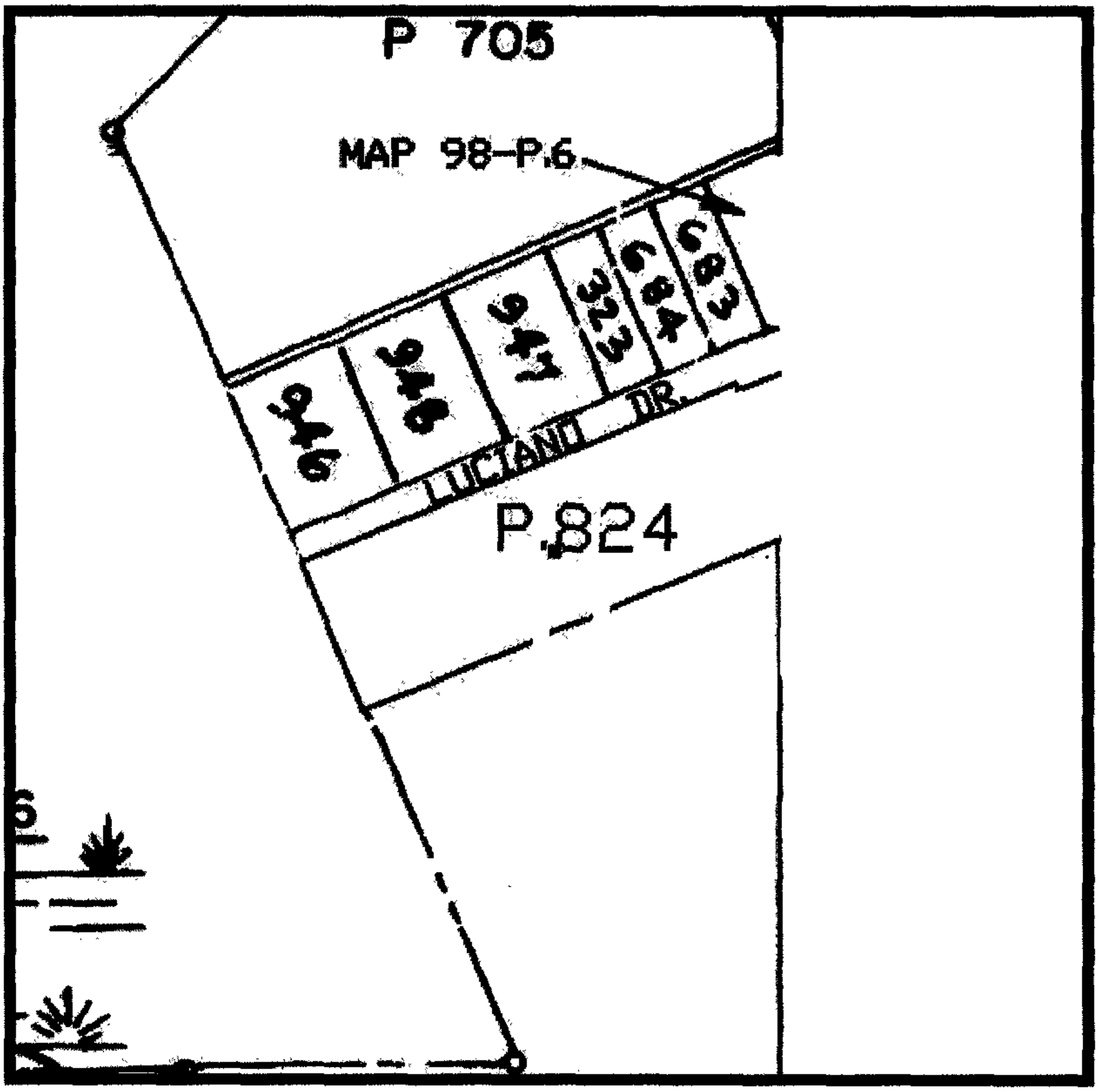
Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
* NONE *

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search

District - 15 **Account Number** - 2300004470



Property maps provided courtesy of the Maryland Department of Planning ©2001.
For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us

FACTS, FINDINGS AND CONCLUSIONS ZONING CHAIR BACK RIVER NECK PENINSULA COMMUNITY ASSOCIATION INC. Leroy Bennett 12-21-01 or 12-28-01

REFERENCE CASE #02-159-A
810 BACK RIVER NECK ROAD
SW/S Back River Neck Road, 330' SE of Pottery Farm Road
15th. Election District - 5th. Councilmanic District
Legal Owner: Buck Jones

The construction of monopole wireless commutation tower as submitted is truly a challenge to the sprint and intent of zoning. We offer the following address in the format of zoning manual dealing with Section 426.

Re:426.2.B.2 The present usage of this property is not a high commercial zone, and questionable as to consideration as medium commercial zone, but is an enigma to the traumas of the high density Residential Transition Area on the norther part of Back River Neck Peninsula into the rural base on the peninsula.

Re:426.2.B.3 Access to this property beginning at the most northern point of the peninsula is via either Back River Neck Road or Eastern Expressway (702) terminating into Back River NecK Road which in is the only access. The geography of the area is such that at the majority gradient is down hill to virtually sea level which will render proposed tower highly visible projecting forty to fifty above the natural forest of the surrounding rural and unspoiled area. This property is adjoined at all it's meets and bounds with Resource conservation Zoning Classifications RC 2, RC 3.5 AND RC 20. In the westerly direction at the end of this rectangular parcel a mere few hundred yards is Muddy Gut Habitat Protection Area designated by Baltimore County. Across Back River Neck Rd. less than one hundred yards is Baltimore County's Natural Wilderness Park, Pottery Farm which has historic significant (see page 2).

Re:426.6 Setbacks - Five Zoning Relief Request by partitioned
1a. 75'-0" in lieu of required 200'-0" a 62.5% relief
1b. 75'-0" in lieu of required 200'-0" a 62.5% relief
1c. 148'-0" in lieu of required 200'-0" a 26% relief
2a. 40'-0' in lieu of required 125'-0" a 68% relief
2b. (repeat of 2a.)

To grant variances of the magnitude demonstrated above would tend to provoke rather significate test to any and all variance request. Tower regulations are one the more constraint Baltimore County Zoning requirements which we encourage no deviation.

2nd Ex
No 1

Inquiry with The Maryland Historical Trust we have been advised that their review has given a 1A rating to this proposed partition ,which is challengeable given the fact that apparently not all historical information of properties within one mile of this site had been exposed as best that can be determined.

The Somogyi farm 90+ acres and house purchased in 1923 by Louis and Marie Somogyi presently lived in by John Somogyi and Pat his wife is the oldest structure on the peninsula constructed in the 1760's according to hand written records of The Hall of Records in Annapolis. Baltimore County Land Marks Commission has record that the house appears on the 1790 tax list. The original land patent in 1657 registers a parcel containing about 700 acres known as "Danby".

Pottery Farm Park name suggestion to Baltimore County came from a MR. Ken Hankin who had researched some of the property history. His interest being generated through his vocation holding a Master Degree in Pottery. Historical significate of this particular parcel is one of its former owners a renowned potter Peter Herrman whom emigrated to this country in the 1860's that had purchased this land in or about 1880, working the soil of this land to his craft and firing his kilns with the bounty of it's forest and using the water ways to transport his merchandise. Herrman's talented craft is so coveted by art as well as pottery collectors that a number of his creations are displayed at the Smithsonian. Telephone contact with Mr. Hankin (410-239-8888) the evening of December 20, 2001 he had dialogue that he had forward forms to agency of his archaeological findings at this site several years ago in or about 1997, he then did note that he had retained copies forwarded. It most be noted that this particular site and sort of industry in Baltimore County from what's been determined to date may establish Peter Herrmans activity as the only of it's kind in the state or even the nation in his time in history.

It has to be noted that the location of 810 Back River Neck Road is truly the "gate way" to Baltimore Counties ardent efforts over the last several years to preserving wild lands aiding and facilitating with the procurement of 800 acres plus into the "Maryland Legacy Program. That the appearance of a tower in of it's self is not sufficient reason to not allow it in a particular location, we would most certainly be remiss if we did not highlight the requirements of the National Environmental Act and the National Historic Act.

That the Somogyi family has chosen not to have their property listed on historic register, wishing to maintain their privacy, does not negate the facts of it's historic significance and the potential of being listed in the future. As Pottery Farm is owned by Baltimore County it falls upon the county to investigate and establish the historic values of this parcel to the citizens of this nation. Presently their is dialogue with many of the land owners in the area to participate in the "Maryland Legacy" an historic venture in it's self, two of the adjoining properties (RC 20) are potential participance until all avenues have been exhausted, efforts as well as funding.

Regarding environmental impact in accordance with our interpretation NEPA, the fact of "Muddy Gut" and the registry of wild life in the area especially various endangered birds that are well documented by Baltimore County has to weigh heavy on this proposed project.

DATE: 9/25-02

PEOPLE'S COUNSEL'S SIGN-IN SHEET

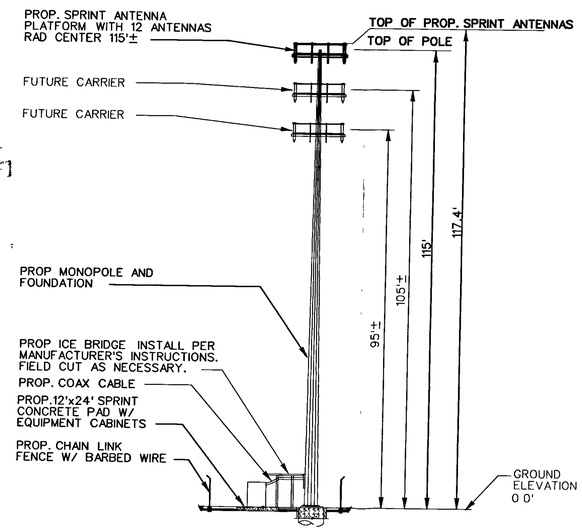
CASE NAME: 810 Back River Neck Rd

CASE NO.: 02-159-A

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check if you wish to testify	Name / Address Phone Number	Community Group You Represent / Basis of Your Concerns
✓	Jackie Nickel 921 Rockaway Beach Ave. 410-686-1358	Back River Neck Pen. Comm. Assn. - Impact of Excessive Variances Requested
✓	LEROY SENNETT 1716 BEACHWOOD AVE 410-682-3697	DO.
✓	JOE ORTT 2314 FOSTER AVE 410-665-3287	V/C EASTERN YACHT CLUB SENECA RD.
✓	EDWARD B. RYBCZYNSKI 1532 DENTON CD ESSEX 410-391-5466	BACK RIVER NECK PEN COMM Opposing Variance Request Violation of Aesthetics

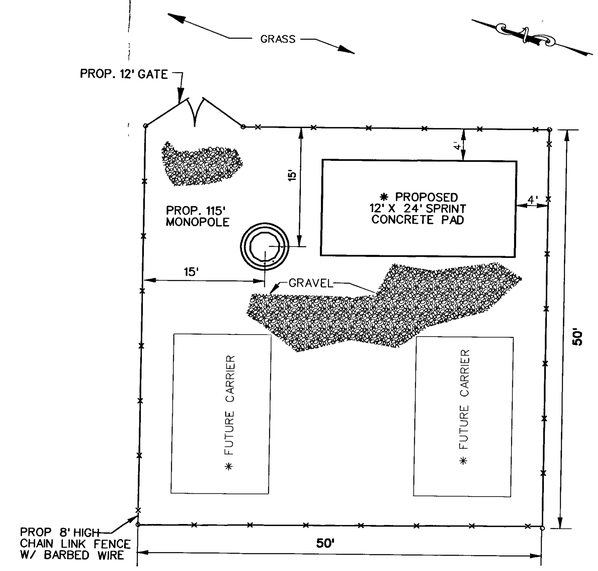
BOA 1



MONOPOLE ELEVATION

SCALE: 1" = 20'

