7/23/08

IN THE MATTER OF THE APPLICATION AMERICAN LEGION LIBERTY POST 122 –LO; NEW CINGULAR WIRELESS PCS, LLC – CP FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE S/S OF PAINTERS MILL RD, S OF LYONS MILL RD 4414 PAINTERS MILL ROAD 2ND ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 06-637-SPHXA

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

RULING ON APPELLANT /PROTESTANT'S
REQUEST FOR RECONSIDERATION

In the matter of American Legion Liberty Post 122 /AT&T Tower, Case No. 06-637-SPHXA, the Board of Appeals issued an Opinion and Order on the 22nd of April, 2008. Richard Jones, Appellant in the above-mentioned case, filed a Motion for Reconsideration by way of a letter to the County Board of Appeals of Baltimore County asking the Board to reconsider its final Order in this matter.

In Mr. Jones' Motion, he cites specific parts of the Opinion in which he feels the Board incorrectly stated certain facts. Without rewriting the original Opinion in this ruling, it is the finding of this Board that all of Mr. Jones concerns set forth in his Motion were discussed in a public deliberation on June 11, 2008. The Board unanimously finds that nothing new was presented in the Protestant's Motion that was not considered at the hearing, or that was not available at the hearing. This Board feels that the original decision is not affected by anything raised in the Motion and that, therefore, the Board does not need to change the original Opinion.

Concerns brought forth by Protestant through evidence presented at the hearing were addressed by Petitioner's witness, and the evidence and testimony submitted by Petitioner's

witness was found to be credible and very thorough, and, in the opinion of this Board, disputed all Mr. Jones' arguments.

Therefore, the Motion for Reconsideration will be denied, and the decision of the Board will remain as originally stated in its final Opinion and Order issued April 22, 2008.

ORDER

IT IS THEREFORE THIS 23rd day of July, 2008 by the County Board of Appeals of Baltimore County

ORDERED that Protestant's Motion for Reconsideration be and the same is hereby **DENIED**; and it is further

ORDERED that the Board's original Opinion and Order issued on April 22, 2008, shall remain as the final Opinion and Order in this 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*.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Edward W. Crizer, Jr., Chairman

Lawrence M. Stahl

Robert W. Witt

GD/PMZ

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

RECEIVED BY
JUL 24 2008
People's Counsel for Baltimore County

July 23, 2008

Mr. Richard A. Jones
PO Box 792
Owings Mills, MD 21117

RE: *In the Matter of: American Legion Liberty Post 122*
– Legal Owner/Petitioner
Case No. 06-637-SPHXA /Ruling on Motion for Reconsideration

Dear Mr. Jones:

Enclosed please find a copy of the Board's Ruling on Motion for Reconsideration issued this date.

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 Bianco/sc

Kathleen C. Bianco
Administrator

Enclosure

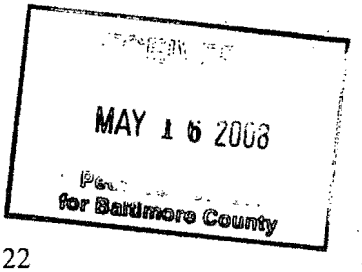
c: Phyllis Brotman /McDonogh Field Assn.
Towanda Maddox
Camille Givens-Patterson
Joanna and Sylvester Kearney
Lynn Ketara
Jason M. St. John, Esquire
Cingular Wireless PSC, LLC
Jack E. Barber; Syed S. Haider; Tim Stakes
Leon McGee, Jr., Commander
American Legion Liberty Post 122
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

GD
PMV

County Board of Appeals of Baltimore County

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May 14, 2008



Mr. Richard A. Jones
PO Box 792
Owings Mills, MD 21117

RE: *In the Matter of:* American Legion Liberty Post 122
Case No. 06-637-SPHXA /Request for Reconsideration

Dear Mr. Jones:

This will acknowledge receipt of your request for reconsideration filed this date in the subject matter. A copy of your motion to reconsider, along with any response that may be filed thereto, will be forwarded to the Board for their review and ultimate consideration.

With regard to this request for reconsideration, Rule 10 of the Board's Rules of Practice and Procedure states in part as follows:

> ...**The filing of a motion for reconsideration shall stay all further proceedings in the matter, including the time limits and deadlines for the filing of a petition for judicial review. After public deliberation and in its discretion, the board may convene a hearing to receive testimony or argument or both on the motion.** Each party participating in the hearing on the motion shall be limited to testimony or argument only with respect to the motion; the board may not receive additional testimony with respect to the substantive matter of the case. Within 30 days after the date of the board's ruling on the motion for reconsideration, any party aggrieved by the decision shall file a petition for judicial review. The petition for judicial review shall request judicial review of the board's original order, the board's ruling on the motion for reconsideration or both. [Emphasis added.]

Therefore, in response to your request for reconsideration, a public deliberation will be scheduled and appropriate notice promptly sent to all parties to this matter.

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

Very truly yours,

Kathleen C. Bianco
Administrator

c: Karl Nelson, Esquire
Office of People's Counsel

4/22/08

IN THE MATTER OF THE APPLICATION* AMERICAN LEGION LIBERTY POST 122 –LO; NEW CINGULAR WIRELESS PCS, LLC – CP FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE * ON PROPERTY LOCATED ON THE S/S OF PAINTERS MILL RD, S OF LYONS * MILL RD 4414 PAINTERS MILL ROAD 2ND ELECTION DISTRICT * 4TH COUNCILMANIC DISTRICT		BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 06-637-SPHXA

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

OPINION

This matter comes before the Baltimore County Board of Appeals as an appeal taken by Richard A. Jones, an area resident as noted on the appeal, from the October 30, 2006, decision of the Deputy Zoning Commissioner in which the requested zoning relief was granted with restrictions. The Petitioners were asking for a special exception, special hearing, and variance filed by the Legal Owner of the subject property, American Legion Liberty Post 122, Leon McGee, Jr., Commander. The subject property is located at 4424 Painters Mill Road. The special hearing is to continue the use of the property as an American Legion Post in combination with a wireless telecommunications facility and to confirm that there is no conflict with prior zoning Case No. 2812-S. The special exception is to permit a wireless telecommunications facility, construction to be consistent with the accompanying plans. The variance request is to allow a tower with a 47-foot side yard setback and a 59.6-foot front yard setback to any other residential property line in lieu of the minimum required 200 feet for both.

A public hearing was held before this Board on November 15, 2007. Appellant, Richard A. Jones, appeared *pro se*. Karl J. Nelson, Esquire, appeared on behalf of Petitioners. The Office of People's Counsel for Baltimore County participated in these proceedings, represented

by Carole S. Demilio, Deputy People's Counsel. Public deliberation was conducted on February 7, 2008.

Testimony and Evidence

Jack Barber, who is a consultant for AT&T and Cingular Wireless, testified on behalf of Petitioners. He stated that they prefer to build on existing structures (buildings, towers, etc.). He further testified that, since they need coverage in a particular cell, Petitioner is limited in the amount of places they can locate. He testified that he went to the most obvious locations first, consulting with WBAL on their tower, the T. Rowe Price complex, and the McDonough school campus, who all told him no. After reviewing the area, he then consulted with the American Legion Post 122. He felt that the property was suitable due to its elevation, location, and current use. The property consists of 3.09 acres zoned D.R. 16, and is surrounded by woods on three sides. Mr. Barber stated that the Petitioner's intent is to use a telecommunication tower in the design of a 125-foot flagpole with a base no larger than 3 feet, with a 50-foot by 50-foot compound. He further testified that they have used this design before in other locations, and that it seemed to work for everyone. The location and placement on the property, in his view, is the least invasive spot. In the 50-square foot compound, there will be a box the size of a small shed so that if other carriers come in, the boxes will be smaller since they are the largest of all the carriers. He stated that there was no other suitable B.L.-zoned land in the area, and that the American Legion looked quasi-commercial and was the most suitable. The Legion was also willing to accommodate their needs.

Mr. Barber also testified that he flew a test balloon of projected height, took photographs from points around the community, and simulated a flagpole in the photographs. After viewing

the photographs, he felt that it would work with the neighborhood and also comply with § 502.1 of the *Baltimore County Zoning Regulations* (BCZR), which reads as follows:

> 502.1--Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:
>
> a. Be detrimental to the health, safety, or general welfare of the locality involved;
>
> b. Tend to create congestion in roads, streets or alleys therein;
>
> c. Create a potential hazard from fire, panic or other dangers;
>
> d. Tend to overcrowd land and cause undue concentration of population;
>
> e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
>
> f. Interfere with adequate light and air;
>
> g. Be inconsistent with the purposes of the property's zoning classification nor in any other way be inconsistent with the spirit and intent of these Zoning Regulations;
>
> h. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
>
> i. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers, and floodplains in an R.C. 2, R.C. 4, R.C. 5 or R.C. 7 Zone.

Shashaikanbh Sena, an engineer employed by LTC for AT&T Cingular Wireless, testified as to the coverage this tower would bring to the area. He stated that he uses a computer propagation tool and confirmed that they have poor service in this area and have had many complaints from area customers. With this tool, he confirmed that this would satisfy their customers' needs.

Next to testify on behalf of Petitioners was Leon McGee, the Commander of Post 122. He testified that the Post started in the 1940s and that he, himself, has been a member for 21

years. He stated that the Post has a hall that they rent for income, and on Sundays they set up for church services held there. The Legion currently has 534 members, plus or minus. They raise money to do charity work. He further testified that they support veterans' hospitals and are mostly known for placing flags on graves on Veterans' Day. He testified that the property was originally 6 acres but that in 2000 they needed money. They sold half of the property, which left them 3 acres. He stated that the Post is on top of a hill that is severely sloped on the south side, which is heavily wooded and which has to remain due to a retaining wall that was used on the neighboring property. The property is narrow (200 ft. by 400 ft.). He further testified that the Post was hopeful to enter into an arrangement with AT&T to help subsidize their work. They are also looking forward to having a large flag flying and would be honored to care for it.

Mr. Richard Jones, Appellant, testified in opposition to the construction of a telecommunications flagpole. He stated that he mainly opposed the Petition due to the height of the flagpole, and believed that it would have an adverse impact on the area and on his property value. He stated that the height was equivalent to a 12-story building and that the base would be 6 feet in diameter and in no way resemble a flagpole. He testified that he also felt that the American Legion was operating out of compliance due to selling half of the property in 2000. He also stated that the property is not unique and that the hardship was self-imposed because they chose to sell 3 of the 6 acres. Petitioner's counsel stipulated that the base would be no larger than 3 feet.

People's Counsel was concerned with the special exception that was first approved with 6 acres and the need to amend the special exception to reflect the reduced acreage of their operation from the sale in 2000.

With regard to the variance request, the Petitioner indicated that the property is unique in a zoning sense by the fact that it is long and narrow and sits on a high point. The site plan indicates that the property is approximately 672 feet on the southern boundary and 209 feet wide. As such, the tower cannot be set back at 200 feet from any other owner's residential property line as the width is only 209 feet. From the evidence submitted (Petitioner's Exhibit #4), the side yard setback to the south is 47 feet. The side yard setback to the north is approximately 155 feet. The front yard setback is 59 feet. The area to the southern side setback of 47 feet is owned by an apartment complex. Between the apartment buildings and the property line is a severe slope that is wooded. It was noted during testimony that the slope would stay wooded to hold back the severe slope and that at the bottom was a high retaining wall to help hold the slope. The northern side setback was approximately 155 feet. That is the side from which the original 3 acres were split off. That 3 acre-parcel has a single residence not shown as protestants in this case. The front yard setback of 59 feet faces Painters Mill Road in an eastern direction. Currently, there is nothing on the opposite side of the road except fields and woods.

Considering the site on the property, this Board feels that that is the best location on the actual property. Even with the amount of relief being requested, we find that this is a good placement. We further find that the owner would suffer hardship and practical difficulty if the cell tower zoning regulations were strictly enforced. The Legion would not be able to lease its property as proposed. We find that the hardship and practical difficulty are not self-imposed by the selection of this site. The Petitioner outlined the extensive study done to locate the facility on existing structures and commercial sites in the area. None of the preferred locations was feasible. This Board feels that the Petitioner exhausted all options in this area.

Mr. Jones alleges in his written comments that the hardship is self-imposed because the Legion sold off 3 acres of its property, creating the narrow width with which we now have to contend. However, the Protestants provided no evidence to support their allegations.

The tower will be disguised as a flagpole. We feel that this is appropriate for the location and natural for the Legion. As shown by the Petitioner's enhanced photographs, Petitioner's Exhibit 5, the flagpole will not dominate the skyline or overwhelm the residential nature or look of communities in the surrounding area. The Tower Committee approved the site; the Planning Office supports the location provided that the antenna is disguised as a flagpole. Considering all the testimony and evidence, we find that the variances can be granted within the spirit and intent of the cell tower regulations and will not adversely affect the community.