90 60 30 0 10 30

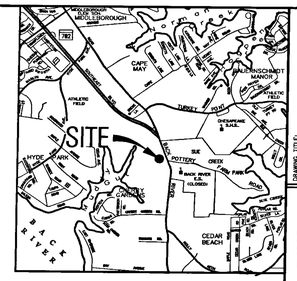


* NOTE:
EQUIPMENT CABINETS MAY GO TO THE FENCE LINE

COMPOUND DETAIL

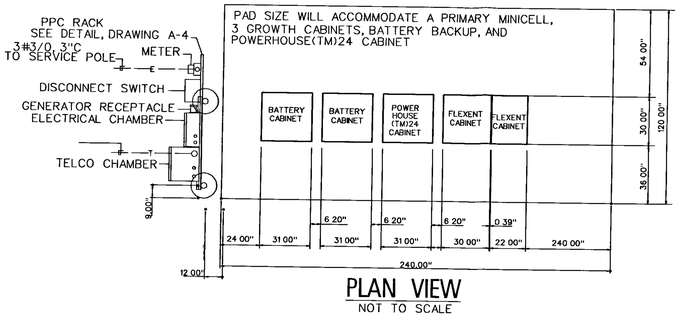
SCALE 1"=50'

180 120 60 0 5 60



VICINITY MAP

SCALE 1"=2000'

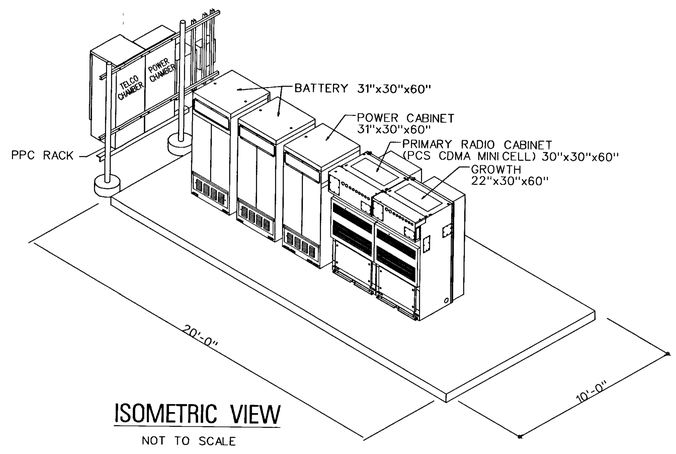


PLAN VIEW

NOT TO SCALE

6 CARRIER CABINET DETAIL

NOT TO SCALE



ISOMETRIC VIEW

NOT TO SCALE

STATE OF MARYLAND
No. 25024
PROFESSIONAL ENGINEER
MARIANNE KIERNAN

SEP 24 2002

PROJECT
SAR# WA54XC461
BACK RIVER NECK
UNMANNED WIRELESS COMMUNICATION SITE
810 Back River Neck Rd
Baltimore, MD 21221

DRAWN BY: CTS
CHECKED BY: CEO
DIRECTORY: K:\TECHNOLOGIES
PROJECT NO: 1601003.07
DRAWING NO: **22**
SCALE: AS SHOWN
JOB FILE: 1601003.07/dgn 2.1.DGN

DRAWN BY | CHK'D BY | ISSUE STATUS | ISSUE DATE
1 | 95% SUBMISSION | | | 09/24/02
SCHEDULE OF REVISIONS

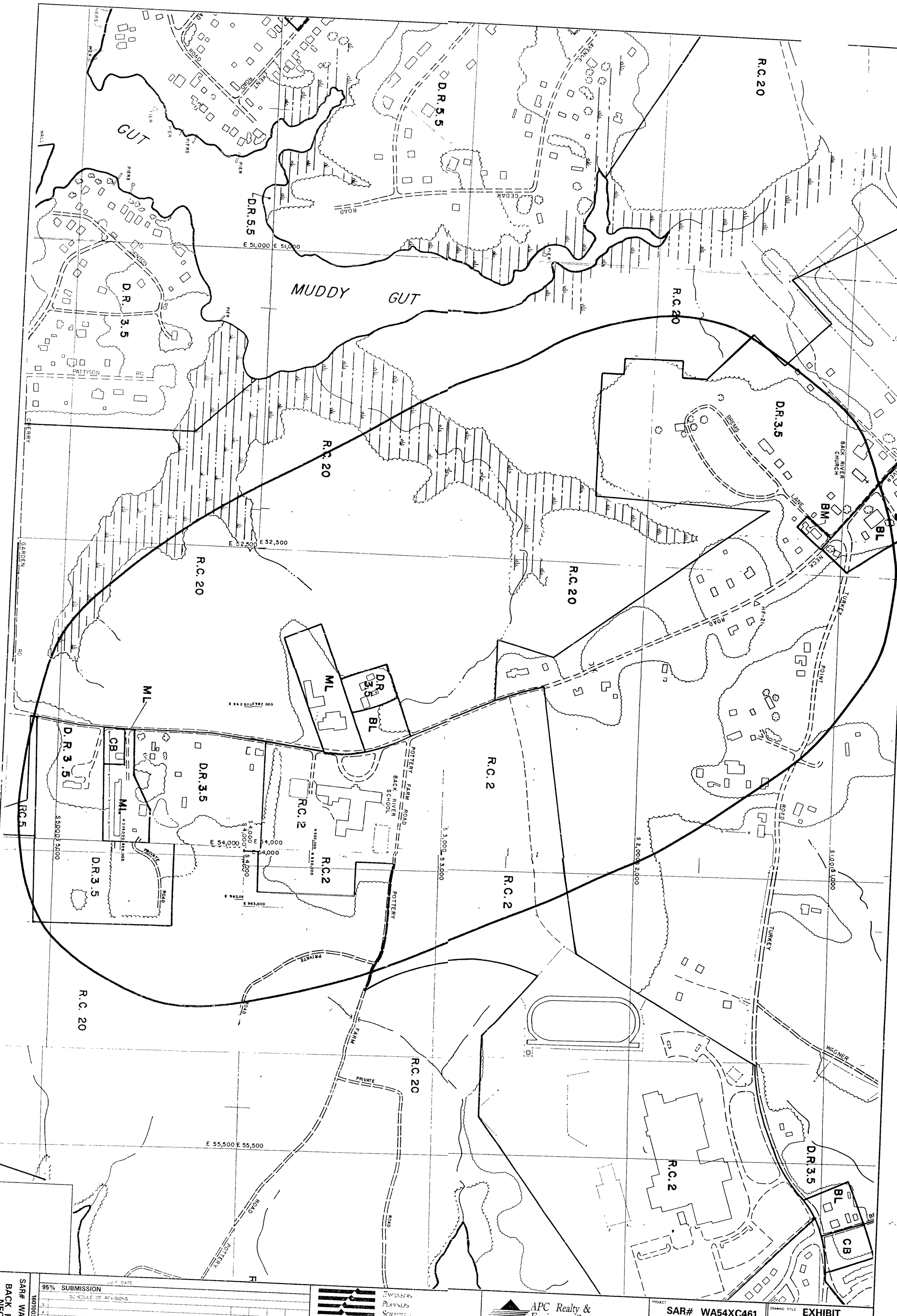
APC Realty & Equipment Company, L.L.C.
D.B.A. Sprint Spectrum L.P.
6905 Rockledge Drive
Bethesda, MD 20817
Phone 301-214-9200 Fax 301-214-9492

ENGINEERS
PLANNERS
SCIENTISTS
CONSTRUCTION MANAGERS
KCI TECHNOLOGIES
14502 Greenview Drive, Suite 424
Laurel, Maryland 20708
(301) 953-1821 (410) 792-8086
fax (410) 792-7419
www.kci.com

1601003.07

SAR# WA54XC461
BACK RIVER NECK
810 Back River Neck Rd
Baltimore, MD 21221

Date 8/6



SAR# WA54XC461 BACK RIVER NECK	95% SUBMISSION
810 Back River Neck Rd Baltimore, MD 21221	SCHEDULE OF REVISIONS
1601003 07	ISSUE DATE

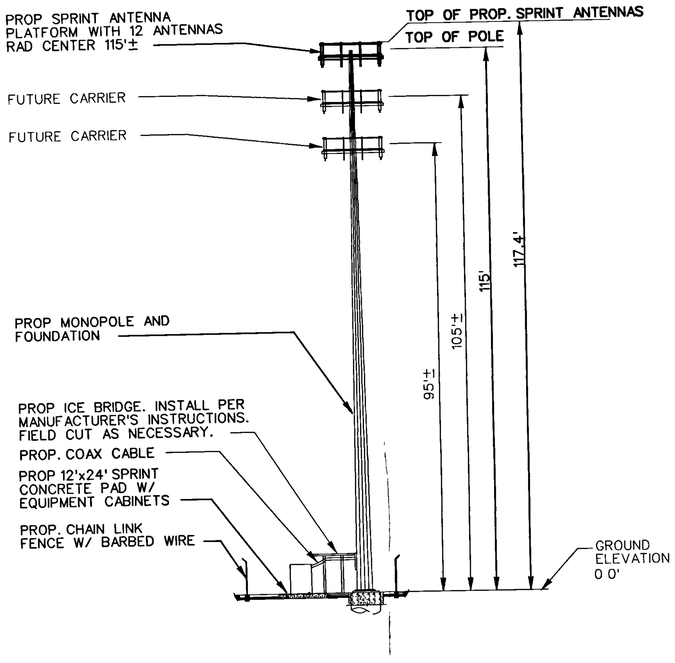
KCI TECHNOLOGIES
ENGINEERS
PLANNERS
SURVEYORS
CONSTRUCTION MANAGERS
11502 Greenview Drive Suite 424
Laurel, Maryland 20708
(301) 953-18 (410) 792-8086
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PROJECT
SAR# WA54XC461
BACK RIVER NECK
UNMANNED WIRELESS COMMUNICATION SITE
810 Back River Neck Rd
Baltimore, MD 21221

DRAWING TITLE
EXHIBIT

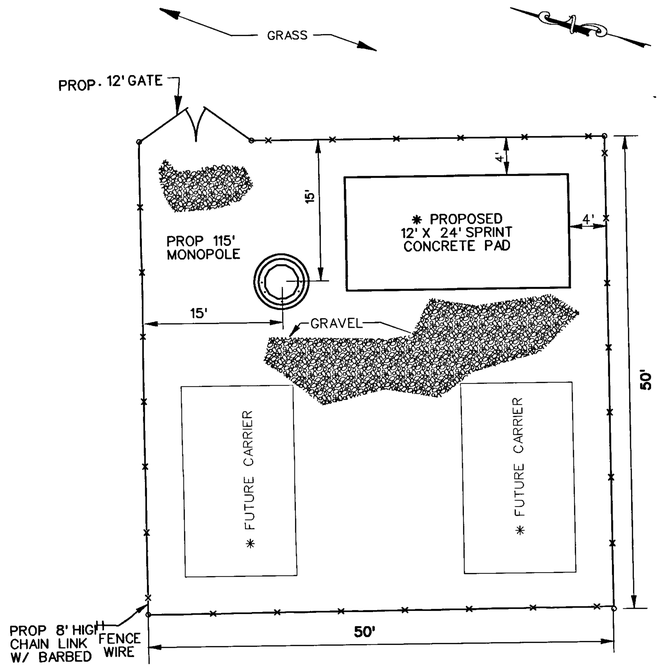
DRAWN BY	DRAWING NO
CHECKED BY	
SURVEYOR KCI TECHNOLOGIES	
PROJECT NO 1601003-07	SCALE AS SHOWN



MONOPOLE ELEVATION

SCALE 1" - 20'

90 60 30 0 10 30

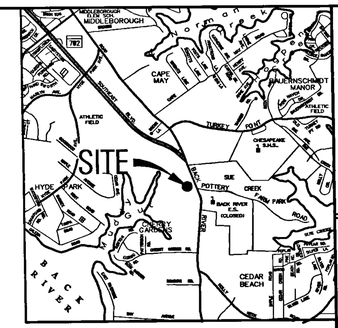


* NOTE
EQUIPMENT CABINETS MAY GO TO THE FENCE LINE

COMPOUND DETAIL

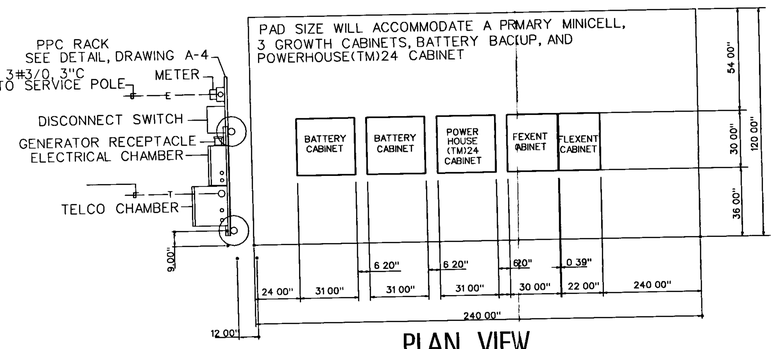
SCALE- 1"-50'

180 120 60 0 5 60



VICINITY MAP

SCALE- 1"=2000'

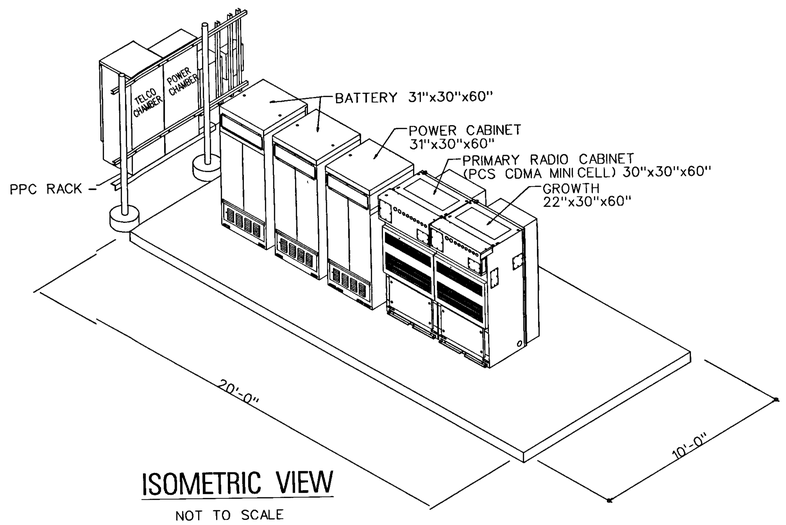


PLAN VIEW

NOT TO SCALE

6 CARRIER CABINET DETAIL

NOT TO SCALE



ISOMETRIC VIEW

NOT TO SCALE

STATE OF MARYLAND
No. 25058
MARIANNE KIERNAN
PROFESSIONAL ENGINEER
SEP 24 2002

DRAWING TITLE: PLAN TO ACCOMPANY PETITION FOR VARIANCES
DRAWN BY: CTS
CHECKED BY: GEO
SURVEYOR: KCI TECHNOLOGIES
PROJECT NO: 1601003.07
DRAWING NO: Z2
SCALE: AS SHOWN
CAD FILE: 1601003.07.07 Z2.DGN

PROJECT
SAR# WA54XC461
BACK RIVER NECK
UNMANNED WIRELESS COMMUNICATION SITE
810 Back River Neck Rd
Baltimore, MD 21221

APC Realty & Equipment Company, L.L.C.
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www.kci.com
KCI TECHNOLOGIES

ISSUE DATE	SCHEDULE OF REVISIONS	DRAWN	APPR.	ISSUE
95% SUBMISSION				
	6			
	5			
	4			
	3			
	2			
	1			
	0			

1601003.07

SAR# WA54XC461
BACK RIVER NECK
810 Back River Neck Rd
Baltimore, MD 21221

LEGEND

PROP TREE LINE	240	EX CONTOURS
EX TREE LINE	240	PROP. CONTOURS
FIRE HYDRANT	15' B R L	BUILDING RESTRICTION LINE
POLE		INDICATES SURFACE FLOW
POLE WITH LIGHT		RAILROAD LINE
EVERGREEEN TREE	+120.50	SPOT ELEVATION
OAK	LOD	LIMIT OF DISTURBANCE
EX FENCE		ZONING LINE
PROP FENCE	30	PARKING SPACES

granted by
LAWRENCE E SCHMIDT
ZONING COMMISSIONER
FOR BALTIMORE COUNTY

MARYLAND STATE MERIDIAN
(NAD 83/91)

POINT OF COMMENCEMENT

POTTERY FARM ROAD

ZONE: RC 2
ZONE: DR BL

225'±

BACK RIVER NECK ROAD

S 66° 30' 02" W
25.3'±

POINT OF BEGINNING

ELSIE RUTH LUCIANO
L. 4649 F. 579
G.S. 5.5 AC.±
P. 6
USE: RESIDENTIAL / VACANT
ZONE: BL

MICHAEL A. & ELSIE R. LUCIANO
L. 5497 F. 151
G.S. 1.0 AC.±
P. 6
USE: RESIDENTIAL
ZONE: DR 3.5

EX ACCESSORY BUILDING

EX DWELLING

EX. DWELLING

ZONE: BL
ZONE: DR 3.5

WILLIS D. & ELLEN J. GIBSON
L. 3161 F. 351
G.S. 1.84 AC.±
P. 6
USE: RESIDENTIAL
ZONE: DR 3.5

WILLIS D. & ELLEN J. GIBSON
L. 5606 F. 587
G.S. 2.07 AC.±
P. 947
USE: WOODED / VACANT
ZONE: RC20

ZONE: DR 3.5
ZONE: R.C.-20

ZONE: DR 3.5
ZONE: ML

MICHAEL A. & ELSIE R. LUCIANO
PRIVATE DRIVE

S 66° 30' 02" W 197.76'

STONE FOUND

390.31' TO FOUND STONE MONUMENT

641.04'

FRANCES & ANTHONY A. DIANGELO
L.5606 F.587
G.770 AC.
P. 948
USE: WOODED / VACANT
ZONE: RC20

ALBERT & EVA H ADANTI
L.5606 F. 587
G.770 AC.
P. 946
USE: WOODED / VACANT
ZONE: RC20

LUCIANO DR
(PRIVATE)

EX DITCH

ZONE: R.C.-20
ZONE: ML

S 66° 30' 02" W 650.00'

N 23° 29' 58" W
10.00'

1003

EX. PARKING

EX 1 STY STORAGE BUILDING

EX 1 STY COMMERCIAL BUILDING

EX MACADAM PARKING LOT

HC
HC

ZONE: RC2
ZONE: ML

BACK RIVER LLC
L. 13577 / F. 535
4.1297 Ac.
P. 824
USE: COMMERCIAL
ZONE: ML

EX 1 STY MASONRY BUILDING (STORAGE)

EX GRAVEL AREA

ZONE: ML
ZONE: RC-20

ZONE: ML
ZONE: RC-20

N 66° 30' 02" E 768.36'

EX GRAVEL AREA
1002

EX DITCH

100 YR FLOOD PLAIN (ELEV 9.4')

PROP. 115' MONOPOLE

PROP. 50' X 50' COMPOUND
(SEE COMPOUND DETAIL SHEET C2)

EX. TREE LINE

EX CONC PAD

S 23° 29' 58" E 223.00'

491.92' TO FOUND STONE MONUMENT

STONE FOUND

ROBERT B. SIMMS & BRENDA J. SCRUGGS
L. 7015 F. 302
45.45 AC.
P. 326
USE: WOODED / VACANT
ZONE: RC-20
(NO RESIDENTIAL DWELLING WITHIN 150' OF PROPOSED WIRELESS TELECOMMUNICATIONS COMPOUND)

THEODORE & ANN JULIO
L. 5561 F. 664
26.17 AC.
P. 893
USE: RESIDENTIAL
ZONE: RC-20
(NO RESIDENTIAL DWELLING WITHIN 150' OF PROPOSED WIRELESS TELECOMMUNICATIONS COMPOUND.)

CURVE DATA

No	CHD BEARING	CHD	ARC LENGTH	ARC RADIUS
①	N 03° 03' 20" W	227.33'	228.15'	775.00'

GENERAL SITE NOTES

1 ELECTION DISTRICT NO 15
2 COUNCILMANIC DISTRICT NO 5
3 DEED REFERENCE 13577/535
4 TAX ACCOUNT NO 15-2300004470
5 SUBSEWER SHED N/A
6 WATERSHED 6 HARRIS MILL CREEK
7 A D C MAP 37, GRID K-13
8 TAX MAP NO 97, PARCEL 824
9 PROPERTY AREA 4 1297 AC.±

SITE PLAN
SCALE 1" = 50'

SITE NOTES

1 APPLICANT — SPRINT PCS, 1 INTERNATIONAL BOULEVARD, SUITE 800, MAHWAH NJ 07495, CONTACT C/O PAUL DUBLANYK, (201) 684-4180

2 PROPERTY OWNER BACK RIVER LLC, 500 VOGTS LANE, BALTIMORE, MD 21221-1634

3 SITE DATA — TAX MAP 97 GRID 24 PARCEL 824; TAX ACCOUNT NO 15-2300004470; LIBER 13577 FOLIO 535; TRACT AREA 4 31 AC; ELECTION DISTRICT 15; ADC MAP 37 GRID K-13; ADDRESS 810 BACK RIVER NECK ROAD, BALTIMORE, MD 21221; EXISTING USE COMMERCIAL

4 CURRENT ZONING ML

5 A MONOPOLE AND TELECOMMUNICATIONS ANTENNA ARE A PERMITTED USE BY RIGHT, IN THE ML ZONE
A. HEIGHT OF PROPOSED MONOPOLE 115'
B SETBACKS, PER SECTION 426 6 A.3 REQUIRED

MONOPOLE SETBACKS

REQUIRED	FRONT	200'
	SIDE	200'
	REAR	200'
PROVIDED	FRONT	638'
	SIDE	75' MIN / 148' MAX
	REAR	135'

EQUIPMENT CABINETS SETBACK

REQUIRED	FRONT	125'
	SIDE	125'
	REAR	125'
PROVIDED	FRONT	620'
	SIDE	40' MIN / 133' MAX' *
	REAR	100' *

* NOTE EQUIPMENT CABINETS MAY GO TO FENCE LINE

6 HORIZONTAL CONTROL SHOWN HEREON IS BASED ON A GPS SURVEY PERFORMED BY KCI TECHNOLOGIES, INC ON 03-18-02

7 LATITUDE 39° 17' 12 60" N (NAD 83/91) LONGITUDE 76° 25' 44 78" W (NAD 83/91) — GROUND ELEVATION 18' AMSL; PROPOSED STRUCTURE HEIGHT 115'; TOTAL ELEVATION ABOUT MEAN SEA LEVEL 133'

8. TOTAL DISTURBED AREA- 4,900 SQ FT ±

9 THE PROPOSED FACILITIES WILL CONSIST OF A 12' X 24' SPRINT CONCRETE PAD, EQUIPMENT CABINETS AND 12 TELECOMMUNICATIONS ANTENNAS ON A PROPOSED 115 MONOPOLE

10. THE STRUCTURE WILL NOT SUPPORT LIGHTS OR SIGNS UNLESS REQUIRED FOR AIRCRAFT WARNING OR OTHER SAFETY REASONS

11 THE APPLICANT WILL PROVIDE A CERTIFICATION FROM A REGISTERED ENGINEER THAT THE STRUCTURE WILL MEET THE APPLICABLE DESIGN FOR WIND LOADS OF THE ELECTRONIC INDUSTRIES ASSOCIATES (EIA)

12 IF THE ANTENNAS ARE NO LONGER USED FOR TELECOMMUNICATIONS PURPOSES FOR A CONTINUOUS PERIOD OF ONE (1) YEAR THEY SHALL BE REMOVED BY THE ANTENNA OWNER AT OWNER'S EXPENSE

13 NO WATER OR SANITARY UTILITIES ARE REQUIRED FOR THE OPERATION OF THIS FACILITY

14 PROPERTY SHOWN HEREON LIES WITHIN ZONE C AN AREA OF MINIMAL FLOODING AS PER FEMA COMMUNITY PANEL NO 240010 0445 C EFFECTIVE DATE NOVEMBER 17, 1993 HOWEVER THIS SITE PLAN REFLECTS UPDATED TOPOGRAPHY NOT REFLECTED ON FEMA MAPPING THE 100 YEAR FLOOD BOUNDARY IS SHOWN ON THIS PLAN BASED ON NEW TOPOGRAPHY AND THE FEMA BASE FLOOD ELEVATION OF 9 4'