Section 500.7 of the *Baltimore County Zoning Regulations* states:

> The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

The Petitioner requests, by special hearing, to continue the use of the property as an American Legion Post in combination with a wireless telecommunication facility and to confirm that there is no conflict with prior zoning Case No. 2812-S. The standard of proof for special hearings has generally been whether the proposed use is within the spirit and intent of the regulations and that it will not adversely impact the community. The Legion serves a public as well as a private purpose for its members. The tower will be disguised as a flagpole on a Legion property. For the reasons stated above, we find no reason that the cell tower will either adversely

affect the community or conflict with the special exception granted for a legion facility in the above case.

We find that the proposed use meets the criteria specified in § 502.1 of the BCZR and will not adversely affect the community for the reasons stated above. Therefore, we will grant the requested special exception to permit a wireless telecommunications facility on the subject property.

ORDER

IT IS THEREFORE THIS 22nd day of April, 2008 by the County Board of Appeals of Baltimore County

ORDERED that the variance request to allow a tower with a 47-foot side yard setback and a 59-foot front yard setback to any other residential property line in lieu of the minimum required 200 feet for both be and is hereby **GRANTED**; and it is further

ORDERED that the requested special hearing to continue the use of the property as an American Legion Post in combination with a wireless telecommunication facility and to confirm that there is no conflict with prior zoning be and is hereby **GRANTED**; and it is further

ORDERED that the special exception to permit a wireless telecommunications facility, with construction to be consistent with the accompanying plan, be and is hereby **GRANTED**, subject, however, to the restrictions below, which are conditions precedent to the relief requested herein:

1. The monopole will be designed as a flagpole as shown on Petitioner's Exhibit 4, with a base no larger than 3 feet;

2. The complex around the flagpole will be submitted to the Baltimore County's Avery Hardin for landscaping, and maintained for the life of the telecommunications tower; and

3. The flag will be proportioned with the flagpole (tower) and maintained by the property owner.

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

Edward W. Crizer, Jr., Chairman

Lawrence M. Stahl

Robert W. Witt

County Board of Appeals of Baltimore County

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RECEIVED BY
APR 22 2008
People's Counsel
for Baltimore County

April 22, 2008

Mr. Richard Jones
PO Box 792
Owings Mills, MD 21117

RE: *In the Matter of: American Legion Post 122 – Legal Owner;*
New Cingular Wireless PCS, LLC - CP
Case No. 06-637-SPHXA

Dear Mr. Jones:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules of Procedure*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all subsequent Petitions for Judicial Review filed from this decision should be noted under the same civil action number as the first Petition.** 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
Administrator

Enclosure

c: Phyllis Brotman /McDonogh Field Assn.
Towanda Maddox
Camille Givens-Patterson
Joanna and Sylvester Kearney
Lynn Ketara
Karl Nelson, Esquire
Cingular Wireless PSC, LLC
Jack E. Barber; Syed S. Haider; Tim Stakes
Leon McGee, Jr., Commander
American Legion Liberty Post 122
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

1/28/08

GD

RECEIVED BY
JAN 28 2008
for Baltimore County

BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY

IN THE MATTER OF:

AMERICAN LEGION LIBERTY POST 122,
Leon McGee, Jr., Commander,

and

New Cingular Wireless PCS, LLC,

Petitioners.

CASE NO. 06-637-SPHXA

****

PETITIONERS' CLOSING STATEMENT IN SUPPORT OF THEIR SPECIAL EXCEPTION, VARIANCE, AND SPECIAL HEARING APPLICATIONS

Petitioners, New Cingular Wireless PCS, LLC ("AT&T")[1] and the American Legion Liberty Post 122 ("American Legion"), by their undersigned counsel, hereby submit this closing statement supporting their applications for a special exception, variance, and special hearing, stating as follows:

I. Introduction

This case involves AT&T's request to construct a 125' stealth wireless flagpole on the American Legion property at 4424 Painters Mill Road in Randallstown, Maryland (the "Property"). The stealth flagpole will enable AT&T (and at least two other wireless carriers) to provide much-needed wireless services to residents of the area, local employees, and travelers along heavy commuter routes. The flagpole structure itself is the very type of stealth facility preferred by the County Council as evidenced by Baltimore County Zoning Regulation (the "Regulations" or "BCZR") §426.9(c)(3).

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[1] New Cingular Wireless PCS, LLC trades as AT&T Mobility and, as the same company, will be referred to throughout this memorandum as "AT&T."

To construct this stealth facility, AT&T has requested a special exception, a variance, and a special hearing.[2] The special exception request meets all applicable Baltimore County requirements, as well as the requirements set forth in *Schultz v. Pritts*, 291 Md. 1 (1981). The special hearing request is to allow the American Legion to continue to operate as an American Legion, as it has since 1953, in conjunction with the new flagpole wireless tower.[3] Finally, the variance application seeks relief from the 200' setback requirements due to the special circumstances and conditions that are peculiar to the Property. The variance request meets the County's criteria, as well as the criteria set forth in *Cromwell v. Ward*, 102 Md. 691 (1995).

AT&T's applications are challenged by one couple,[4] Richard and Mary Jones. The Joneses own a residential parcel at 9109 Lyons Mill Road, a 0.8 acre parcel down the street from the proposed flagpole. The Joneses were aided in their presentation by People's Counsel. They made a number of assertions, which are described in more detail below. The opposition's purported arguments fail to have any legal effect on the approval of the Petitioners' applications and the evidence makes this clear.

Below, AT&T will compare the evidence generated during the hearing to the applicable laws and show that it has more than satisfied its burden to demonstrate that the proposed flagpole meets all relevant legal standards.

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2 Of note is that AT&T, the American Legion, or any property owner in Baltimore County may construct a flagpole of any height at any time as flags and flagpoles are encouraged by the County Council. *See* BCZR § 300.1, 450.2(c)(6).

3 The Baltimore County Planning staff recommended this action. If the Board believes this action to be in error (because there is no specific regulation), AT&T will proceed with the special exception and variance applications only.

4 It is worth noting that, other than the Joneses, no neighbors or neighborhood associations in this high density residential area appeared to testify in opposition to the proposed flagpole.

II. The Site

The Property is a 3.09 acre rectangular parcel, zoned Density Residential ("DR"), that sits a "little bit higher," topographically speaking, than surrounding properties in the area. Hearing Transcript at 17-19, 101.[5] The Property is owned by the American Legion, a non-profit 501(c) corporation, with approximately 534 members, that generates revenue in order to, *inter alia*, send items to U.S. armed forces serving in war zones, provide funding to a hospital, and buy and distribute flags. TR at 216, 226. The Property runs 626' along its northern border, 672' along its southern border, and is 209' wide. TR at 19; *see also* Pet. Ex. 1. The Property is improved with a meeting hall, a large parking lot, a picnic area, and two storage sheds. TR at 27, 96. The Property has no residential buildings and is used for American Legion meetings, church services, cook-outs, and other events, including wedding receptions. TR at 18-19, 226. Rent from these events defrays the American Legion's expenses and promotes its charitable efforts in the community. TR at 216.

The structure proposed by AT&T is a "stealth" flagpole/monopole. In wireless parlance, a "stealth" facility is a wireless installation that is disguised to resemble a feature typically found in the environment. In this case, the wireless facility will be constructed to resemble a flagpole. Specifically, the antennas AT&T will use to transmit and receive signal will be placed *inside* the pole itself. TR at 23. Thus, from the outside, the pole will appear to be a freestanding and tapering cylinder, just like a traditional flagpole. *Id.* No wires, cables or other visible equipment will run outside of the cylinder. To complete the flagpole appearance, the facility will be capable of flying flags. Particularly, the American Legion will fly the

---

5 The hearing transcript will be hereinafter cited as "TR at ___."

American flag, and assume all responsibilities for maintenance of the flag in compliance with federal guidelines. TR at 214-15.

It is important to note that flagpoles are allowed in all zoning districts as a matter of right, without any height limitation. BCZR at §300.1. Thus, the American Legion could construct a flagpole to any height that does not interfere with FAA guidelines without zoning approval.

It is also important to note that the stealth facility will not be excessively wide. Much of the Joneses' testimony concerned their fears that the pole would be upwards of 6'. in diameter. These fears were not borne out by AT&T's evidence and application materials. To put the point to rest, however, AT&T stipulated at the hearing that the pole would not exceed 3' in diameter at its base and 2.5' in diameter at its tallest point. The Joneses accepted this concession. TR at 322-23.

The flagpole will be located inside a 50' by 50' fenced compound that will be situated near the southeast corner of the Property. TR at 21, 25. The fence around the compound will be 10' high and will prevent any wireless ground equipment from being visible from outside of the compound. TR at 33-35. The proposed flagpole will sit approximately 60' back from the front of the Property on Painters Mill Road and 47' back from a south facing side yard.[6] Pet. Ex. 1. The southeast corner of the Property was chosen as the location for the flagpole because "it's the farthest away from existing dwellings... [and] [i]t's also of sufficient height to allow the [technology] that [AT&T] needs [to provide services in the deficient coverage

---

[6] No variance is required for the 50' by 50' compound. The variance is only required because the flagpole is a wireless tower, whereas if a 125' flagpole already existed or was constructed, no variance would be necessary and AT&T would co-locate on the structure without zoning approval.

area]." TR at 30. Practically speaking, a 125' flagpole flying a large flag in front of an American Legion is a natural way to highlight the patriotic nature of the organization.

The southern and eastern boundaries necessitate variances because a total property width of 209' could never allow a 200' setback from each boundary. The unique characteristics of the Property, however, allow the Board to grant the variance. The property directly south of the proposed flagpole drops steeply down through a wooded buffer area that gives way to high density dwelling units. TR at 28. The flagpole will not be visible from the residences in this development because of the steep wooded incline. TR at 31-32. This evidence is undisputed. The eastern boundary of the Property fronts Painters Mill Road. The land directly across Painters Mill Road is being developed as a high density residential subdivision. TR at 41-42; *see also* Pet. Ex. 1. Ultimately, the flagpole is ideally suited to the Property, both aesthetically and technologically, due to the unique characteristics of the land and the unique 55 year use as an American Legion.

The Tower Review Committee conducted its own independent investigation and concurred with these conclusions. Specifically, the Tower Review Committee found that no viable co-locations or commercial properties, one viable residential property – the American Legion, and found that the stealth flagpole was ideally suited for this Property and its height was as low as it could be to gain the necessary coverage. TR at 176. *See also* Tower Review Committee Report, Pet. Ex. 6. Baltimore County's Planning staff also reviewed AT&T's requests and expressed support for the applications, noting that it "determined that the requested [flagpole] would not create any unsightly structures..." *See* Office of Planning Report, June 22, 2006. Additionally, the Deputy Zoning Commissioner concurred in these conclusions and found that AT&T's applications met the necessary criteria and that the special exception, the variance,

and the special hearing requests should be granted. *See* Findings of Fact and Conclusions of Law, Dep. Zoning Comm'r, dated Oct. 30, 2006.

III. AT&T's Coverage Objectives

AT&T's overarching objective is to provide reliable wireless services to existing and future customers. Reliable service can only be available when the signal strength in any given area is strong (or dense) enough to allow for a reliable (and invisible) connection between a customer's mobile device and the wireless carrier's antennas. When signal strength falls below a certain level, a coverage "hole" is created, and calls are dropped or will be disrupted by static. TR at 165. Signal is transmitted and received by AT&T's antennas, which are located high enough above ground level to clear clutter, project signal a reasonable distance, and allow for reliable communications.

AT&T has identified a coverage hole in Owings Mills in the area surrounding the Property. That hole is evidenced by customer complaints from commuters, residents, and employees of local businesses, and confirmed by AT&T's engineers. TR at 163-65. Shashaikanbh Sena ("Sena"), AT&T's radio frequency ("RF") engineer, testified to the hole's existence, and how it could be filled.[7] TR at 152-53. Sena uses a "computer propagation system" to analyze the performance of AT&T's network and evaluate potential coverage solutions. TR at 155-56. With respect to diagnoses, the propagation tool takes into account topography and coverage problems (such as a hole). The tool is also effective in finding a solution because it allows network modeling in order to simulate coverage that would be provided by any hypothetical antenna placement. *Id.* In this case, Sena did just that.

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[7] Sena was accepted by the Board as an expert in RF design and network engineering. TR at 153.

Using the propagation tool, Sena identified the center of the problem area as the intersection of Painters Mills and McDonogh Roads. TR at 75. Sena then testified that the poor coverage extended across long stretches of Painters Mill, McDonogh, Lyons Mill, and Winands Mill Roads. TR at 168-69. These roads are indisputably "heavy commuter routes." TR at 168. Sena also described the poor coverage currently found in the high density residential areas and businesses, such as T. Rowe Price. *Id.* It was undisputed that AT&T has a coverage problem in that area.

Having diagnosed the problem, Sena's next job was to solve it. First, Sena looked at AT&T's existing wireless installations outside of the immediate area to determine if they could be retuned or "tweaked" to resolve AT&T's coverage problem. TR at 166. The simple answer was "no" because the other installations were too far from the problem area to be of any use in this case. *Id.* Sena also testified that the coverage problem could not be resolved with a new antenna installation outside the coverage area. TR at 167. Rather, Sena explained that the problem could be resolved only by placing a new antenna installation at an appropriate height within the problem area. TR at 167.

Sena next used the propagation tool to create a "search ring." A search ring identifies the geographic area in which antennas must be placed in order to fix a coverage hole. TR at 167. The search ring in this case surrounds the intersection of Painters Mill and McDonogh Roads, extending out to a radius of 1/3 mile. Sena testified that a new antenna installation placed at an appropriate height within a 1/3 mile radius from that intersection would fill the hole and resolve this coverage problem. *Id.* The Tower Review Committee agreed that AT&T demonstrated a need for additional coverage in the area. *See* Tower Review Committee Report, Pet. Ex. 6.

Once a search ring is issued, AT&T's real estate personnel search in and around the area to ferret out potentially appropriate real estate solutions. As explained below, such solutions may range from the placement of AT&T's antennas on tall existing structure to the construction of a new facility.

IV. The Diligent Search

A. Co-Location

Jack Barber, a Site Acquisition Consultant for AT&T, ("Barber") testified that his job is to go into the field and identify viable sites to place or build antennas. TR at 16. Barber was provided the search ring (created by Sena), and was told that any suitable co-location opportunity needed to be between 100' and 130' tall. TR at 78. Barber testified that his and AT&T's first step is to determine if there are co-location possibilities within the search ring. TR at 17. Before even going out into the field, Barber conducted preliminary web-based research (*i.e.* Google Earth, SDAT, etc.) to determine if there were existing structures that were tall enough for co-location purposes. TR at 114-16. Simply put, there are no viable existing structures within (or even near) the search ring. TR at 79. In fact, there is no structure in or near the search ring that is more than 60' tall. TR at 81-82.

Even though there were no viable existing structures in the search ring or its immediate perimeter, Barber continued to search. Barber located the WBAL towers, which were "well outside the search area" by approximately 1 mile. TR at 80. Though it appeared likely that the WBAL towers were not technologically viable due to their distance from the search area, Barber approached WBAL about whether the towers were even available for consideration. *Id.* WBAL stated categorically that it does not "entertain cell services" on their towers. *Id.* No

other tall structures in or near the search ring were identified at the hearing because no such structures exist. TR at 69. The Tower Review Committee verified this fact during its review. *Id*; *see also* Tower Review Committee Report, Pet. Ex. 6.

B. Commercial Properties

In the absence of viable existing structures, Barber searched for commercially zoned properties, as it is the policy of AT&T and the County to seek out commercial parcels if co-location is not an option. TR at 82; *see also* BCZR § 426.5. Barber located two large pieces of property within the search ring, owned by the McDonogh School and T. Rowe Price, respectively. Barber contacted the school and was told it was not interested in having a wireless facility on its property.[8] TR at 83-84. Additionally, Barber contacted T. Rowe Price, which has a "campus" near the intersection of Painters Mill and Lyons Mill Roads. Barber was then informed T. Rowe Price would not allow a wireless installation on its campus. TR at 42, 59, 84; *see also* Pet. Ex. 3.

Barber also identified two additional commercial lots that were well outside of the search ring. TR at 86; *see also* Pet. Ex. 3. Barber knew the sites were well outside of the search ring and also believed those sites were "too close to an existing [AT&T installation]." TR at 87. Despite this belief, and the actual distance outside of the search ring, Barber submitted the coordinates to AT&T's RF engineers for a determination of viability. *Id.* AT&T's engineers informed Barber that those properties were "too close to another existing wireless site and

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[8] Barber re-contacted the McDonogh School prior to the Board's hearing (and after Mr. Jones claimed that McDonogh was interested at the Deputy Zoning Commissioner hearing) and was again told that McDonogh was not interested. TR at 84; *see also* Pet. Ex. 7 (e-mail from McDonogh School denying lease request).

therefore were not approved." TR at 88. Sena confirmed in his testimony that those two parcels were "too close to our existing sites," and therefore not viable. TR at 182.

During his testimony, Mr. Jones offered his lay testimony that a building approximately 1 mile (or more) away from the search area (in Mt. Wilson) was a viable co-location opportunity. Mr. Jones apparently based his opinion on his belief that the "Mt. Wilson location is actually closer to the area where AT&T desires cell coverage, [sic] than the WBAL towers that AT&T testified would have satisfied their needs." TR at 265. On the contrary, the undisputed expert testimony was that a new installation was required in the search ring or in its immediate periphery. TR at 157, 159. All of AT&T's evidence shows there were no viable co-location or commercial structures, and the Tower Review Committee concurred. Mr. Jones' lay opinion, based upon no technical information or analysis, does nothing to cast doubt about AT&T's diligent search and expert conclusion that the new installation was required to be located in the search ring or its immediate periphery.

C. Viable Residential Properties

With no co-location options or commercial properties available, Barber was left with no choice but to consider residentially-zoned parcels. The area consists of high density subdivisions. Barber knew that the Regulations require a three acre site and originally he could not find any in the area. TR at 92-93. Barber testified that he was "driving up Painters Mill Road [seeing all these small residential lots and he saw] a sign in front of the American Legion [that said] 'hall for rent'..." TR at 92. Barber testified that the American Legion intrigued him because it "looked quasi-commercial." *Id.* Barber approached the American Legion, which was interested in leasing space for a site, especially a stealth site disguised as a flagpole flying the American flag. TR at 214.

The American Legion site seemed ideal. Unlike the surrounding 1/4-1/3 acre lots, the Property was more than 3 acres. Not only did this size make the American Legion the only available residential lot that could meet the County's three acre requirement, it also offered greater setbacks than any of the subdivision lots. The Property's quasi-commercial and patriotic nature rendered the placement of a flagpole structure there unique.

V. The Special Exception

A "special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interests of the general welfare, and therefore, valid." *Shultz*, 291 Md. at 11. The Regulations permit a wireless communications tower by special exception in residential areas. BCZR § 426.5.[9] The Regulations provide for specific criteria in various subsections of § 426 that supplement and compliment the general criteria detailed in § 502.1. Shown below is that AT&T has more than satisfied its burden in demonstrating compliance with all applicable laws and regulations.

A. Siting Policies

The County's siting policy mirrors the AT&T activities described above.[10] Once a need for additional coverage is identified, the County requires antennas to be "placed on existing towers, buildings, and structures... where feasible..." BCZR is 426.2(A).[11] If an existing structure is unavailable and a new tower must be built, the County requires that, if available, it be built in a "medium – or high-intensity commercial zone..." BCZR § 426.2(B)(2).

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9 Despite this clear law, Mr. Jones testified that a cell tower in a residential area "is in conflict of the property's residential zoning classification and the cell tower conflicts with the spirit and intent of the zoning regulations." TR at 242. Mr. Jones is wrong as a matter of law.

10 The County's siting policy is found in § 426.2 and §426.9 of the Regulations.

11 This regulation allows co-location by right, without zoning approval.

Finally, the County allows towers on residential property by special exception, if the property is at least 3 acres, and only when there is no non-residential property available. BCZR § 426.9(C)(2), (3).

B. AT&T's Compliance with Specific Criteria

As mentioned above, the Regulations require specific criteria to be met before a tower can be built in a residential area. The evidence from the hearing, and the Tower Review Committee's approval prior to the hearing, all indicate that AT&T has more than met its burdens of production and proof.

1. Site Location

AT&T's search not only mirrored the County's requirements, but also met the specific criteria required to obtain a special exception. Any tower proposed in a residential area requires AT&T to establish, *inter alia*, that it attempted to place its antenna on an existing building or, if no existing structure was available, then no commercial property was available either. BCZR § 426.9(a)(1) and (c)(1)(a). The testimony and other evidence described above demonstrates that AT&T clearly satisfied its burdens relating to co-location and commercial property considerations. With respect to co-location, AT&T conclusively demonstrated that, in order to function properly, its antennas must be placed in a relatively circumscribed area defined as the search ring and the area immediate surrounding it. It is undisputed that there exists no tall structures in, or even proximate to, the search ring. Accordingly, from an engineering perspective, there are simply no viable co-location opportunities that can satisfy AT&T's coverage objective. Co-location simply is not an option.

With respect to commercial property, the search ring area is, itself, almost entirely consumed with high density residential subdivisions. There are no available commercial

properties in or near the search ring. The closest commercial parcels are approximately one mile to the north and infringe on existing AT&T facilities. Wireless installations at those commercial facilities would not meet AT&T's coverage objectives and would affirmatively interfere with other AT&T facilities. Again, as with co-location, there simply are no commercial alternatives in or near the area.

With respect to other large parcels, the only two identified parcels that exceed three acres are the T. Rowe Price campus and the McDonogh School campus. Both of these properties are unavailable. Thus, the only large parcel in the entire area with any commercial overtones is the American Legion Post – the site selected for this project.

a. Existing Structures and Co-Location Opportunities

As shown above, no viable structure existed in the 1/3 mile search ring or its immediate perimeter. TR at 79. This evidence is undisputed. As Sena explained at the hearing, no existing structure could be deemed viable unless it was in, or close to the perimeter of, the search ring. TR at 167-68. The tallest office buildings in or near the search ring are only 60' tall -- well below the height criteria. TR at 81. This utter lack of viable existing structures propels AT&T to its secondary goal of finding an available, viable, commercially zoned property on which to build a wireless communication tower. TR at 82; *see also* BCZR § 426.5.

b. Commercial Properties

Both McDonogh School and T. Rowe Price own large properties within the search ring. Neither property owner was interested in having a wireless facility on their property. TR at 83-84.

Barber also identified two commercial properties outside of the search ring, which were not technically feasible because the locations were too close to existing AT&T installations.

TR at 88. The bottom line is that there were no viable and available commercially zoned properties in or near the search area. *Id.* AT&T's diligent search more than complied with BCZR § 426.9(A)(2).

c. Viable Residential Properties[12]

All remaining properties in or near the search ring were small DR zoned parcels containing dwellings. TR at 89. The Regulations require that any residential property be at least three acres in order to accommodate a tower. BCZR § 426.9(c)(2). The Property is more than three acres. All other residential properties in the area are less than 3 acres per lot. TR at 90; *see also* Pet. Ex. 3.

These facts led Barber to the American Legion, which is more than three acres (unique in that area), and "look[s] quasi-commercial," according to Barber TR at 92. Barber approached the American Legion (after seeing a sign "hall for rent") about having a wireless tower disguised as a flagpole and the American Legion "[was] proud and glad to do it." TR at 93. First Vice Commander McGee ("Commander McGee"), the individual in charge of the American Legion Post, testified that the American Legion agreed to host the tower for two reasons: first is "pride of having an American flag..." and the second, financial assistance. TR at 215. Commander McGee also testified that the American Legion will take responsibility for the maintenance and protections of the flag and its related and required ceremonies. TR at 214.

AT&T conducted a diligent search and proceeded exactly as the Regulations require. There are no co-location sites, no commercially zoned available property, and there is

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[12] Because no co-location or commercial properties are available, technically AT&T does not have to show that the proposed residential site is "more consistent with the legislative policy in § 426.2 than in an available [commercially zoned] property." BCZR §426.9(C)(1)(a). That standard, however, is met in this case because a flagpole on an American Legion Property is consistent with the legislative policy set forth in BCZR § 426.2, as well as other sections of the Regulations. *See* BCZR § 300.1, 450.2(c)(6).

one viable, from both a zoning and technological perspective, residential site – the American Legion.

2. AT&T's Compliance with Other Specific Criteria

The proposed flagpole is designed to allow co-location for at least two providers, in addition to AT&T, as required by BCZR § 426.2(B)(1), 426.9(A)(3). It was undisputed that the flagpole and the surrounding compound will accommodate the antennas and equipment for AT&T and at least two other providers. TR at 33, 146-147.

Additionally, the Property's relatively high ground elevation allows AT&T to meet its coverage objective with a structure of only 125'. BCZR 426.9(A)(4) requires the "tower" to be "no higher than what is required to enable present and future co-location..." Sena testified that AT&T engineers originally thought that a new tower in the search area needed to be 150', but because the American Legion property was "on a very good elevation" it was brought down to 125'. TR at 174. Furthermore, Sena testified that 125' was the minimum acceptable height from an engineering perspective. TR at 175-176.

Finally, AT&T proposes to build a flagpole on an American Legion site, which is an appropriate improvement that fits in with the current use of that property. In fact, AT&T's proposal mirrors the Regulations, which require a tower in a residential area to be "disguised as a structure or natural formation, such as a flagpole, steeple or tree, which is found or likely to be found, in the area of the tower..." BCZR § 426.9(C)(3) (emphasis added).

C. General Criteria

As noted above, a use allowed by special exception is presumptively valid. *Shultz*, 291 Md. at 11. This is because drawbacks that are associated with the use (in this case a tower) already have been legislatively weighed and deemed acceptable. *Id.* at 21. A special

exception should be approved unless the proposed use at the proposed location possesses drawbacks greater than those inherently associated with the use, regardless of its location within the zoning district. *Id.* at 22-23.