15 THIS SITE IS EXEMPT FROM STORMWATER MANAGEMENT REQUIREMENTS

16 THIS SITE IS EXEMPT FROM THE BALTIMORE COUNTY WOODLAND CONSERVATION AND TREE PRESERVATION ORDINANCE

17 WIRELESS TRANSMITTING DEVICES MUST COMPLY WITH ANSI STANDARD C95 1-1982

18 ZONING HISTORY

A. THE 1971 MAP REVEALED A RECLASSIFICATION CASE 3715 DATED FEBRUARY ~~27, 1956~~ WHEREIN THE PROPERTY WAS RECLASSIFIED TO ML FROM R-6 AND BL

B THE 1971 ZONING MAP ALSO REVELED A RE-CLASSIFICATION AND VARIANCE CASE # 63-132 RV DATED 11/15/63 WHEREIN THE PROPERTY WAS RE-CLASSIFIED FROM R-6 TO ML AND THE REQUEST VARIENCES WERE GRANTED

C ON APRIL 18 2001 THE BALTIMORE COUNTY TOWER REVIEW COMMUNITY MET AND APPROVED THIS PROJECT AS EVIDENCED IN THEIR LETTER DATED APRIL 25 2001

D THE BALTIMORE COUNTY DEVELOPMENT REVIEW COMMUNITY GRANTED THIS PROJECT AN (A) (7) LIMITED EXEMPTION FROM BCC SECTION 26B-171 THIS EXEMPTION WAS GRANTED MAY 14, 2001

E ON JANUARY 4 2002, THE ZONING COMMISSIONER FOR BALTIMORE COUNTY GRANTED THE VARIANCES REQUESTED IN CASE #02-159-A, AN APPEAL OF THE ORDER IN THAT CASE WAS FILED BY THE PEOPLE'S COUNSEL FOR BALTIMORE COUNTY ON JANUARY 14, 2002 THE APPLICANT IS PROCEEDING TO BUILDING PERMIT AT RISK

ZONING RELIEF REQUESTED AND GRANTED IN CASE #02-159-A-

1A. PETITION FOR VARIANCE FROM BCZR SUBSECTION 426 6 A.3 TO ALLOW A SETBACK OF 75' TO THE SOUTHERN PROPERTY LINE IN LIEU OF THE REQUIRED 200' FOR A WIRELESS TELECOMMUNICATION TOWER

1B PETITION FOR VARIANCE FROM BCZR SUBSECTION 426 6 A.3 TO ALLOW A SETBACK OF 75' TO THE WESTERN PROPERTY LINE IN LIEU OF THE REQUIRED 200 FOR A WIRELESS TELECOMMUNICATIONS TOWER (SETBACK FROM WESTERN PROPERTY LINE REVISED TO 135' AS REQUESTED BY BALTIMORE COUNTY DEPRM TO OBTAIN BUILDING PERMIT)

1C PETITION FOR VARIANCE FROM BCZR SUBSECTION 426 6 A.3 TO ALLOW A SETBACK OF 148' TO THE NORTHERN PROPERTY LINE IN LIEU OF THE REQUIRED 200 FOR A WIRELESS TELECOMMUNICATION TOWER

2A. PETITION FOR VARIANCE FROM BCZR SUBSECTION 426 6 A.4 TO ALLOW A SETBACK OF 40' TO THE SOUTHERN PROPERTY LINE IN LIEU OF THE REQUIRED 125' FOR EQUIPMENT CABINETS FOR A WIRELESS TELECOMMUNICATIONS TOWER

2B PETITION FOR VARIANCE FROM BCZR SUBSECTION 426 6 A.4 TO ALLOW A SETBACK OF 40' TO THE WESTERN PROPERTY LINE IN LIEU OF THE REQUIRED 125 FOR EQUIPMENT CABINETS FOR A WIRELESS TELECOMMUNICATIONS TOWER (SETBACK FROM WESTERN PROPERTY LINE REVISED TO 100' AS REQUESTED BY BALTIMORE COUNTRY DEPRM TO OBTAIN BUILDING PERMIT)

19 NO PARKING SPACES ARE REQUIRED FOR THE PROPOSED FACILITY

PARKING DATA
COMMERCIAL BUILDING
RETAIL-GENERAL
4 TENANTS - 5,800 S F
OFFICE-GENERAL
1 TENANT - 1 450 S F
TOTAL - 7 250 S F

PARKING REQ'D	(RETAIL)	5 SPACES/1,000 S F = 29 SPACES
PARKING REQ'D	(OFFICE)	3 3 SPACES/1,000 S F = 5 SPACES
TOTAL REQ'D		34 SPACES
TOTAL PROVIDED		34 SPACES

STORAGE STRUCTURES

EXISTING STORAGE BLDG	1 UNIT = 2 660 S F
EXISTING REAR STORAGE BLDG	5 UNITS = 5 600 S F
FUTURE STORAGE BLDG	10 UNITS = 8 000 S F
TOTAL AREA	16 UNITS = 16 260 S F.

PARKING REQ'D

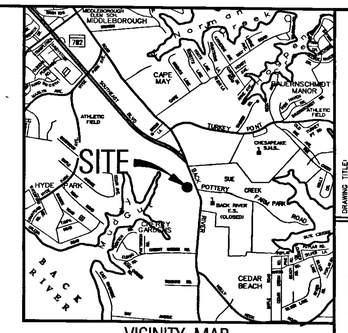
(1 SPACE/EMPLOYEE/UNIT)	16 SPACES
PARKING PROVIDED	30 SPACES

NOTE FRONT PARKING - MACADAM PAVED AND STRIPED
REAR PARKING - GRAVEL

20 A. TENANTS IN FRONT BUILDING
FREE-STATE GENERAL CONTRACTORS, INC
SAND PIPER CLEANING SERVICE
HUNTINGTON AND FISHING DEPOT
BARK AND BUBBLES

B TENANTS IN REAR BUILDING (STORAGE BUILDING)
MICHAEL'S OUTBOARD
FREE-STATE GENERAL CONTRACTORS, INC
COLLISION TRUCKING
JEFF'S LANDSCAPING
ROSEDALE CARPETS

21 SUBSEQUENT TO JANUARY 4 2002 THE DATE OF THE ORDER IN CASE #02-159-A, A FIELD SURVEY WAS CONDUCTED THE LOCATIONS OF THE EXISTING IMPROVEMENTS ARE MODIFIED ON THIS PLAN TO REFLECT THE RESULTS OF THE KCI FIELD SURVEY DATED MAR 18 2002



VICINITY MAP
SCALE 1" = 2000'

DRAWING TITLE: SITE PLAN
DRAWN BY: CTS | DRAWING NO: Z1
CHECKED BY: MK | SCALE: AS SHOWN
SURVEYOR KCI TECHNOLOGIES | PROJECT NO 1601003-07
CAD FILE 1601003/07/07 CI DGN

PROJECT
SAR# WA54XC461
BACK RIVER NECK
UNMANNED WIRELESS COMMUNICATION SITE
810 Back River Neck Rd
Baltimore, MD 21221

APC Realty & Equipment Company, L.L.C.
D.B.A. Sprint Spectrum L.P.
6905 Rockledge Drive
Bethesda, MD 20817
Phone: 301-214-9200 Fax: 301-214-9492

ENGINEERS
PLANNERS
SCIENTISTS
CONSTRUCTION MANAGERS
KCI TECHNOLOGIES
14502 Greenview Drive, Suite 424
Laurel, Maryland 20708
(301) 953-1821 (410) 792-8086
fax (410) 792-7419
www kci com

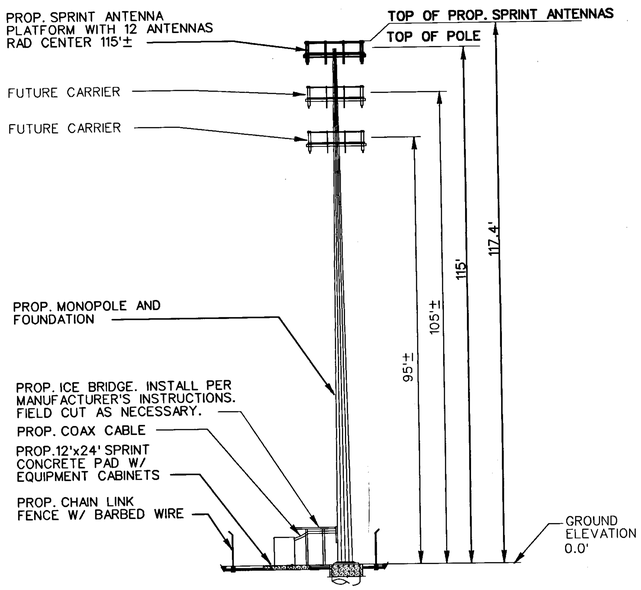
ISSUE DATE	SCHEDULE OF REVISIONS	DRAWN BY	CHK'D BY	SCALE	REVISE
9/6% SUBMISSION					
	5				
	4				
	3				
	2				
	1				
	0				
	NO				

1601003.07

SAR# WA54XC461
BACK RIVER NECK
810 Back River Neck Rd
Baltimore, MD 21221

STATE OF MARYLAND
No 25058
MARIANNE KIERNAN
PROFESSIONAL ENGINEER
SEP 2 4 2002

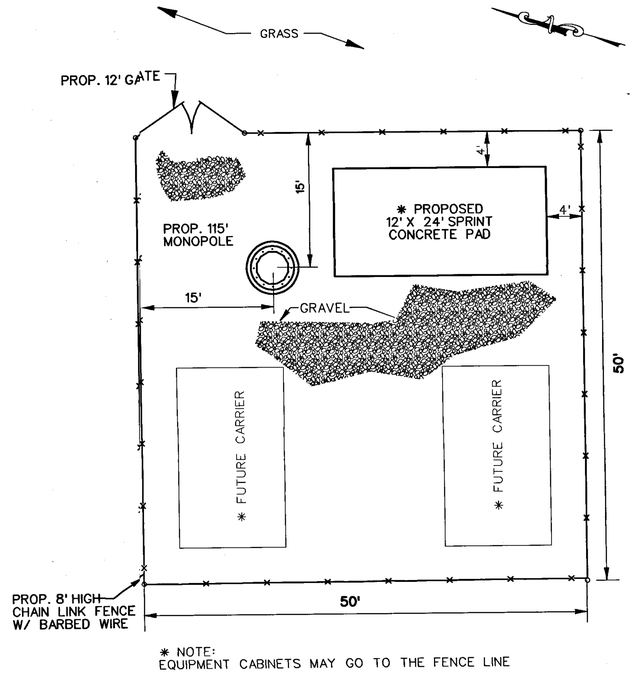
PET
-8A



MONOPOLE ELEVATION

SCALE: 1" - 20'

90 60 30 0 10 30

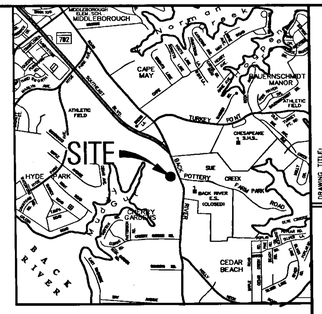


* NOTE:
EQUIPMENT CABINETS MAY GO TO THE FENCE LINE

COMPOUND DETAIL

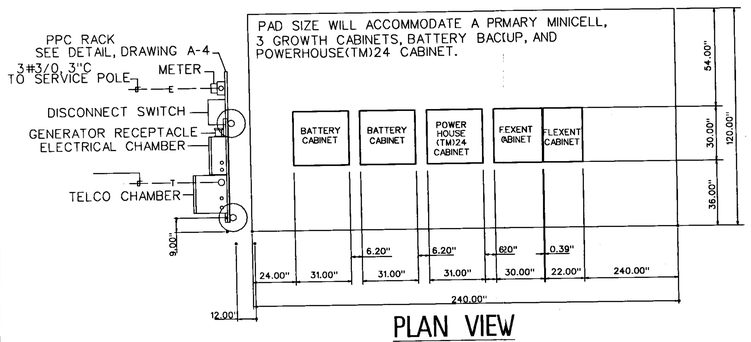
SCALE: 1"=50'