In the case of a tower, its drawback is its visibility. *See AT&T Wireless Services v. Mayor & City Council of Balt.*, 123 Md. App. 681, 698 (1998) (the *Schultz* test requires a determination of whether a tower's visibility drawback is more or less at a location other than the proposed site). The question, therefore, is whether the American Legion placement creates visibility problems that will exceed those generally associated with tower placements elsewhere in this DR zoned area. The answer here is that the drawback of visibility is actually reduced - or, arguably, eliminated - by the fact the tower is designed as a flagpole and will be situated in front of an American Legion post. Testimony showed that a tall flagpole alongside a road is not unusual and is common at American Legion posts. TR at 99. Additionally, a flagpole that contains hidden wireless antennas can be no more of a drawback than a flagpole with no hidden antennas, which are allowed as a matter of right and have no height limitations.[13] This is to say there is no drawback of visibility.

Even aside from the flagpole's stealth characteristics, it is clear that the proposed project more than satisfies the *Schultz* test. It is undisputed that the largest available parcel in the area is the Property. It is also undisputed that the Property is the only commercial-type property in the search area. Thus, placing the wireless facility there allows for the greatest setback the lowest impact on adjoining neighbors, and the most consistency with the property's existing views. Aside from these factors, the Property also possesses a unique attribute of a steep

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[13] BCZR §301(A) applies to freestanding structures such as barns, silos, grain elevators, drive-in theater screens, poles or flagstaffs, as well as other structures located on the top of buildings. BCZR §301(B) then applies to those structures located on top of existing buildings.

topographical drop-off on its southern boundary. Thus, placement of a wireless facility at its proposed location will have little or no visual impact on the closest nearby residences.

In light of the evidence discussed above, the Joneses can rebut the *Schultz* presumption in favor of this proposed special exception application only by demonstrating that there exists some property or group of properties that offer reduced visual impact from the Property. No such evidence was produced because no such property exists. All available properties in and near the search ring are very small DR zoned, parcels improved by homes. It goes without saying that the Property is a vastly better site for a new wireless installation of any type, particularly a stealth facility, than the nearby residential subdivisions. Moreover, even if a nearby neighbor saw some logic to placing a monopole on his quarter-acre property, any such project would run afoul of the County's minimum lot size requirement.

Additionally, and as discussed above, the proposed flagpole has been "located and designed to minimize its visibility from residential and transitional zones," as required by BCZR § 426.2(B)(3). AT&T took pains to minimize the visibility of the proposed structure. First, AT&T agreed to use stealth technology by cloaking the tower as a flagpole. This legislative preference for a stealth facility is evidenced by Regulations which require a tower to be disguised as, *inter alia*, a flagpole. BCZR 426.9(C)(3). Moreover, AT&T picked the largest available property so as to maximize setbacks. The Property, and the flagpole's location on it, further reduces visibility by taking advantage of the steep topographical drop off at the Property's southern boundary. That drop-off will make the flagpole invisible or nearly invisible from the closest homes.

Finally, § 502.1 lists general criteria that is required of all special exceptions and AT&T presented evidence of compliance with each criterion. First, Barber testified that the

flagpole and its surrounding compound will have no adverse impact on the general health, safety, and welfare of the area, thus satisfying BCZR §502.1(A). TR at 71. Furthermore, the installation is "not a manned site," (*id.*), and so it will not create traffic, traffic congestion, burdens on any public systems, or create any kind of fire hazard or panic hazard, thus satisfying BCZR §§ 502.1(B), (C), (D), and (E). *Id.* Barber testified that the flagpole will not interfere with anyone's light or air, that it creates no environmental issues such as run-off or impermeable surfaces, thus satisfying BCZR §§ 502.1(F) and (H). *Id.* Additionally, Barber testified that the flagpole would not create any noise, fumes, odors, or vibrations, satisfying BCZR §§ 502.1(G) and (I), because it is "not a manned site." *Id.*

Just as AT&T's evidence regarding the general criteria for a special exception was undisputed, the only potentially relevant opposition testimony came from Mr. Jones' personal and non-expert testimony that his property value would be reduced in value by the "cell tower," but no expert evidence supported his claim.[14] Mr. Jones' conclusion has no support in fact or law. Consequently, the only evidence of an adverse effect on the Joneses' property is his own lay testimony that this property will lose value because of a flagpole located down the street in front of an American Legion that has existed for nearly 55 years, nearly 10 more years than the Joneses have owned their property.

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[14] Mr. Jones made a confusing argument that the State of Maryland had determined that the assessed value of his property, and his own tax liability was reduced because of his home's proximity to a cell tower. TR at 287-288. This is unclear because his home is not in proximity to a cell tower. At most, Mr. Jones' home is in close proximity to a proposed stealth cell tower that will look exactly like a flagpole (which could be built anywhere and everywhere around his property). Mr. Jones' argument was rejected because there was no evidence of what information Mr. Jones provided to SDAT in order to get his assessment lowered. TR at 291-92.

VI. The Special Hearing

In 1953, the American Legion requested and obtained a special permit to operate a "private club" on the Property. Prot. Ex. 8. When a property is subject to a special permit, it is the Planning staff's position that the Board must approve the "continued use" of the property for the originally permitted purpose when a new use is proposed. Here, the Planning staff required a special hearing to request continued use of the Property as an American Legion hall after the wireless facility is constructed. This request for a special hearing, recommended by the Planning staff is, if necessary, a request to modify the permit to operate a private club to include the proposed stealth flagpole.

The evidence suggests that the American Legion should be able to continue to operate an American Legion, while modifying that use to include a 125' stealth wireless tower disguised as a flagpole. Adding the flagpole does not change the character of the original special permit because the American Legion will still operate as it has for nearly 55 years, only it will have a flagpole on the front of the property. Consequently, AT&T and the American Legion request that the American Legion continue to be an American Legion, with the additional use of a wireless tower through special exception on the Property.

Mr. Jones alleges that the American Legion's sale of 3 acres (of its original 6 acre parcel) in 2000 violated the original special permit and he therefore objects to the special hearing. TR at 273-76. Mr. Jones provided no evidence of this alleged violation.[15] *Id.*

VII. The Variance

The Property is 209' wide. BCZR § 426.6(1) requires any tower in a residential area to be "set back at least 200' from any other owner's residential property line." A tower

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15 AT&T objected to Mr. Jones' testimony and every objection was sustained. TR at 273-76.

cannot be on property that is 209' wide and also be set back from each property line by 200'. Because the surrounding properties are residences, AT&T's proposal necessarily requires setback variances. BCZR § 426.11 expressly allows this Board to grant a setback variance for wireless towers, as long as the variance is in accord with BCZR § 307.1. BCZR § 307.1 sets forth the legal criteria for variances and is consistent with *Cromwell v. Ward*, 102 Md. App. 691 (1995). Both sources require, *inter alia*, a showing that some unique physical condition of the land, or special circumstances peculiar to the land or structure, would cause practical difficulty or undue hardship to the property owner if strict compliance with the Regulations was required.

A. The Uniqueness of the Property Warrants a Variance

Petitioners presented overwhelming evidence of the unique characteristics of the land and the structure, which more than meets their burden of production for a granting of the requested variance.

The Property is unique because it is the only 3 acre parcel in an area that consists of residential properties less than 3 acres. TR at 90. The Regulations require at least a 3 acre parcel for a tower to be built on residential land, and the Property is the only one in the vicinity of the search area that can meet that requirement. *Id.* The Property is quasi-commercial, as Barber so aptly described it. TR at 92. The Property has no residence on it, it has several commercial buildings on it, and it operates under a special permit as a private club. All other properties in the are improved with residences. The American Legion is the only property in the area with a "compendium of buildings." TR at 99. These buildings will screen some portion of the structure from certain vantage points. Moreover, a tall flagpole is uniquely consistent with an American Legion post.

The Property also sits at a higher topographical level than other properties in the area. TR at 17-19. This allows a new structure that is only 125' above ground level. Further unique is the southern drop-off, which will allow the flagpole to remain completely hidden from the neighbors closest to the flagpole itself. TR at 31-32. The Property has been used in a quasi-commercial capacity since 1953 and it is the only such property in the area to be used in such a manner. These numerous unique qualities stem from the "unique physical condition of the land" and the "special circumstances peculiar to the land or the structure."

B. Strict Harmony with the Spirit and Intent of the Setback

Section 307.1 of the Regulation govern, generally, how variances are to be granted. In addition to the test detailed above, the Regulations only allow for a variance grant "if [the use] is in strict harmony with the spirit and intent of said [regulation]... and only in such a manner as to grant relief without injury to public health, safety, or general welfare." BCZR § 307.1.

With respect to the spirit and intent of the regulation, AT&T presented evidence that shows compliance. If the goal of a setback is to insure that a particular use has a minimal impact on adjoining properties, the proposed flagpole has accomplished that goal. The flagpole will be placed in such a location on the Property that it is invisible or nearly invisible to the closest residential neighbors. This has the same impact (or less) as if it were 200' away. The best case scenario if the flagpole were placed 200' away is that it would create the exact same impact at its proposed location -- namely, the southern neighbors could not see it. As to the health, safety, and general welfare, there is no evidence of any injury or detrimental effect. To the contrary, the new wireless services will serve as an additional safety feature that benefits the

commuters, workers, and residents in the area. Ultimately, AT&T's entire proposal is consistent with the spirit and intent of the Regulations, as was planned from its initial stages.

C. Counter Arguments

Rather than argue the Property is not unique, Protestants raise two other arguments, both of which fail. First, they claim that the American Legion created the hardship when it sold three acres in May 2000. This argument wrongfully assumes, *inter alia*, that legally subdividing property with no intent to create a situation requiring a variance years later is a legally defined "self-created hardship." Protestants' second argument mistakenly relies on an unreported Court of Special Appeals case from 2005, *Sprint, PCS v. Baltimore County*. *See* Prot. Ex. 17. People's Counsel essentially argues that *Sprint* forecloses all towers to variances. Not only does this ignore the fact-intensive analysis due each zoning case, but it ignores the Regulations which expressly allow setback variances for towers. Reliance on *Sprint* can be valid only if AT&T's only rationale for the variance request is that the property is too narrow and if AT&T's application matched Sprint's in all other details. The American Legion's property is unique for many reasons in addition to its narrowness, and *Sprint* is inapplicable on its facts.

1. The Sale of Three Acres Did Not Create Hardship.

A "typical type of self-created hardship arises from an act of commission by the owner . . ." *Mueller v. Baltimore County,* 177 Md. App. 43, 90 (2007) (citing *Richard Roeser Prof'l Builder Inc. v. Anne Arundel Co.*, 368 Md. 294, 317 (2002). Maryland courts have defined a self-created hardship as "requir[ing] an affirmative action . . . that is itself the sole reason for the need for the variance." *Stansbury v. Jones*, 372 Md. 172, 198 (2002). *Stansbury* expressly excluded the legal subdivision of land as a "normal" or "traditional" self-created hardship. *Id.* While conceding that subdividing a lot is an act of commission, the Court held

that, generally, subdividing property does not constitute a self-created hardship for variance consideration purposes. *Id.* *Stansbury* goes on to list the "normal" acts of commission that have been held to constitute self-created hardship, including illegal construction prior to zoning approval, surveying errors, and inferior building design that needed a variance to modify the building for its intended purpose. *Id.* at 198-99.

Stansbury's rationale harmonizes with other hardship cases holding that the mere "purchase of property with knowledge of use restrictions does not prohibit a purchaser from claiming a special or unnecessary hardship . . ." *Roeser*, 368 Md. at 308. *See Chesley v. Annapolis*, 176 Md. App. 413, 437 (2007) (mere purchase of property with knowledge that a variance will be needed in order to accomplish the purchaser's plan is not a self-created hardship).

The American Legion's legal subdivision of the property in 2000 would not be a self-created hardship even if evidence existed that showed it was done with full knowledge that the American Legion would require a variance seven years in the future to situate a wireless facility on the Property. In fact, the evidence shows the exact opposite. The undisputed testimony in the record was that the American Legion sold 3 acres to "pay off the mortgage and all outstanding debts . . . and brought [the] rental hall up to modern standards . . ." TR at 228.[16]

If for some reason, the Board decided to break with Maryland law and apply the law of self-created hardship to a subdivision, the sale of the 3 acres still would not qualify as a self-created hardship. The sale of 3 acres is not "the sole reason for the need for the variance," as necessitated by *Stansbury*. Undisputed testimony showed that the southeast corner of the lot

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[16] Maryland law would undoubtedly allow a subsequent purchaser of the American Legion Property to apply for this exact same variance under the law of *Roeser* and *Chesley*.

was chosen for physical characteristics of the land such as higher topography that allows for a lower tower and a wooded buffer area that allows the flagpole to be completely out of site from the residents directly to the south. TR at 32.

A ruling supporting Protestants' rationale would be a ruling that an owner must know every possible use for all future scenarios, which is at best, unreasonable. A valid and legal sale of a portion of a property years before a variance is requested is not a self-created hardship. For these reasons, the American Legion's sale of 3 acres was not a self-created hardship.

2. The Inapplicability of *Sprint PCS v. Baltimore County*

As previously noted, the Protestants' reliance on the unreported opinion of *Sprint PCS v. Baltimore County* (*see* Prot. Ex. 17) is misplaced. The *Sprint* case involved a petition for setback variances to build a wireless communication tower. Other than that single fact, the *Sprint* case is wholly different from the case at hand. In *Sprint*, the property was deemed to be unique solely because it was too narrow to allow for a 200' setback from each boundary. The uniqueness of the property in *Sprint* stopped at "narrow." The *Sprint* court assumed, and of particular importance in this case, that based on a reading of BCZR §307.1, "narrowness could also be considered in support of a variance..." *Sprint*, *22 at fn. 5. Essentially, narrowness can be an indicator of uniqueness, but it cannot be the only factor.

Furthermore, *Sprint* involved a commercial property where a wireless tower was permitted by right (and the commercial property at issue was surrounded by other commercial properties). The *Sprint* court rightly held that "the fact that a property cannot accommodate an other permitted use without a[...] variance generally does not require the grant of a variance." *Sprint*, *25. The *Sprint* court, however, expressly stated that an exception to that rule may be

warranted "if the permitted uses in a particular zone were quite limited..." *Id.* at fn. 6. *Sprint* actually supports AT&T's petitions because the facts used by the *Sprint* court to affirm the denial of the variance are the opposite facts in AT&T's case.

In this case, the narrowness of the Property is one of many unique characteristics of the Property (*e.g.* the Property has been the site of commercial uses for nearly 55 years; the Property is the only lot in that area that meets the 3 acre requirement; the topography of the Property and the location of the flagpole allow for a lower tower height). Additionally, the by right uses of a DR property, particularly for an entity such as the American Legion, are extremely limited.

Finally, the *Sprint* court found that all of the properties surrounding the proposed site would also require variances because they were all narrow. Thus, the subject property's drawbacks could not be considered "unique" because they were shared by most neighboring properties. Here, the opposite is true. The American Legion is the only residential property over 3 acres, much less the only residential property that has had commercial uses for nearly 55 years. Indeed, none of the Property's unique attributes are common to its neighbors. The American Legion property is literally unique to the area.

The present case before the Board is clearly distinguishable on its facts. Moreover, the *Sprint* decision is unreported and cannot be said to create a generally applicable rule.

VIII. Conclusion

For the foregoing reasons, Petitioners respectfully request that their applications for special exception, variance, and special hearing be granted.

Respectfully Submitted,

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January 25, 2008

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

RECEIVED BY
JAN 28 2008
for Baltimore County

Re: Case No. 06-637-SPHXA
4424 Painters Mill Road

Dear Ms. Bianco:

Attached please find an original and three copies of the Petitioner's Closing Statement in Support of Their Special Exception, Variance, and Special Hearing Application.

Please do not hesitate to contact me should you have any questions. I thank you for your consideration with this matter.

Very truly yours,

Gregory E. Rapisarda

Enclosure

cc: Carole Demilio, Esquire
Richard and Mary Jones

1/25/08

FILE COPY

RE:	PETITION FOR SPECIAL HEARING SPECIAL EXCEPTION & VARIANCE	*	BEFORE THE COUNTY
	4424 Painters Mill Road; S/S Painters Mill Road, 424.16' S Lyons Mill Road	*	BOARD OF APPEALS
	2nd Election & 4th Councilmanic Districts	*	FOR
	Legal Owner(s):American Legion Commander Liberty Post 122 by Leon McGee, Jr	*	BALTIMORE COUNTY
	Contract Purchaser(s): New Cingular Wireless Petitioner(s)	*	06-637-SPHXA

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

RECEIVED
JAN 25 2008
BALTIMORE COUNTY
BOARD OF APPEALS

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S MEMORANDUM

Overview

Petitioner, American Legion Post 122, ("Legion") and the contract lessee, New Cingular Wireless/AT&T ("AT&T") seek a **special exception** to construct a wireless communication cellular tower on a 3 acre residential site at 4424 Painters Mill Road. In addition, Petitioner cannot meet the setback requirements and seeks **two variances** for 47 ft. side yard and 59.6 front yard in lieu of the required 200 ft. The property is the site of an American Legion Club, which operates under a special exception granted in 1953. The Petitioner must also obtain an amendment to the special exception, under a **special hearing** petition, to permit a second principal use on the site for the proposed tower.

The applicable zoning regulations are BCZR 307 (Variance) BCZR 502.1 (Special Exception) BCZR 500.7 (Special Hearing) BCZR 426 (Wireless Telecommunications Facilities). Petitioner has the burden of meeting the applicable standards. See Turner v. Hammond 270 Md. 41, 55-56 (1973); Futoryan v. Mayor & City Council 150 Md. App. 157 (2003).

The Deputy Zoning Commissioner granted the Special Exception, Special Hearing and Variances on October 30, 2006. Peoples' Counsel entered its appearance at the onset of the case. Several residents appeared in opposition to the proposed tower. An appeal was taken by Mr. & Mrs. Richard Jones, who live across from the site on Lyons Mills Road.

Petitioner proposes to construct the tower as a 125 ft. flagpole, and construct a 50ft. by 50 ft "compound" for the metal cabinets containing the electrical equipment.

The site is zoned Density Residential 16 (D.R. 16). The surrounding area on the west side of Painters Mill Road is zoned residential. It is developed with town homes, condominiums and

single family dwellings. Across Painters Mill to the east is the T. Rowe Price campus zoned Office Technology (OT).

At the time the Special Exception was granted the American Legion site consisted of 6 acres. In 2000, the organization sold 3 acres, located to the north towards Lyons Mills Road, for $240,000.00. This sale reduced the width of the property, for which the Legion now seeks a setback variance. Additionally, the Legion did not seek approval in 2000 to operate the special exception on the smaller lot remaining after the sale. Petitioner now seeks approval for a second principal use on the smaller site.

Facts

Petitioner presented three witnesses: Jack Barber, from Anne Arundel County, MD, an independent consultant who operates as a site acquisition manager for Cingular/AT&T, Shafhihandh Sena, a R.F. engineer with AT&T, and Leon McGee, Jr., an officer with the Legion. The Petitioner did not present a zoning or land use expert.

Mr. Barber was instructed by AT&T to find a site within a given area to locate a tower facility. He has no expertise or knowledge of the level of coverage or the reason for the proposed facility. His responsibility is simply to find a property owner within the given location who is willing to lease its site to AT&T for an agreed price. Barber was unable to provide specific information on leasing terms or costs of construction. He claimed it is cheaper for the wireless company to co-locate on another tower but could not back up his testimony with comparative costs, for instance, to lease a site, and construct a tower, and then account for the income AT&T would receive from co-locators to offset the costs, compared to the cost for AT&T to co-locate on another wireless company's tower.

Mr. Barber contends the Legion site is the only viable location for a tower or antennae. He stated the McDonough School located at 8600 McDonough Road in Owings Mills and T. Rowe Price would not agree to a deal; but Barber apparently did not explore locating an antennae on a near-by assisted living high-rise facility where other cellular antennae are located.

Mr. Barber identified pictures of the balloon test to simulate the location and height of the tower. No photographs were taken from the Jones' property, nor did the balloon test adequately depict how a 125 ft. flagpole would look from adjoining or nearby properties, including the Jones'. No close-up pictures depicting the circumference of the flag pole were presented.

Mr. Barber's only comment on the features of the site itself was that it is "long and narrow." But he never compared the site's shape to others in the area as required by variance law. Moreover, Mr. Barber was not generally familiar with Baltimore County Zoning Regulations. He added nothing probative or cogent to Petitioner's burden of proof on the special exception and variance standards. He was merely a fact witness who explained his responsibility to locate a site with a willing lessor for a tower facility. It appears the feasibility of a site begins and ends with a willing lessor and lessee who can agree on a price. In other words, there is no incentive to find a location that may better comport with BCZR 426 once AT&T can strike a deal with a property owner. No thought is given to variance or special exception standards at the onset – rather the zoning case is rationalized after the deal is made.

Mr. Barber claims McDonough School and T. Rowe Price would not agree to a tower/antennae at each of their sites. But we do not know any details of the discussions or if a serious offer was made – did AT&T offer a competitive price, or was the Legion merely willing to accept a lesser rent? How extensive were the discussions with T. Rowe Price who claimed to need better service? What offer was made to T. Rowe Price?There was no mention that AT&T presented alternative types of towers or antennae or alternative locations on the office complex. Moreover, Mr. Barber, like other site locators in these cases, claims he has only a narrow perimeter within which to find a site - but the truth is the engineer's testimony always indicates the so-called search ring is actually the "ideal", but not the only location within which the wireless company is willing to locate a tower.

Here, Mr. Sena, the engineer, admitted that the coverage map (Pet. Exh. 8) shows improved coverage, not just "poor" coverage. In other words, the "acceptable" level of coverage (dark green shaded areas on Exh. 8) services AT&T's existing customers, as well as the light green shaded areas, which represent "existing" coverage. The coverage descriptions are misleading because the witness tends to disregard the "acceptable" level as inadequate. Here the actual "lack" of coverage is relatively minor compared to existing and acceptable coverage areas. Even so, the courts have held that the wireless cellular companies are not entitled to 100% coverage in an area as justification for a proposed tower. This is addressed more fully on page 11.

Furthermore, BCZR 426 is designed to protect the residents of any area from cell tower intrusion – see BCZR 426.9c which generally discourages towers on residential sites; if a tower

is proposed near residences, it must be setback 200 ft. from adjoining residential property under 426.6.A.1. In other words, 426 applies special exception standards and variance standards above and beyond BCZR 502.1 and the bulk (area) standards for other uses in the zone. But here the tower is an intrusion in the neighborhood. Both Mr. Barber and Mr. Sena candidly admitted the tower is proposed to better serve the office workers at T. Rowe Price and the trucks and automobiles on Painters Mill Road, which Mr. Sena described as a commuter route. Sadly, this is done at the expense of some long-time residents who live near the site.

Variance Law

The CBA is familiar with the variance standards of uniqueness and practical difficulty set out in Cromwell v. Ward 102 Md. App. 691 (1995). Recently, the Court of Special Appeals again discussed variance law and particularly the issue of practical difficulty and hardship in Chesley v. City of Annapolis, 176 Md. App. 413 (2007). There the petitioner requested setback variances for a garage to be constructed and attached to a new replacement dwelling. The location was chosen to protect the petitioner's wheelchair bound adult son from the elements when he visited his parents. The Department of Planning and Zoning requested a detached garage instead in order to maintain a *"public view corridor"* although the new location required setback variances which the planning department supported. The house was constructed while the setback variances were pending. Neighbors opposed the variances, which were denied. Petitioner again amended the plan to request *"a scaled back one story, one car garage in the same location, also requiring a variance to allow a three foot setback, but no side setback variance"* as previously requested in the prior plan. The reduced variance request was also denied, the Board finding *"that no hardship exists, that the claimed hardship was self-created, and that the proposed garage would have a negative impact on the neighborhood."*

It is discussion, the CSA reiterated the settled law stated in Easter v. Mayor of Baltimore, 195 Md. 395, 400 (1950) that *"The burden of showing facts to justify . . . [a] variance rests upon the applicant[.]"* The Court looked particularly whether the "*Board erred in determining both that the Chesleys failed to establish a hardship that was not self-created and that the proposed garage would have a negative impact on the neighborhood."* The CSA upheld the Board.

In Chesley at 435, the CSA applied the proper variance standards when it focused on the *"particular physical surrounding, shape or topographical condition of the specific property."* The Court held the desire to provide a covered environment for Petitioner's son is a convenience,

not a hardship: " . . . *"it is generally not a hardship to be without a desired convenience or amenity on one's property, because zoning regulations are to be enforced in the absence of a 'substantial and urgent' need for a variance."* Id.

The CSA supported the Board's distinction between true hardship required to grant a variance and "mere inconvenience" which does not meet the standard.

The Chesley Court also found that any alleged hardship resulted from the petitioner's decision to construct the house in a location that required variances for the garage. In distinguishing this from the mere purchase of the property, which may not be a disqualifying self-created hardship, the CSA reiterated at page 437 that a self-created hardship does not satisfy the variance standards: *"Thus, the "typical type of self-created hardship [is] . . . an act of commission by the owner [.]"*

In the instant case, the American Legion's sale of part of its property in 2000 resulting in a narrower lot is also a self-created hardship. It is comparable to the facts in Randolph Hills, Inc. v. Montgomery County, 264 Md. 78, 83 (1972), referred to by the Chesley court, where the property owner's "*subdivision that created unbuildable lot was self-inflicted condition creating variance request.*" Id.