180 120 60 0 5 60



VICINITY MAP

SCALE: 1"=2000'

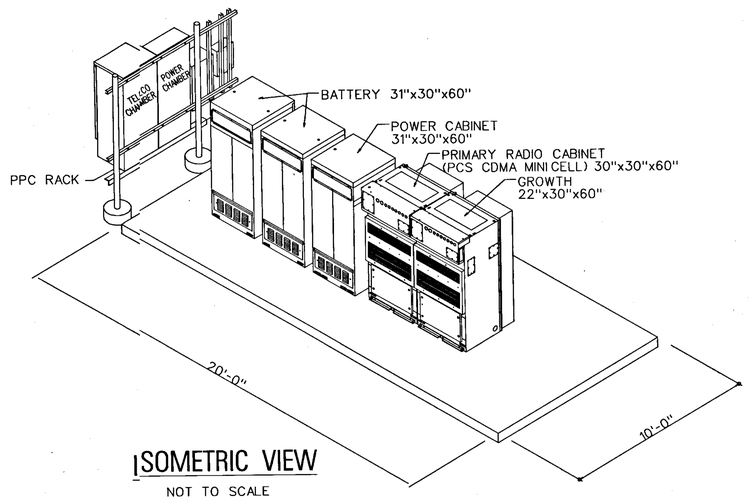


PLAN VIEW

NOT TO SCALE

6 CARRIER CABINET DETAIL

NOT TO SCALE



ISOMETRIC VIEW

NOT TO SCALE

PROJECT:
SAR# WA54XC461
BACK RIVER NECK
UNMANNED WIRELESS COMMUNICATION SITE
810 Back River Neck Rd
Baltimore, MD 21221

DRAWING TITLE:
PLAN TO ACCOMPANY PETITION FOR VARIANCES

DRAWING NO. Z2
DRAWN BY: CTS
CHECKED BY: CEO
SURVEYOR: KCI TECHNOLOGIES
PROJECT NO. 1601003-07
SCALE: AS SHOWN
CAD FILE: 1601003/07/07-22.DGN

APC Realty & Equipment Company, L.L.C.
D.B.A. Sprint Spectrum L.P.
6905 Rockledge Drive
Bethesda, MD 20817
Phone: 301-214-9200 Fax: 301-214-9492

ENGINEERS
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14502 Greenview Drive, Suite 424
Laurel, Maryland 20708
(301) 953-1821 (410) 792-8086
fax (410) 792-7419
www.kci.com

NO.	ISSUE DATE	SCHEDULE OF REVISIONS
5		
4		
3		
2		
1		
0	95% SUBMISSION	

DRAWN BY: JCH/ BT
ISSUE DATE: 9/24/02

1601003.07

SAR# WA54XC461
BACK RIVER NECK
810 Back River Neck Rd
Baltimore, MD 21221

STATE OF MARYLAND
No. 25048
MARIANNE KIERNAN
PROFESSIONAL ENGINEER
SEP 24 2002

PET 88

BACK RIVER CHURCH
BL
BM
TURKEY POINT ROAD
NECK LANE
BREMS ROAD
HF-21
WAGNER ROAD
CB
D.R.3.5
R.C.20
R.C.2
$1,000
$2,000
$3,000
$4,000
POTTERY FARM ROAD
BACK RIVER SCHOOL
POTTERY ROAD
PRIVATE FARM ROAD
ML
MI
RC5
AVENUE
CEDAR
PIER
D.R.5.5
ROAD
MUDDY GUT
E 51,000
E 52,500
E 54,000
E 55,500
KENT ROAD
PIERS
CUT
D.R.3.5
BENTON RD
PATTISON RD
WALL
CHERRY GARDEN RD

DRAWING TITLE: EXHIBIT
DRAWN BY:
CHECKED BY:
DRAWING NO.
SURVEYOR/ KDTECHNOLOGIES

PROJECT
SAR# WA54XC461
BACK RIVER NECK
UNMANNED WIRELESS COMMUNICATION SITE

APC Realty & Equipment Company, L.L.C.
D.B.A. Sprint Spectrum L.P.
6905 Rockledge Drive

ENGINEERS
PLANNERS
SCIENTISTS
CONSTRUCTION MANAGERS
14502 Greenview Drive, Suite 424
Laurel, Maryland 20708

ISSUE DATE
95% SUBMISSION
SCHEDULE OF REVISIONS

1601003.07

SAR# WA54XC
BACK RIVE
NECK
810 Back River Neck
Baltimore, MD 2122

DOT 3
(DUPLICATE)

LEGEND

EX. CONTOURS	240
PROP. CONTOURS	240
BUILDING RESTRICTION LINE	15' B.R.L.
INDICATES SURFACE FLOW	
RAILROAD LINE	
SPOT ELEVATION	+120.50
LIMIT OF DISTURBANCE	LOD
ZONING LINE	
PARKING SPACES	(60)

granted by
LAWRENCE E. SCHMIDT
ZONING COMMISSIONER
FOR BALTIMORE COUNTY

STONE FOUND

MARYLAND STATE MERIDIAN (NAD 83/91)

POINT OF COMMENCEMENT

POTTERY FARM ROAD

ZONE: RC 2
ZONE: DR BL

225'±

BACK RIVER NECK ROAD

S 66° 30' 02" W
25.3'±

POINT OF BEGINNING

ELSIE RUTH LUCIANO
L.2625 F.359
1.0000 AC.±
P. 947
USE: RESIDENTIAL / VACANT
ZONE: RC2

MICHAEL A. & ELSIE M. LUCIANO
PRIVATE DRIVE

ZONE: DR 3.5
ZONE: ML

S 66° 30' 02" W 197.76'

MICHAEL A. & ELSIE M. LUCIANO
L.2625 F.359
0.5000 AC.±
P. 947
USE: RESIDENTIAL
ZONE: DR 3.5

WILLIS B. & ELLEN J. GIBSON
L.5606 F.587
0.770 AC.
P. 947
USE: WOODED / VACANT
ZONE: RC20

WILLIS B. & ELLEN J. GIBSON
L.5606 F.587
0.5000 AC.±
P. 947
USE: RESIDENTIAL
ZONE: DR 3.5

WILLIS B. & ELLEN J. GIBSON
L.5606 F.587
0.5000 AC.±
P. 947
USE: WOODED / VACANT
ZONE: RC20

EX. DWELLING

EX. ACCESSORY BUILDING

EX. DWELLING

EX. DWELLING

FRANCES & ANTHONY A. DIANGELO
L.5606 F.587
0.770 AC.
P. 948
USE: WOODED / VACANT
ZONE: RC20

ALBERT & EVA ELADANTI
L.5606 F.587
0.770 AC.
P. 946
USE: WOODED / VACANT
ZONE: RC20

EX. DITCH

ZONE: R.C.-20
ZONE: ML

S 66° 30' 02" W 650.00'

LUCIANO DR
(PRIVATE)

N 23° 29' 58" W
10.00'

EX. PARKING
1003

EX. MACADAM PARKING LOT

EX. 1 STY. STORAGE BUILDING

EX. 1 STY. COMMERCIAL BUILDING

ZONE: RC2
ZONE: ML

1005

BACK RIVER LLC
L. 13577 /F. 535
4.1297 Ac.
P. 824
USE: COMMERCIAL
ZONE: ML

EX. 1 STY. MASONRY BUILDING (STORAGE)

EX. GRAVEL AREA

ZONE: ML
ZONE: RC-20

N 66° 30' 02" E 768.36'

ZONE: ML
ZONE: RC-20

EX. GRAVEL AREA
1002

EX. DITCH

100 YR
FLOOD PLAIN
(ELEV. 9.4')

148'
133'
133'
100'
135'
100'
75'
40'
40'

PROP. 115' MONOPOLE

PROP. 12' X 24' EQUIPMENT CABINETS

S 23° 29' 58" E 223.00'

EX. TREE LINE

EX. CONC. PAD

PROP. 50' X 50' COMPOUND
(SEE COMPOUND DETAIL
SHEET C2)

#1912 TO FOUND
STONE MONUMENT

STONE FOUND

THEODORE & ANN JULIO
L. 5368 F. 664
26.17 AC.
P. 833
USE: RESIDENTIAL
ZONE: RC-20

(NO RESIDENTIAL DWELLING
WITHIN 150' OF PROPOSED
WIRELESS TELECOMMUNICATIONS
COMPOUND.)

SITE PLAN
SCALE: 1" = 50'

CURVE DATA

No.	CHD BEARING	CHD	ARC LENGTH	ARC RADIUS
①	N 03° 03' 20" W	227.33'	228.15'	775.00'

GENERAL SITE NOTES

1. ELECTION DISTRICT NO. 15
2. COUNCILMANIC DISTRICT NO. 5
3. DEED REFERENCE: 13577/535
4. TAX ACCOUNT NO. 15-2300004470
5. SUBSEWER SHED: N/A
6. WATERSHED: 6 HARRIS MILL CREEK
7. A.D.C. MAP 37, GRID K-13
8. TAX MAP NO. 97, PARCEL 824
9. PROPERTY AREA: 4.1297 AC.±

SITE NOTES

1. APPLICANT: SPRINT PCS
1 INTERNATIONAL BOULEVARD
SUITE 800
MAHWAH, NJ 07495
CONTACT: C/O PAUL DUBLANYK
(201) 684-4180

2. PROPERTY OWNER: BACK RIVER LLC
500 VOGTS LANE
BALTIMORE, MD 21221-1634

3. SITE DATA: TAX MAP 97 GRID 24 PARCEL 824
TAX ACCOUNT NO. 15-2300004470
LIBER 13577, FOLIO 535
TRACT AREA: 4.31 AC.
ELECTION DISTRICT: 15
ADC MAP: 37 GRID K-13
ADDRESS: 810 BACK RIVER NECK ROAD
BALTIMORE, MD 21221
EXISTING USE: COMMERCIAL

4. CURRENT ZONING: ML

5. A MONOPOLE AND TELECOMMUNICATIONS ANTENNA ARE A PERMITTED USE BY RIGHT, IN THE ML ZONE.
A. HEIGHT OF PROPOSED MONOPOLE: 115'
B. SETBACKS, PER SECTION 426.6.A.3 REQUIRED:
MONOPOLE SETBACKS:
REQUIRED: FRONT - 200'
SIDE - 200'
REAR - 200'
PROVIDED: FRONT - 638'
SIDE - 75' MIN / 148' MAX
REAR - 135'
EQUIPMENT CABINETS SETBACK:
REQUIRED: FRONT - 125'
SIDE - 125'
REAR - 125'
PROVIDED: FRONT - 620'
SIDE - 40' MIN / 133' MAX' *
REAR - 100' *
* NOTE: EQUIPMENT CABINETS MAY GO TO FENCE LINE

6. HORIZONTAL CONTROL SHOWN HEREON IS BASED ON A GPS SURVEY PERFORMED BY KCI TECHNOLOGIES, INC. ON 03-18-02.

7. LATITUDE: 39° 17' 12.60" N (NAD 83/91) GROUND ELEVATION: 18' AMSL
LONGITUDE: 76° 25' 44.78" W (NAD 83/91) PROPOSED STRUCTURE HEIGHT: 115'
TOTAL ELEVATION ABOVE MEAN SEA LEVEL: 133'

8. TOTAL DISTURBED AREA: 4,900 SQ. FT. ±

9. THE PROPOSED FACILITIES WILL CONSIST OF A 12' X 24' SPRINT CONCRETE PAD, EQUIPMENT CABINETS AND 12 TELECOMMUNICATIONS ANTENNAS ON A PROPOSED 115' MONOPOLE.

10. THE STRUCTURE WILL NOT SUPPORT LIGHTS OR SIGNS UNLESS REQUIRED FOR AIRCRAFT WARNING OR OTHER SAFETY REASONS.

11. THE APPLICANT WILL PROVIDE A CERTIFICATION FROM A REGISTERED ENGINEER THAT THE STRUCTURE WILL MEET THE APPLICABLE DESIGN FOR WIND LOADS, OF THE ELECTRONIC INDUSTRIES ASSOCIATES (EIA).