The CSA in Chesley also looked at the impact of the proposed garage on the neighborhood, which the administrative agency found would create a *"visually unattractive streetscape."* Id at 426. The CSA relied on neighbor's testimony and photographs and maps in reviewing the "streetscape impact." As to the neighbor's testimony, the CSA found " . . . *the Board was entitled to consider and credit the neighbors' complaints regarding the effect of the proposed garage on the Eastern Avenue streetscape. Observations and opinions regarding the view from and to one's own property, and the effect that diminished views would have on enjoyment of one's property, are not the type of lay opinions that must be supported by empirical data or expert testimony."* Id at 444. The CSA also held the visual impact was relevant because of the City of Annapolis' charge to preserve *"the small, intimate scale"* in this part of the City. Id. at 445.

In the instant case, the protestants, Mr. and Mrs. Jones, offered extensive testimony, as well as pictures and maps, to demonstrate the negative visual impact the tower facilities would have on their property. The recent decision of the CSA in Chesley, requires the CBA to consider

visual impact in the variance case. Visual impact is also a consideration in the special exception case as discussed hereafter.

Special Exception

(i) The Visual Impact of Tower Structures is a Legitimate Factor In Special Exception Cases

Visual impact in a special exception case is not a trite or insignificant concern. It is a valid consideration under BCZR 502.1 A. and G.:

> *"Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:*
>
> *A. Be detrimental to the health, safety or general welfare of the locality involved; . . .*
>
> *G. Be inconsistent with the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; [Bill No. 45-1982] "*

The visual impact of the proposed use on the neighborhood should not be viewed as secondary or subordinate to other factors, such as traffic. In Board of County Commr's v Holbrook, 314 Md. 210 (1988), the Court of Appeals reversed the Court of Special Appeals and denied a special exception for a mobile home that would have a negative aesthetic impact on adjoining property. The adjoining neighbor could see the mobile home from his home and claimed the mobile home had a negative impact on the use and enjoyment of his property and its value. The Court found these concerns to be legitimate factors in a special exception case and stated at 216-217: *"The extent of any harm or disturbance to the neighboring area and uses is, of course, material. . . These [special exception] standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied."*

The Court continued at 218-219: " . . . *we must determine whether sufficient evidence was presented to the Board to justify its inference that the proposed special exception use would cause the requisite adverse impact upon the 'property values in the neighborhood.'. . . As we explained in another zoning context, "the neighborhood in any area must be an area which reasonably constitutes the immediate environs of the subject property."* (citations omitted). . . *"As a general matter, we note that the Board justifiably assumed that the conspicuous presence*

of a mobile home will lower adjacent property values. While a mobile home may justifiably represent a highly valued and attractive possession to its owner, a real estate appraiser might objectively view the same conspicuous trailer as an eyesore and a detriment to neighboring properties of higher value." The Court found *"particular adverse impact"* because *"photographs clearly depicted the direct and proximate view of the mobile home from the Peters's* [protestants] *home."* The Court concluded at 220: *"We find no cause to question the Board's conclusion that the mobile home, in this particular location, would impair neighboring property value to a greater extent than it would elsewhere in the zone. Countless locations exist within the zone, and indeed, within Holbrook's [Petitioner's] own property, where the presence of a mobile home would have no effect whatsoever upon adjoining property values. If, for example, trees or topography hid the mobile home from the view of the neighboring property owners, there would remain, as the Board's counsel conceded, absolutely no grounds for denying a special exception permit."*. . . *"At any rate, in light of the mobile home's high degree of visibility in this particular location, its proximity to the Peters's home, and the markedly disparate values if the Holbrook and Peters residences, we hold that the Board reasonably concluded that the permanent presence of the Holbrook mobile home would create significantly greater adverse effects in this location than were it located elsewhere in the zone."*

Clearly, the negative visual impact described by the Jones' in the instant case is comparable to the arguments in Holbrook. Moreover, here AT&T arguably has other options for its facility. Office buildings located literally across the street could accommodate the 15 ft. antennae permitted by right. Additionally, Mr. Jones described a nearby high rise assisted living facility where such antennae have been erected. Instead, it is quite plausible a 125 ft structure will have a negative impact on the value of the Jones' and other neighbors' homes and will at least create a negative visual impact as a result of an economic arrangement that is profitable to AT&T and the Legion. It is particularly galling because Mr. Jones is a second generation resident at this location.

(ii) Special Exception Standards

Schultz v. Pritts 291 Md. 1, 15 (1981) establishes the standard, which must be read in the full context of the decision, and requires an inquiry into whether:

"... the grant of the requested special exception would result in an adverse effect upon adjoining and surrounding properties unique and **different** from the adverse effect that would otherwise

result from the development of such a special exception use **located anywhere within the zone."** (Emphasis supplied).

* * *

> "... whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects **above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.**" (Emphasis supplied).

In Schultz, Judge Davidson explained that a funeral home could not be denied because it is depressing. That would be true anywhere. But it would have to be denied if there were particular access problems not ordinarily present elsewhere. This did not require an itemized comparison of access at every other property in the zone. Holbrook, *supra,* which followed Schultz, reflects that. Rather, it called for a comparative overview of differences, which could include comparison of other specific areas or individual properties in the zone to illustrate the points.

Schultz requires a reasonable comparative analysis to determine whether the site in question poses adverse effects above and beyond those likely in and around the zone at other locations or areas. This does not mean that the proposal must be denied simply because one or two other locations could be identified where a particular adverse effect would be less adverse. If we plot various locations in the zone along a bell curve of adverse effects, the question is whether the proposed location is situated on the part of the bell curve where the adverse effects are substantially more adverse than the average or median. It doesn't have to be the best site to be approved. It doesn't have to be the worst site to be denied.

The Schultz test is traceable to Montgomery County v. Merlands Club 202 Md. 279 (1953),

> '... The duties given the Board are to judge whether the neighboring properties and the general neighborhood would be adversely affected, and whether the use, in the particular case' **is in harmony with the general purpose and intent of the zoning plan**." Emphasis supplied.

The burden of proof is on the petitioner. Turner v. Hammond 270 Md. 41, 54-55 (1973),

> "... the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements...." .

Lucas v. People's Counsel 147 Md. App. 209 (2002) decided the CBA properly conducted an inquiry which included in scope the entire north county. The CBA had compared the impact of the proposed helicopter use at Helmore Farm on the Greenspring Valley neighborhood with the likely impact if located in other agricultural areas. Judge Kenney wrote, 147 Md. App. at 238-39:

> "In other words, the question is not whether the proposed facility will have some adverse effect on the Greenspring Valley area; it will because there are inherently detrimental effects associated with such facilities. The Board must determine whether the adverse effects of the special exception use in the particular location in which it is sought to be located would be greater or more detrimental than they would be generally at other locations within the R.C. 2 zone. Utilizing the standard set out in *Schultz*, the Board determined that the 'question is one of whether or not the adverse effects are greater at the proposed site than the would be elsewhere in the County where they may be established, i.e., the other areas within the R.C. 2 zones.'"

The Petitioner in the instant case offered no compelling comparisons. The site was chosen because it was within the search area and the Legion was willing to lease the site. This is not the comparison required by Schultz and its progeny.

A Request for both Special Exception and Variance for a Cellular Tower Under BCZR 426 is a Contradistinction

Under Schultz, the Petitioner has the burden in a special exception case to prove the impact of the tower here is no worse than at other locations in the zone. We submit the use innately has a greater impact here because it cannot meet the 200 ft. setback. As a conditional use, it is axiomatic that the conditions, including the setback requirements, must be met to permit the use. BCZR 426 imposes conditions on the tower use above and beyond the special exception standards in BCZR 502.1 and the general bulk standards, such as setbacks, applicable to other uses in the zone. This is a significant burden of proof for the Petitioner as emphasized by the Court of Special Appeal in Chester Haven v. Board of Appeals, 103 Md. 324, 335 (1995):

> *"The Board noted that, in addition to the conditional use-or really, in order to qualify to apply for the conditional use – the applicants had to get . . . additional variances from the conditions for which the ordinance required satisfaction in order to be entitled to a conditional use. In other words, the Board perceived, correctly, that the subject project could not meet the requirements the ordinance established for the granting of the conditional use. Therefore, the applicants were attempting to eliminate the conditions by obtaining variances therefrom.*

The attempt to follow this procedure creates fundamental and conceptional problems with the generally accepted proposition that, if the express conditions necessary to obtain a conditional use are met, it is a permitted use because the legislative body has made that policy decision. Does the legislative intent that the use be permitted remain if the conditions are not met but are eliminated by an administrative body granting a variance? Upon such an occurrence, the application for a conditional use becomes dependent upon the granting of the variances. Under those circumstances, the presumption that a conditional use is permitted may well fall by the wayside. The policy that establishes certain uses as permitted is predicated upon the satisfaction, not avoidance, of conditions. Conditions the legislative body attaches to the granting of a conditional use normally must be met in accordance with the statute-not avoided. In any event, even if such a procedure would pass muster, if the variance process fails, the entire application fails."

This issue was also address by the CSA in a Baltimore County zoning case, Umerley v. People's Counsel, 108 Md. App. 497 (1996). There the Court reversed the CBA's approval of a special exception for a trucking facility where variances from the minimum setback requirements particular to the trucking facility use were also requested. The Court concluded on page 511:

"In the case sub judice, the Umerleys have failed in their attempt to acquire variances from the restrictions that must be met in order to operate a Class II trucking facility. Accordingly, their petition for a special exception to operate such a facility must also fail."

Because the variances and the special exception use were interrelated under the statute, once the CSA denied the variances, it would not even consider the conditional use. Here there was no evidence that the site was unique – Mr. Jones pointed out that many lots in the area are the same width as the subject site, and the Petitioner failed to list a single factor, under the Cromwell standard to meet its burden. If there is no uniqueness under variance standards, the CBA need not even consider the practical difficulty standard. But even if applicable, there is no evidence of the hardship and difficulty defined in Cromwell and Chesley. Profitability and increased revenue are not elements of hardship and difficulty under variance law.

The Special Exception and Variance Fail Even If Viewed Individually

Unlike the instant case, in some cases seeking both a special exception and variance, each petition can be reviewed on its own merits. For instance, a special exception for a garage use and a sign variance may not be mutually exclusive. In Evans v. Shore Communications, Inc. et al, 112 Md. App 284 (1996), Petitioner sought a special exception for a tower but also requested a height variance. This differs from the instant case and Chester Haven, *supra.* In Evans, the

Petitioner was able to meet the conditions for a special exception tower use for the height allowed under the statute. But the Petitioner claimed a higher tower was needed to maximize coverage. The zoning board found no justification for the variance and the CSA agreed. Thus even if the special exception burden was met, the courts were not lulled into granting the height variance.

In the instant case, even if the CBA should find that a tower facility here meets the standards under BCZR 502.1, the Petitioner must still satisfy the strict variance standards of uniqueness and practical difficulty. Granting the special exception does not lessen the burden of proof for a variance. Similarly, the CBA must not look more favorably on the variance merely because the monopole is disguised as a flagpole. There is no language in BCZR 426 that reduces or waives the 200ft setback requirement if the tower is disguised under BCZR 426.9C.3. The requirement to disguise a monopole in a residential zone is part of the special exception standards. The flagpole must also comply with the 200 ft. setback.

It is our position that because the Petitioner cannot meet the 200ft setback, the special exception standards in BCZR 502.1 (a) and (e) have not been satisfied. It cannot be cured with a variance, and particularly here where there is no justification for a variance under BCZR 307 and variance law. Even if viewed individually, the special exception and variance each fails to meet the standards under 502.1 and 307 respectively. In addition, because they are integrated under BCZR 426, the need for a variance in and of itself disqualifies the conditional use. In other words, if the tower cannot meet the 200 ft setback at this location, the special exception must be denied because the use would have a greater impact here than at other residentially zoned sites that would not require a variance.

Federal and Local Law; Delegation of Powers; Exposure of Myths in Wireless Telecommunication Facilities

The electrical engineer for AT&T focused on the technical reasons to locate a tower at this site. But there is no preference to grant a special exception for a wireless communications tower than for any other proposed use in the zone. Furthermore, federal cases routinely affirmed denial of towers based on zoning standards. The Court in American Tower LP v. City of Huntsville. 295 F.3rd 1203, (11th Cir. 2002) affirmed the Board of Zoning Adjustment's denial of the special exception based on its "negative

aesthetic impact" and its negative "effect on the health, safety and welfare of the public." *Id.* 1208.

The federal law gives discretion to local zoning boards to approve or deny proposed towers under local law. The federal government reserves authority over any environmental health standards, such as cancer prevention. Federal law does not give service providers a blank check to locate towers irrespective of zoning standards to satisfy the alleged coverage gap. Traditional zoning issues relating to public safety, health and welfare and consistency with spirit and intent of zoning law for special exceptions in BCZR 502.1, including aesthetics, visual intrusion or clutter, impact on nearby residences, and consistency with the character of the neighborhood are also considerations in a wireless telecommunication facility special exception case.

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), 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 79, 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.

The decisions reinforce our position that local zoning boards should not be intimidated into granting a tower use merely because the Petitioner alleges a coverage gap. The recent decision in USCOC of Virginia RSA#3 v. Montgomery County Board 343 F.3d 262 (4th Circuit 2003) is particularly instructive because the Fourth Circuit includes the State of Maryland. The Court rejected the argument of U.S. Cellular that the local zoning board's rejection of a wireless communications tower "had the effect of prohibiting the provision of personal wireless services in violation of 47 U.S.C. 332" *et. seq* and "was not based upon substantial evidence." The Court concluded *"that U.S. Cellular has not met the burden required in this circuit for prevailing on a prohibition of service claim."* The Court continued:

> *". . . to be entitled to relief under a . . . prohibition of service claim, the plaintiff's burden is substantial. In AT&T Wireless PCS, Inc. v. City Council of Virginia Beach, we held that a telecommunications provider could not prevail in a challenge to an individual zoning decision absent a general ban or policy to reject all applications. See also 360 Communications Co. v. Board of Supervisors of Albermarle County, 211 F.3d 79, 88 (4th Cir. 2000) ("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 to try.")." Id. 268*

The Court pointed out, in footnote 6, that the Second and Third Circuits *"have developed a less stringent test for prohibition of service claims."* On the other hand, the Fourth Circuit [in Albermarle County, *supra*] *has "specifically declined to adopt this approach, noting that it would unnecessarily interfere with the fact-specific nature of the inquiry and would effectively create a presumption, shifting the burden to the local government to explain its actions." Id. 273*

The federal Court also rejected U.S. Cellular's "substantial evidence" claim. The agency in that case determined that violation of the spirit and intent of the law was not overcome by some citizen support or a favorable report from the professional consultants. The Court held the agency's decision to deny the telecommunications tower was supported by substantial evidence:

> *" The Supreme Court has defined "substantial evidence" to mean "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." . .. It requires more than a mere scintilla but less than a preponderance." . . ." (citations omitted) .*
>
> *"According to the Board, the proposed tower's failure to adhere to the applicable zoning requirements provides substantial evidence to justify the rejection of the tower. We agree. . . . We conclude that, under the facts of this case, the proposed tower's inconsistency with the local zoning requirements is sufficient to establish substantial evidence for the denial of the permit." Id. at 271.*

One need only look at the chart in BCZR 426.5 to see that nearly every zone in Baltimore County permits some type of wireless communication tower, whether conditional or by right.

The Current Use of the Property Must Be Considered

The American Legion requires a special exception to operate in a residential zone. When the use was first approved, the site was 6 acres. In 2000, the Legion chose to sell 3 acres to a developer, but failed to amend the special exception to reflect the reduced acreage of their operation. The result is a non-residential use on ½ the size of the original approval. This includes renting the facility for social and recreational events. The tower use introduces a second non-residential principal use on this 3 acre site. It is our position

that the impact on the neighborhood is exponential. Even if the tower is disguised as a flagpole, it size and height may not be compatible with a flag pole normally seen on residential property. The impact must be measured from the residences nearby, such as the protestants, Mr. & Mrs. Jones. A flag pole seen from a distance as depicted in Petitioner's exhibit 4, is quite different from a flag pole seen at ground level from a neighbor's house and yard.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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 15th day of January, 2008, a copy of the foregoing People's Counsel for Baltimore County's Memorandum was mailed to Richard Jones, P.O. Box 792, Owings Mills, MD 21117 and Karl Nelson, Esquire, 500 East Pratt Street, Baltimore, MD 21202, Attorney for Petitioner(s).

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

1/28/07

cd / PKM

RECEIVED
JAN 28 2008
People's Counsel
for Baltimore County

IN RE: PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING & VARIANCE	*	BEFORE THE
S/S of Painters Mill road, south of Lyons Mill Road	*	COUNTY BOARD OF APPEALS
2nd Election District	*	FOR BALTIMORE COUNTY
4th Councilmanic District		
(4424 Painters Mill Road)	*	
American Legion Liberty Post 122, Leon McGee, Jr., Commander	*	CASE NO. 06-637-SPHXA
Legal Owner and Petitioner	*	

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

APPELLANTS' POST-HEARING MEMORANDUM

Mr. & Mrs. Richard A. Jones submit this memorandum in opposition to the Petitioner's request for a Special Exception, Special Hearing, and Variance to construct a 125' cell tower at 4424 Painters Mill Road, Owings Mills, Maryland. We are opposed to the proposed cell tower because it is improper in a mature residential neighborhood, since it will have an adverse impact, will be intrusive, and visually incompatible; and will be the only such obtrusive structure in our neighborhood. The Lyonswood Homeowners' Association, Owings Park Community, and the McDonogh Field Community Association, who also felt strongly in opposition to the tower, each contributed $100 toward the $400 fee for the appeal, and these groups represent approximately 350 households.

The **Special Exception** is not warranted because the cell tower is in conflict with the property's residential zoning and the cell tower conflicts with the spirit and intent of the zoning regulations.

The Zoning Regulations require cell towers to be located in medium to high density commercial zones, and located and designed to minimize their visibility from residential zones.

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The term 'flagpole' which the Petitioner uses to describe the cell tower, is just a euphemism for an unsightly and obtrusive structure. A 125 foot, 12 story cell tower is not what someone usually pictures when the term 'flagpole' is used.

Baltimore County Zoning Regulation, Section 502.1.G states that a Special Exception should not, "Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations[.]"

Baltimore County Zoning Regulations, Section 426.2 B states:
"If a new tower must be built, the tower should be, erected in a medium- or high-density commercial zone when available; and...located and designed to minimize its visibility from residential and transitional zones."

The Petitioner's property is zoned Residential, and they are now operating a Private Club, under a Special Exception, that was granted by a Special Zoning Permit. The Special Permit required the Club to operate on 6 acres, and also designated specific parking requirements. The construction of a cell tower on this property, which was reduced in size to 3 acres when they sold half of their original 6 acres, would permanently change the use from residential to commercial. For visualization and comparison purposes the Petitioner testified that an identical transmitter and antenna complex had been installed at Shawan and Fall Roads in a Residential area. The complex at Falls Road is virtually invisible because it is constructed among some farm buildings in a wooded complex, ¼ mile from any road and in a sparsely populated rural setting.

The Petitioners testified that, other than the use of the WBAL tower for a cell antenna, no other tall site in the area was available. The Petitioners in their application for a cell tower,

indicated they specifically wanted coverage along McDonogh Road to 795, and Mt. Wilson and surrounding areas. When the Petitioner's engineer, Mr. Sena, was asked if a location at Mt. Wilson with the same elevation as the Painters Mill site, would work for their transmission needs, he answered yes.

With very little effort, we were able to find an alternative site, which would not require the Petitioner to obtain a Special Exception, Special Hearing, or Variance. This alternative site, which is visible from the Painters Mill proposed cell tower location, is a 12 story building located on Mt. Wilson Lane, which is currently supporting many cell antennas. The building sits at an elevation of 560 feet and the cell towers at the top of the building are the same height as the top of the tower proposed for the Painters Mill site. This location on Mt. Wilson would not be intrusive or have an adverse impact on that neighborhood, since there are already many cell antennas on the top of the building. It's very obvious that Cingular had not done thorough site location research in the area for which they desired cell transmission sites. They single-mindedly concentrated on an inappropriate site at Painters Mill that needs a Special Exception, Special Hearing, and Variance.

The **Special Hearing,** where the Petitioner is asking to continue the use of the residential property as an American Legion Post in combination with a wireless telecommunications facility, and to confirm that there is no conflict with prior zoning case #2812-S, is not warranted.

The petitioners are in conflict with prior zoning because they invalidated their Special Permit, dated December 7, 1953. This Special Permit, which granted a Special Exception to operate a Private Club on 6 acres, also required off street parking in a ratio of 3 square feet to each square foot of land covered by commercial buildings.

On May 23, 2000 the Petitioners sold 3 acres of their land for $240,000. This sale reduced the size of their property to 3 acres, and violated the Zoning Approval of 1953. The property owner should have obtained prior zoning approval, under the spirit and intent of the Zoning Regulations, before altering the size of their land, by selling 3 of their 6 acres of land in 2000.

The Petitioner is seeking to compound their zoning violation problem, by requesting a Special Hearing for a wireless telecommunications facility, on top of the zoning problem they created by selling 3 acres of their land, which jeopardized their 1953 Special Permit.

The **Variance** request, to allow the construction of a cell tower with a 47 foot side-yard setback and a 59 foot front yard setback to any other residential property line, in lieu of the minimum requirement of 200 feet for each, is not warranted.

The Petitioner has not shown sufficient credible evidence that they should be granted a Variance, because they have not demonstrated that there are special circumstances or conditions in existence, peculiar to their property, which are not the result of their own actions.

The 3 acre site is not unique to the area, and the property owner created their own hardship by reducing the size of their land from 6 acres to 3 acres, thereby causing a need for a Variance to Zoning setback Regulations.

Section 307.1 of the Zoning Regulations states that the Zoning Commission of Baltimore County and the County Board of Appeals shall have, and they are hereby given the power to grant Variances only in cases where 'special circumstances or conditions' exist that are peculiar to the land or structure which is subject to the variance request, and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship.

And furthermore any such Variance shall be granted only if in strict harmony with the spirit and intent of the area.

Section 426.6.A.1 of the Zoning Regulations states that a tower shall be set back at least 200 feet from any other owner's residential property line.

The Petitioner's property, which comprises 3.09 acres, in the form of a rectangle 626 feet long and 209 feet wide, is not unique. Even though it is the largest property in the area, it, like all other properties, is too narrow to support the set back requirements for a cell tower. Therefore it is not unique because of the narrowness of the property.

It was stated that the location of structures on the property, precludes using a 200 foot setback from the front of the property, and the property is therefore unique. Nearly all of the surrounding residential properties contain homes which would also preclude the placement of a cell tower on any of them. Therefore, the property is not unique because of the structures, when compared with other properties in the neighborhood.

Baltimore County Council Bill 30-98, enacted by the Council on February 17, 1998, on page 10, Lines 4,5,6 states, and I quote: " IF A TOWER IS LOCATED IN A RESIDENTIAL ZONE, THE TOWER SHALL BE SET BACK AT LEAST 200 FEET FROM ANY OTHER OWNER'S RESIDENTIAL PROPERTY LINE."

The Petitioners sold 3 of their 6 acres of land in 2000, which left them with only 3 acres that is too narrow on which to construct a cell tower without a Variance. Before the Petitioner sold 3 acres of their land, their property was rectangular shaped, and approximately 625 feet in depth and approximately 418 feet in width. Before the sale of 3 acres, their property would have easily accommodated the setback regulations for a cell tower, without the need for a Variance.

As the direct result of the sale, the remaining property is too narrow to accommodate the setback regulations for a Cell Tower without a Variance.

The Petitioner created their own hardship because they sold 3 acres of their land in 2000, after the cell tower set back regulations were enacted, and therefore by their own actions, rendered their property too narrow to meet the 200 foot set back required by Baltimore County Zoning Regulation 426.6.A.1

It is intuitive that a 12 story cell tower would have an adverse impact on residential properties because it is invasive and intrusive. In our opinion the construction of a cell tower would cause our home to lose thousands of dollars of value.

We would like to cite *Sprint PCS, et al v. Baltimore County, Maryland,* an Unreported Case, before the Court of Special Appeals of Maryland.

> On p. 1, the Case says: **"Sprint...petitioned Baltimore County zoning authorities for setback variances...[to] build a wireless telecommunications tower. [The Zoning Commissioner] granted the variances on the grounds that the...property is "unique". [T]he...Board of Zoning Appeals denied the variances...[as] not unique. The Boards decision was affirmed by the Circuit Court for Baltimore County. The Court of Special Appeals of Maryland took the case."**

> On p. 14 of Judge Adkins written opinion for the Court of Special Appeals, he references *Cromwell v Ward, p. 719*: **"In many cases...the petitioner did not satisfy its burden of proof because the unique circumstances were caused by the plight of the property owner rather than a characteristic of the land itself."**

On p. 32, the Court of Appeals Conclusion states: **"[W]e affirm the judgment of the circuit court affirming the Board's denial of the variance petition."**

In support of our assertion that a self-created hardship is not grounds for a Variance, we cite *Cromwell v. Ward* (102 MD APP. 691), a decision by the Maryland Court of Special Appeals.