12. IF THE ANTENNAS ARE NO LONGER USED FOR TELECOMMUNICATIONS PURPOSES FOR A CONTINUOUS PERIOD OF ONE (1) YEAR, THEY SHALL BE REMOVED BY THE ANTENNA OWNER/OWNER'S EXPENSE.

13. NO WATER OR SANITARY UTILITIES ARE REQUIRED FOR THE OPERATION OF THIS FACILITY.

14. PROPERTY SHOWN HEREON LIES WITHIN ZONE C, AN AREA OF MINIMAL FLOODING, AS PER FEMA COMMUNITY PANEL NO. 240010 0445 C EFFECTIVE DATE: NOVEMBER 17, 1983. HOWEVER, THIS SITE PLAN REFLECTS UPDATED TOPOGRAPHY NOT REFLECTED ON FEMA MAPPING. THE 100 YEAR FLOOD BOUNDARY IS SHOWN ON THIS PLAN BASED ON NEW TOPOGRAPHY AND THE FEMA BASE FLOOD ELEVATION OF 9.4'.

15. THIS SITE IS EXEMPT FROM STORMWATER MANAGEMENT REQUIREMENTS.

16. THIS SITE IS EXEMPT FROM THE BALTIMORE COUNTY WOODLAND CONSERVATION AND TREE PRESERVATION ORDINANCE.

17. WIRELESS TRANSMITTING DEVICES MUST COMPLY WITH ANSI STANDARD C95, 1-1982.

18. ZONING HISTORY:

A. THE 1971 MAP REVEALED A RECLASSIFICATION CASE 3715 DATED FEBRUARY 27, 1956 WHEREIN THE PROPERTY WAS RECLASSIFIED TO ML FROM R-6 AND BL.

B. THE 1971 ZONING MAP ALSO REVELED A RE-CLASSIFICATION AND VARIANCE CASE # 63-132 RV DATED 11/15/63 WHEREIN THE PROPERTY WAS RE-CLASSIFIED FROM R-6 TO ML AND THE REQUEST VARIENCES WERE GRANTED.

C. ON APRIL 18, 2001, THE BALTIMORE COUNTY TOWER REVIEW COMMUNITY MET AND APPROVED THIS PROJECT AS EVIDENCED IN THEIR LETTER DATED APRIL 25, 2001.

D. THE BALTIMORE COUNTY DEVELOPMENT REVIEW COMMUNITY GRANTED THIS PROJECT AN (A) (7) LIMITED EXEMPTION FROM BCC SECTION 266-171. THIS EXEMPTION WAS GRANTED MAY 14, 2001.

E. ON JANUARY 4, 2002, THE ZONING COMMISSIONER OF BALTIMORE COUNTY GRANTED THE VARIANCES REQUESTED IN CASE #02-159-A AN APPEAL OF THE ABOVE IN CASE WAS FILED BY THE PEOPLE'S COUNSEL (FOR BALTIMORE COUNTY ON JANUARY 14, 2002. THE APPLICANT IS PROCEEDING TO BUILDING PERMIT AT RISK.

ZONING RELIEF REQUESTED AND GRANTED IN CASE #02-159-A:

1A. PETITION FOR VARIANCE FROM BCZR SUBSECTION 426.6.A.3 TO ALLOW A SETBACK OF 75' TO THE SOUTHERN PROPERTY LINE IN LIEU OF THE REQUIRED 200' FOR A WIRELESS TELECOMMUNICATION TOWER.

1B. PETITION FOR VARIANCE FROM BCZR SUBSECTION 426.6.A.3 TO ALLOW A SETBACK OF 75' TO THE WESTERN PROPERTY LINE IN LIEU OF THE REQUIRED 200' FOR A WIRELESS TELECOMMUNICATIONS TOWER. (SETBACK FROM WESTERN PROPERTY LINE REVISED TO 135' AS REQUESTED BY BALTIMORE COUNTY DEPRM TO OBTAIN BUILDING PERMIT)

1C. PETITION FOR VARIANCE FROM BCZR SUBSECTION 426.6.A.3 TO ALLOW A SETBACK OF 148' TO THE NORTHERN PROPERTY LINE IN LIEU OF THE REQUIRED 200' FOR A WIRELESS TELECOMMUNICATION TOWER.

2A. PETITION FOR VARIANCE FROM BCZR SUBSECTION 426.6.A.4 TO ALLOW A SETBACK OF 40' TO THE SOUTHERN PROPERTY LINE IN LIEU OF THE REQUIRED 125' FOR EQUIPMENT CABINETS FOR A WIRELESS TELECOMMUNICATIONS TOWER.

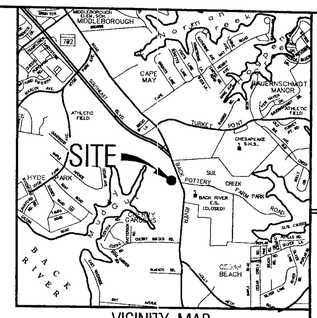
2B. PETITION FOR VARIANCE FROM BCZR SUBSECTION 426.6.A.4 TO ALLOW A SETBACK OF 40' TO THE WESTERN PROPERTY LINE IN LIEU OF THE REQUIRED 125' FOR EQUIPMENT CABINETS FOR A WIRELESS TELECOMMUNICATIONS TOWER. (SETBACK FROM WESTERN PROPERTY LINE REVISED TO 100' AS REQUESTED BY BALTIMORE COUNTY DEPRM TO OBTAIN BUILDING PERMIT)

19. NO PARKING SPACES ARE REQUIRED FOR THE PROPOSED FACILITY.
PARKING DATA:
COMMERCIAL BUILDING
RETAIL-GENERAL
4 TENANTS - 5,800 S.F.
OFFICE-GENERAL
1 TENANT - 1,450 S.F.
TOTAL - 7,250 S.F.
PARKING REQD: (RETAIL) 5 SPACES/1,000 S.F. = 29 SPACES
PARKING REQD: (OFFICE) 3.3 SPACES/1,000 S.F. = 5 SPACES
TOTAL REQD: 34 SPACES
TOTAL PROVIDED: 34 SPACES
STORAGE STRUCTURES:
EXISTING STORAGE BLDG. 1 UNIT - 2,660 S.F.
EXISTING REAR STORAGE BLDG.: 5 UNITS - 5,600 S.F.
FUTURE STORAGE BLDG.: 10 UNITS - 8,000 S.F.
TOTAL AREA: 16 UNITS - 16,260 S.F.
PARKING REQD:
(1 SPACE/EMPLOYEE/UNIT) 16 SPACES
PARKING PROVIDED: 30 SPACES
NOTE: FRONT PARKING - MACADAM PAVED AND STRIPED.
REAR PARKING - GRAVEL

20. A. TENANTS IN FRONT BUILDING:
FREE-STATE GENERAL CONTRACTORS, INC.
SAND PIPER CLEANING SERVICE
HUNTINGTON AND FISHING DEPOT
BARK AND BUBBLES

B. TENANTS IN REAR BUILDING (STORAGE BUILDING)
MICHAEL'S OUTBOARD
FREE-STATE GENERAL CONTRACTORS, INC.
COLLISION TRUCKING
JEFF'S LANDSCAPING
ROSEDALE CARPETS

21. SUBSEQUENT TO JANUARY 4, 2002, THE DATE OF THE ORDER IN CASE #02-159-A, A FIELD SURVEY WAS CONDUCTED. THE LOCATIONS OF THE EXISTING IMPROVEMENTS ARE MODIFIED ON THIS PLAN TO REFLECT THE RESULTS OF THE KCI FIELD SURVEY DATED MAR. 18, 2002.



VICINITY MAP
SCALE: 1" = 2000'

STATE OF MARYLAND
No. 25078
MARYANNE KIERNAN
PROFESSIONAL ENGINEER
SEP 24 2002

PROJECT: SAR# WA54XC461 BACK RIVER NECK
UNMANNED WIRELESS COMMUNICATION SITE
810 Back River Neck Rd Baltimore, MD 21221

DRAWING TITLE: SITE PLAN
DRAWING NO. Z1
DRAWN BY: CTS
CHECKED BY: MK
SURVEY BY: KCI TECHNOLOGIES
SCALE: AS SHOWN
PROJECT NO.: 1601003.07
CAD FILE: 1601003.07/07-01.DGN

APC Realty & Equipment Company, L.L.C.
D.B.A. Sprint Spectrum L.P.
6905 Rockledge Drive
Bethesda, MD 20817
Phone: 301-214-9200 Fax: 301-214-9492

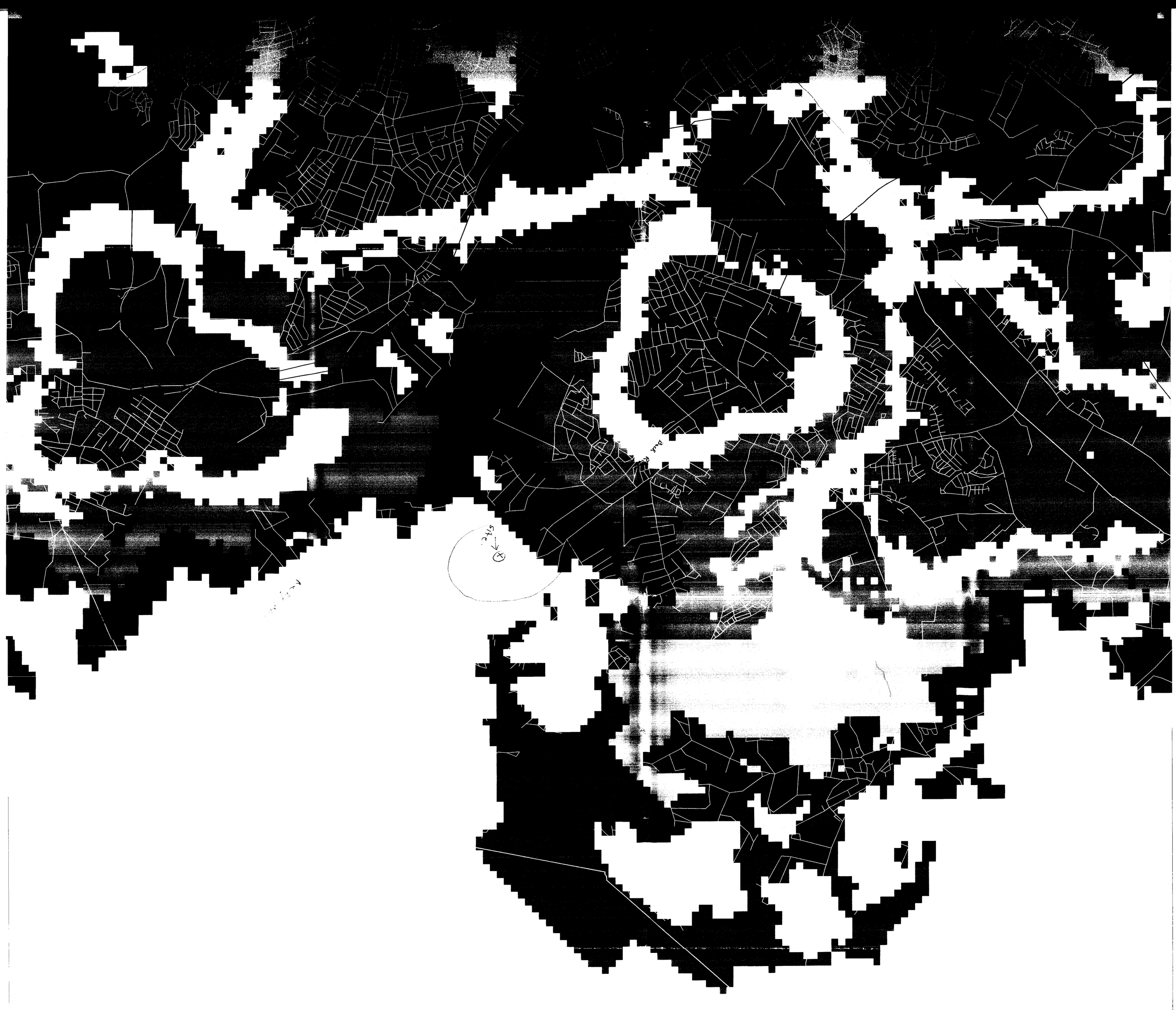
KCI TECHNOLOGIES
ENGINEERS
PLANNERS
SCIENTISTS
CONSTRUCTION MANAGERS
14502 Greenview Drive, Suite 424
Laurel, Maryland 20708
(301) 953-1821 (410) 792-8066
fax: (410) 792-7419
www.kci.com

NO.	REVISION	DATE	APPR.	DRAWN	CHECK STATUS	POST
5						
4						
3						
2						
1						
0	95% SUBMISSION					

SCHEDULE OF REVISIONS

1601003.07

SAR# WA54XC461
BACK RIVER NECK
810 Back River Neck Rd
Baltimore, MD 21221



Peninsula Gate G3

WA23XC549

DC03XC006

DC03XC388

DC03XC319

DC03XC158

DC03XC398

DC03XC540

WA23XC318

| | | |



SCALE 1"= 1000'
0 1/4 1/2 3/4 1 MILES
0 1000 3000 5000 FEET

BALTIMORE COUNTY OFFICE OF PLANNING

ESSEX - MIDDLE RIVER

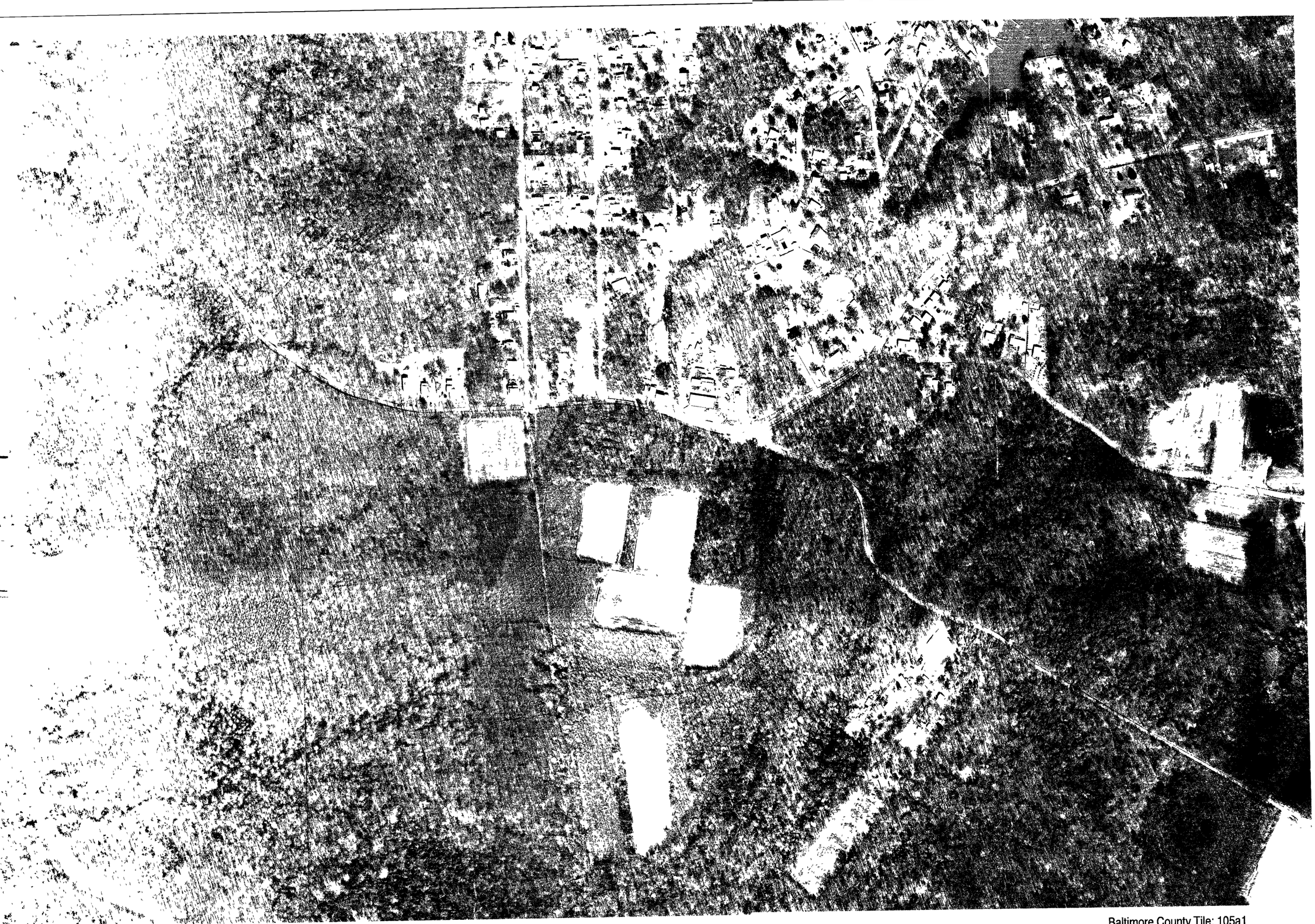
BALTIMORE COUNTY BASE MAP SERIES -

REVISED DATE SEPT '94

4B

PC2

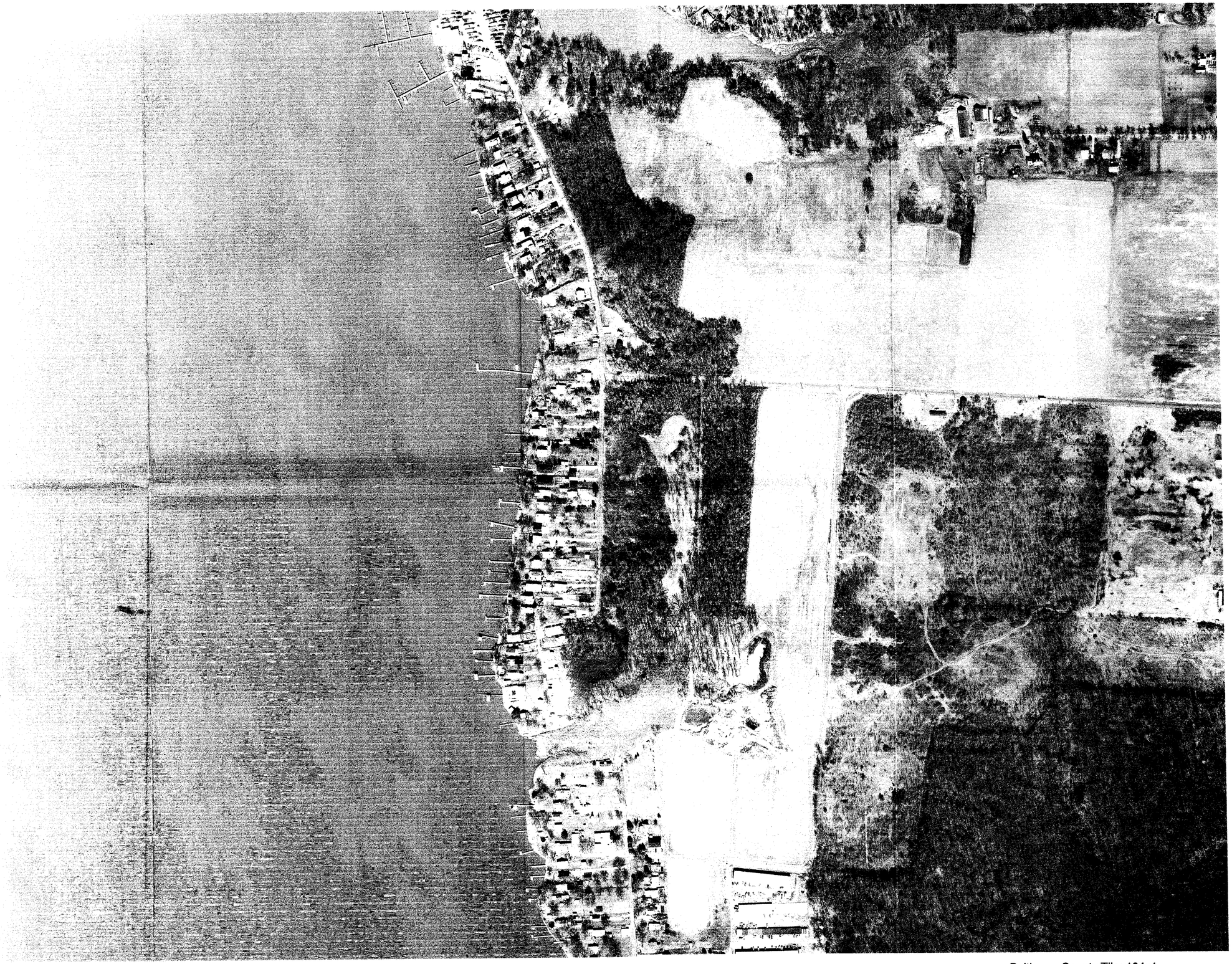
02-159-A



Baltimore County Tile: 105a1

altimore County GIS Services Unit Date of Photography March 1995 Scale. 1 inch = 200 feet

RH 6x 220



Baltimore County Tile: 104c1

timore County GIS Services Unit Date of Photography: March 1995 Scale: 1 inch = 200 feet

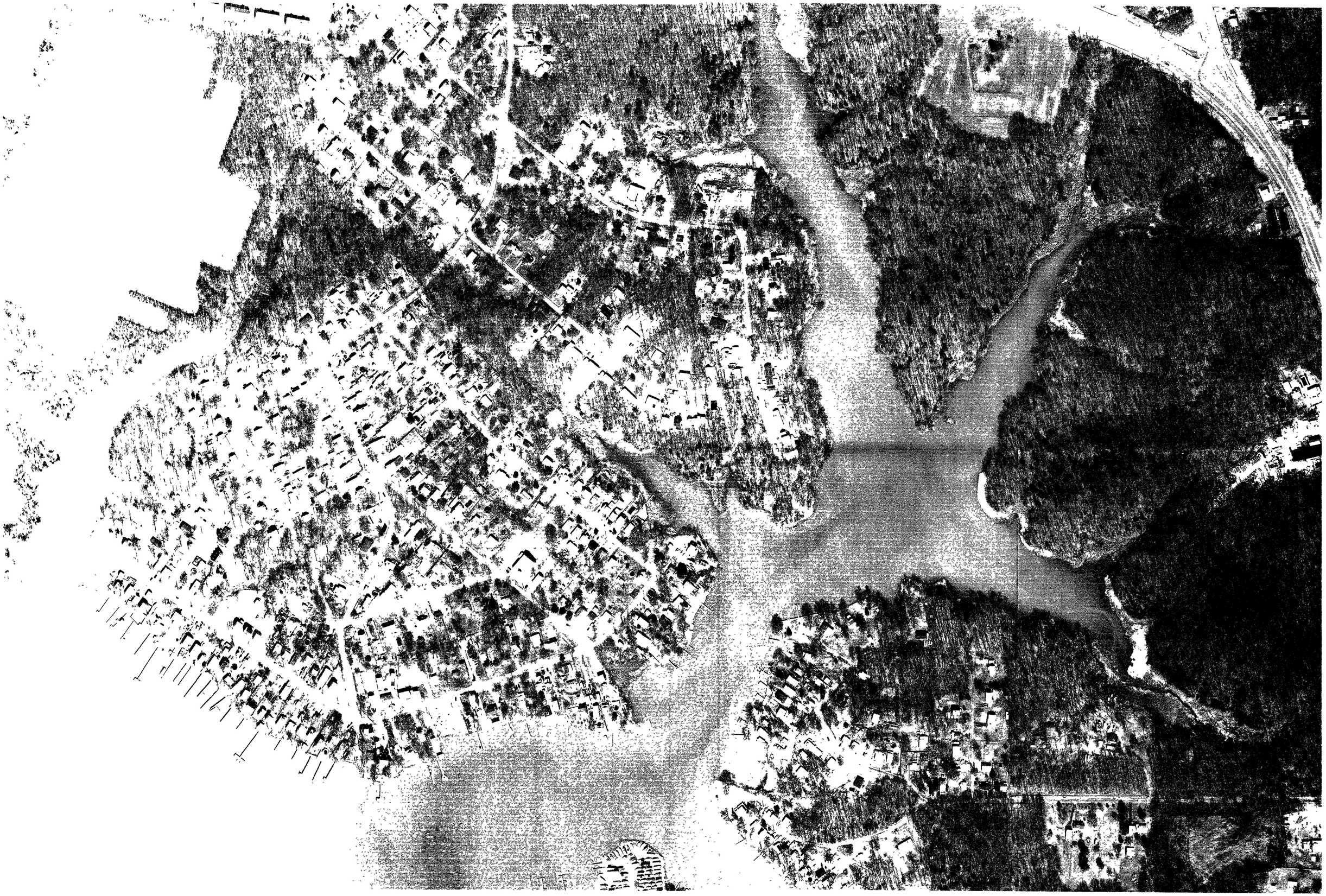
Ped. Ex 22C



Baltimore County GIS Services Unit Date of Photography March 1995 Scale: 1 inch = 200 feet

Baltimore County Tile: 098a3

Pet Ex 22B



Baltimore County GIS Services Unit Date of Photography. March 1995 Scale: 1 inch = 200 feet

Baltimore County Tile: 097c3

Pct. 6x 22A


97
1794514mN
449404.0mE
528
525
522
519
516
105
111
PATAPSCO
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FREEWAY
695
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SCHOOLHOUSE COVE
CHINK CREEK
COUNTRY CLUB COVE
GRAYS
CREEK
STATE ROADS COMM
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WITCHCOAT POINT
TODD POINT
GREENHILL COVE
PORTER POINT
ESSEX SKYPARK
SPARROWS POINT COUNTRY CLUB INC
7056 / 756
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46.69 A
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17.00 A
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15.72 A.
P 245
BOARD OF EDUCATION
2881/476
29.78 A
P 117
BOARD OF EDUCATION
4115/516
7.46 A
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PRIME REALTY CORP 460/145
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MAP97-877
MAP97-868
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MAP97-716
MAP97-878
MAP97-718
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MAP105-P 287
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PG5
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TRACT 25
TRACT 27
TRACT 28
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TRACT 36
TRACT 37
TRACT 38
TRACT 39
TRACT 40
TRACT 41
TRACT 42
TRACT 43
TRACT 44
TRACT 45
TRACT 46
TRACT

98

1794514mN
454890.2mE

528

525

106

522

519

516

175793.8mN
454890.3mE

977

980

968

971

112

HOLLY NECK LIMITED PARTNERSHIP
5568/706
67.71A
P210

HOLLY NECK LIMITED PARTNERSHIP
5501/680
P1

GEORGE PAUL ZAHRADKA
5857/281
67.15A
P205

HOLLY NECK LIMITED PARTNERSHIP
5619/337
P30

MAP 98 - P 143

MAP 98 - P 424

P/O MAP 98 - P.424

P/O P 143 - MAP 98

WELLS PT

CREEK

BROWN'S

BAY

FLOYD E PLOTT
4450/100
70.0A
P88

HOLLY NECK LIMITED PARTNERSHIP
5526/20
69.93A
P137

BALLISTON PT

AUGUST PAKASKI ETAL
6292/611
68.25A
P114

ROCKY POINT PARK
BALTIMORE COUNTY
4027/399
19.68 AC
F 76

BALTIMORE COUNTY MD
4991/189
106.55 AC
P27

ROCKY POINT GOLF COURSE

BACK RIVER

COVE

HAWK

CHESAPEAKE

HART ISLAND

MAP 112 - P6

DRUM POINT

ROCKY PT

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SCALE IN FEET

600 0 600 1200 1800

COMPILED BY
MARYLAND DEPARTMENT OF PLANNING
PROPERTY MAPPING SECTION

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PROPERTY LINE
SUBDIVISION BOUNDARY
TOWN BOUNDARY
PRIVATE ROAD
STREAM LINE
CONTINUING OWNERSHIP
PARCEL NUMBERING P ### (ASSIGNED TO IDENTIFY OWNERSHIP MUST BE PRECEDED BY A MAP NUMBER)

SCALE 1"=600' (RF 1 7200)

REVISED TO	DATE	BY	LIBER	LAST P NO	QUARTER-QUADRANGLE	DATE OF PHOTO	SHA GRID
	DEC '01	GPM					

MDP Maryland Department of Planning

BALTIMORE COUNTY,
MARYLAND

962-516
MAP NO.
105

Ref Ex 21 D

183108.9mN
449403.7mE

90

540

537

98

534

531

528

1794514mN
449404.0mE

944-528

MAP NO. 97

BALTIMORE COUNTY, MARYLAND

NORTHEAST CREEK

BACK RIVER

DEEP CREEK

COX POINT

HOPEWELL POINT

HOPKINS CREEK

NORMAN CREEK

MUDDY GUT

WALNUT POINT

GREENMARSH POINT

WETHERBY POINT

BREAD & CHEESE CR

EASTERN TERRACE

MAP 90 - P1272

MAP 90-P731

MAP 98-P63

MAP 98-P74

MAP 98-P76

MAP 98-P77

MAP 98-P6

MAP 104-P82

MAP 104-P206

K104-P157

BOARD OF EDUCATION 1933/98 19 76A P1004

BOARD OF EDUCATION 1706/625 1 22A

BOARD OF EDUCATION 3385/082 1510 A P 282

BOARD OF EDUCATION 3949/259 9.78A P 281

BOARD OF EDUCATION 3960/492 13 55A P 284 DEEP CREEK MID SCHOOL

BOARD OF ED 3917/59 14 00 A P 259

BALTO CO MD 4268/119 11 10A P 430

BALTO CO MARYLAND 4351/177 24 3 A P 403

BROWNING-FERRIS INC 5097/135 140 01A P.129

BROWNING-FERRIS INC 5237/540 83 83A P 184

ANNA C LAUENSTEIN, ETAL 6484/223 55 99A P 801

WALNUT POINT LLC 14562/455 55 627 AC P 233

BALTIMORE CITY BACK RIVER SEWAGE DISPOSAL PLANT

SANDALWOOD ELEMENTARY

DEEP CREEK MID SCHOOL

CAPE MAY LANDING

WATERFORD LANDING CONDO

FOX RIDGE MANOR

VALLEY POINT

MIDDLEBOROUGH

MARTINDALE REV

HILLTOP PARK

CHERRY GARDENS

PART CHERRY GARDEN FARMS

SCALE IN FEET

600 0 600 1200 1800

950 953 959 962

104

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PROPERTY MAPPING SECTION

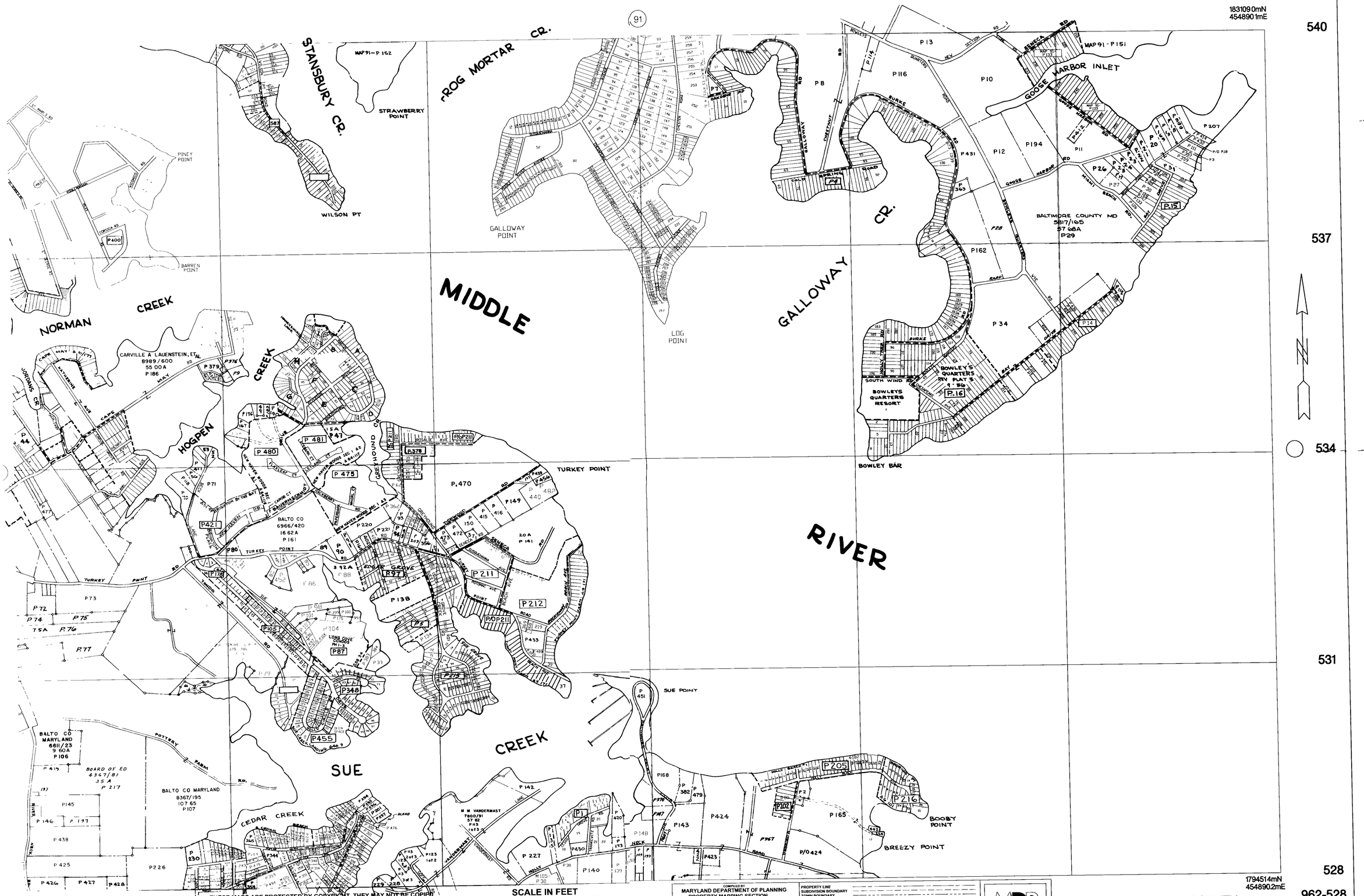
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PROPERTY LINE
SUBDIVISION BOUNDARY
TOWN BOUNDARY
PRIVATE ROAD
STREAM LINE
CONTINUING OWNERSHIP Z ia Z Z Z
PARCEL NUMBERING P 888 (ASSIGNED TO IDENTIFY OWNERSHIP MUST BE PRECEDED BY A MAP NUMBER)
SCALE 1"=600 (RF 1 7200)

REVISED TO	DATE	BY	LIBER	LAST P NO	QUARTER-QUADRANGLE	DATE OF PHOTO	SHA GRID
	DEC '01	GPM					

MDP Maryland Department of Planning

PLAT 21A


183109.0mN
454890.1mE
91
MAP91 - P152
STRAWBERRY POINT
STANSBURY CR.
WILSON PT
PINEY POINT
BARREN POINT
NORMAN CREEK
CARVILLE A LAUENSTEIN, ET AL
8989/600
55.00A
P186
MAY
CAPE MAY & KY177
CAPE KATHERINE AVE
JORDANS CR.
HOGPEN CREEK
P379
P376
P9
P400
P44
P477
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P481
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15A
P475
P211
P378
P220
P221
P362
P422
P80
TURKEY POINT
BALTO CO
6966/420
16.62A
P161
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P440
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P415
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P150
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P141
20A
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P104
LONG COVE (HOMES)
BALTO CO
MARYLAND
6611/23
9.60A
P106
BOARD OF ED
4367/81
35A
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POTTERY FARM RD.
BALTO CO MARYLAND
8367/195
107.65
P107
SUE
CREEK
CEDAR CREEK BEACH
P230
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M M VANDERMAST
7800/91
57.62
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P205
P216
P102
P165
P967
P/O 424
BOOBY POINT
BREEZY POINT
SUE POINT
P451
P.470
TURKEY POINT
MIDDLE
CREEK
LOG POINT
GALLOWAY POINT
ROG MORTAR CR.
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