On page 717 by citing *Sibley v. Inhabitants of the Town of Wells* (462 A.2d 717), the case states: " **'...[T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.' "**

On page 721, citing *Marino v. Mayor and City Council of Baltimore*, (215 Md. 206, 137), the case states: **"...'it was incumbent [on the applicant] to [show]...that the hardship was not the result of the applicants' own actions.' "**

On page 722, citing *Pollard v. Zoning Bd. of Appeals* (186 Conn. 32, 438), the case states: **" '[S]elf-inflicted or self-created hardship...is never considered proper grounds for a variance.' "**

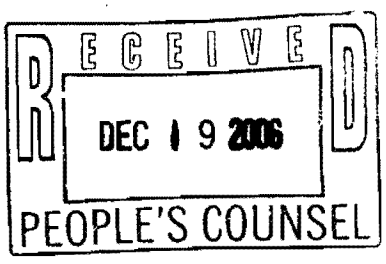
DATE: Nov 26, 2007

Richard A. Jones

Mary Dot Jones

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Owings Mills, MD 21117
(410) 363-0942

PMZ



Peter Max Zimmerman, Esq.
People's Counsel for Baltimore County
Room 47, Court House
400 Washington Ave.
Towson, MD 21204

December 15, 2006

Ref: Case No. o6-637-SPHXA

Dear Mr. Zimmerman,

I have enclosed our letter of appeal to the referenced case, dated November 13, 2006, along with the three receipts representing the $400.00 appeal fee.

Very Truly Yours,

Richard A. Jones
PO Box 792
Owings Mills, MD 21117
(410) 363-0942

November 13, 2006

Zoning Review Office
Attn: Kristen Matthews
111 W. Chesapeake Ave.
Towson, MD 21204

Re: Case No.06-637-SPHXA

Dear Ms. Matthews:

This letter is to formally appeal the decision and order by the Deputy Zoning Commissioner in the above referenced case. As you instructed today, I have enclosed checks totaling $400, representing the fee to appeal the referenced case.

I have listed below the names and addresses of all parties that should be kept notified of all times, dates, and places of the appeal process.

Very Truly Yours,

Richard A. Jones

Richard Jones, PO Box 792, Owings Mills, MD 21117

Phyllis Brotman, McDonogh Field Assn., 8105 McDonogh Rd., Pikesville, MD 21208

Towanda Maddox, 4315 Wynfield Dr., Owings Mills, MD 21117

Camille Givens-Patterson, 6 Kentbury Ct., Owings Mills, MD 21117

Joanna & Sylvester Kearney, 8 Lancashire Ct., Owings Mills, MD 21117

Lynn Ketara, 9202 Owings Park Dr., Owings Mills, MD 21117

IN RE: PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING & VARIANCE S/S of Painters Mill Road, south of Lyons Mill Road 2nd Election District 4th Councilmanic District **(4424 Painters Mill Road)**	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY
American Legion Liberty Post 122, Leon McGee, Jr., Commander *Legal Owner and Petitioner*	*	CASE NO. 06-637-SPHXA

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as Petitions for Special Exception, Special Hearing and Variance filed by the legal owner of the subject property, American Legion Liberty Post 122, Leon McGee, Jr., Commander. The Petitioners are requesting special exception, special hearing and variance relief for property located at 4424 Painters Mill Road. The special hearing is to continue the use of the property as an American Legion Post in combination with a wireless telecommunications facility and to confirm that there is no conflict with prior zoning Case No. 2812-S. The special exception is to permit a wireless telecommunications facility and construction will be consistent with the accompanying plans. The variance request is to allow a tower with a 47.0 foot side yard setback and a 59.6 foot front yard setback to any other residential property line in lieu of the minimum required 200 feet for both.

The property was posted with Notice of Hearing on July 28, 2006, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on August 1, 2006, to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 502.1 of the B.C.Z.R. *Special Exceptions*

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;
B. Tend to create congestion in roads, streets or alleys therein;
C. Create a potential hazard from fire, panic or other danger;
D. Tend to overcrowd land and cause undue concentration of population;
E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
F. Interfere with adequate light and air; [Bill No. 45-1982]
G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the sprit and intent of these Zoning Regulations; [Bill No. 45-1982]
H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]
I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 zone. [Bill No. 74-2000]

Section 500.7 of the B.C.Z.R. *Special Hearings*

The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any non conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

Section 307 of the B.C.Z.R. *Variances*

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign 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. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to the public health, safety and general welfare. They shall have no

power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment letter was received from the Office of Planning dated June 22, 2006. That Office is supportive of the request provided the monopole is disguised as a flagpole. Copy of the comment is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on August 17, 2006 in support of the variance and special exception requests were Jack Barber, Syed S. Haider, Tim Stakes, Oakleigh Turame, and Leon McGee, Jr., Commander American Legion Liberty Post 122. Karl Nelson, Esquire, represented the Petitioners. Appearing in opposition to the requests was Richard Jones.

Appearing in the continued hearing on October 11, 2006 in support of the requests were Jack Barber, Syed S. Haider, and Oakleigh Turame. Karl Nelson, Esquire, represented the Petitioners. Appearing in opposition to the requests were Richard Jones, Towanda Maddox, Camille Green-Patterson, Joanna Kearney and Sylvester Kearney. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

August 17, 2006 Hearing

The Petitioner, New Cingular Wireless PSC, LLC proposes to construct a wireless transmitter and antenna on the grounds of the American Legion Post 122, as shown on exhibit

4. The antenna would be disguised as a flagpole with a large flag 125 feet high above the ground. The American Legion property contains 3 acres zoned DR 16 and is improved by the existing American Legion Building and two sheds. The property is located on Painters Mill Road across from T. Rowe Price offices and the McDonough school campus which is zoned OT. To the south, is an apartment complex while to the north is an office building. To the west are single family homes.

Mr. Nelson proffered that the request for variance arises because the site is only 208 feet wide. Any transmitter located on the site will not meet the 200 foot setback from other residential property line. In addition the transmitter is sited close to Painters Mill Road to move it as far as possible from residences along Eli Drive. He noted the location had been approved by the County's Tower Review Committee.

Mr. Nelson proffered the testimony of Mr. Haider, a consulting engineer, who indicated that his studies of available signal strength in the Painters Mill area reveal there is little or no signal for cell phone users as shown in exhibit 1. This causes cell phones to drop calls and be susceptible to interference. Mr. Nelson described the procedure that Cingular undertakes to fill in such holes in coverage. However their studies showed that existing tall structures were all too far from the coverage hole to be effective locations for the antenna.

Mr. Barber, a real estate consultant, testified that he came to the same conclusion that there were no existing tall structures in the area suitable for this task. He noted that his task is to find high existing structures in commercially zoned areas on which to build an antenna. For example he contacted WBAL regarding the possibility of mounting an antenna on the WBAL tower, but WBAL was not interested in allowing such. He recalled his unsuccessful efforts to locate the antenna on the T. Rowe Price property and or McDonough campus across Painters

Mill Road. While there is a small commercial center to the north of the property, this was too far away to solve the problem. See coverage for this commercial site, Petitioner's exhibit 1C. He was left with locating the antenna in a residentially zoned area and eventually contacted the American Legion Post who agreed to this idea. He opined that having a large flag pole on an American Legion Post is quite appropriate and consistent with community expectations.

He noted that the proposed flag pole antenna at 120 feet was the lowest height to get adequate coverage for the area. In support of this contention he presented signal strength map for an antenna 20 feet lower which showed inadequate coverage. See Petitioner's exhibit 1 B.

Mr. Barber opined that the property is unique from a zoning standpoint as the site is long and narrow. He further noted that the company studied the visual impact of the antenna from various aspects in the community by superimposing computer generated images of the antenna on photographs of locations in the community. See the map with enhanced photographs, Petitioner's exhibit 3.

Mr. Jones, who opposed the requested relief, suggested that there was a site across Painters Mill Road which the County owns and which would be an ideal location. See protestants exhibits 1, an aerial photograph of the area and photograph of the County site, exhibit 2. This is physically higher than the American Legion and farther away from residences. In addition it has utility poles which can be reproduced to provide stealth structures for antenna. Mr. Barber expressed concern that there might not be enough room for the transmitter equipment at the base of the antenna in this location.

Mr. Jones also contends that McDonough would likely be interested in locating a tower on their campus given the school's leasing of considerable portions of the property. Mr. Barber recounted his unsuccessful efforts to persuade McDonough to cooperate.

Mr. Jones testified that locating the antenna as proposed would permanently damage the community, would stick out like a sore thumb, and that alternative locations would provide better coverage without damaging the community. Upon questioning Mr. Jones admitted that he was not sure of the exact legal status of the County site across Painters Mill Road, and that he had no personal knowledge of the design of cell tower antennas.

At this point in the hearing the Petitioner requested and was granted a continuance to investigate the alternative locations suggested by Mr. Jones.

October 11, 2006 Continued Hearing

The Petitioner recalled Mr. Barber who reviewed his mandate to examine the alternative locations suggested by Mr. Jones. In regard to McDonough, he indicated that he spoke to a Mr. Steve Simmers at McDonough who identified himself as the person who makes decisions regarding lease of campus property. Mr. Barber indicated that McDonough was not interested in placing a transmitting tower on the campus. This conversation was confirmed by e-mail dated August 21, 2006, Petitioner's exhibit 5.

In regard to use of the BGE property across Painters Mill Road, Mr. Barber reported that while he confirmed the BGE right of way, he indicated that the property is actually owned by T. Rowe Price who he noted previously were not interested in locating a transmitter on their property. He also contacted BGE as to whether or not a transmitter could be attached to its wooden poles supporting the company's electrical distribution system and was told that BGE had adopted a company policy against such use. Finally he noted that the wooden poles were 50 feet high and so questioned Cingular engineers as to whether a transmitter on a wooden pole would solve the coverage problem. He reported that the engineer indicated the height would not be sufficient and that because the BGE site is 15–20 feet lower in elevation than the

American Legion site the Petitioner would have to build a tower 150 feet high to achieve coverage. He opined that the 10 foot right of way was also too narrow to be used.

Finally in regard to the suggestion of the Pohaska property, he indicated that T. Rowe Price owns this property as shown on Petitioner's exhibit 6 and may be planning a residential development on the OR-2 zoned land. He noted again that T. Rowe Price is not interested in locating a transmitter on their property.

Upon questioning by the protestants, he indicated that Mr. Simmers at McDonough was the right person to talk to about such use of the property as Mr. Simmers was either on the Board of Trustees or was the person the Board designated to make such decisions. He indicated that the highest structure on campus was the historical chapel whose steeple is about 40 feet high and would not be an appropriate location on which to mount the transmitter antenna.

In regard to concerns of the protestants that the radiation from the antenna may enter homes and pose a health threat to the community, Mr. Nelson indicated that the Federal Telecommunications Act of 1966 holds that such radiation is conclusively safe and local jurisdictions have no authority to question the federal finding. In addition he noted that the transmitting part of the system is high above the ground, the power transmitted is comparable to FM radio and that whatever complaints regarding health have occurred focus exclusively on hand held transmitters and not cell towers.

Ms. Maddox who indicated that she has an engineering background, expressed concern that the transmitter may inadvertently open automatic garage doors in the community. Mr. Nelson opined that Cingular owns and operates over 1,000 such transmitters around the country and has never encountered a problem with garage doors. She also inquired whether or not the

Petitioner had actually received complaints about lost coverage from the adjoining community. Mr. Nelson indicated that the basis of this request is the signal strength in the area as shown by the coverage plots and not specific complaints from this community. Finally she expressed concern about the safety of the tower structure.

Ms. Kearney indicated that the antenna on the American Legion property seems fine but was concerned what would happen if the American Legion sold the property. Mr. Nelson indicated the Petitioner has a 25 year lease with the Legion and any sale of property would be subject to the lease. He also noted that special exceptions run with the land so that new owners would be allowed to continue operations. However he indicated that his client would not object to a condition of approval that required the flagpole configuration for the antenna. She expressed concern about property values if the antenna is located on the Legion property.

Finally in response to Mr. Jones' concern that the base of the antenna structure was 5 feet in diameter, Mr. Nelson indicated that he was unsure of the actual diameter as the tower had not yet been ordered. He asserted however that the antenna will look like a flagpole tapering in diameter as the height increases and that no one will see the base behind the protective fencing. Mr. Barber recalled how he arrived at the decision to offer the lease to the Legion and some of the considerations which qualify a site. Mr. Nelson asserted that the Petitioner was very sensitive in selecting sites not to offend customers in the area.

Mr. Jones indicated his continued opposition to the request and presented written testimony marked as protestants' exhibit 3. Mr. Nelson indicated that an identical transmitter and antenna has been installed at Shawan and Falls Roads. Finally Ms. Given-Patterson indicated her doubt that the transmitter was really needed and worried that 20 years from now we may discover the health hazards of such antennas.

Findings of Fact and Conclusions of Law

Variances

In regard to the variance, the Petitioner indicates the property is unique in zoning sense by the fact that it is long and narrow. The site plan indicates that property is approximately 626 feet on the northern boundary, 672 feet on the southern boundary and 209 feet wide. As such the tower cannot be setback at least 200 feet from any other owner's residential property line as the width is only 209 feet. In fact the proposed tower is 47 feet from the property line of apartments to the south.

Mr. Jones cites the unreported case of *Sprint PCS v Baltimore County* COSA 8-3-05, 0047/04 before the Court of Special Appeals as authority for denying this variance. In this case the Court upheld the Board of Appeal denial of a cell tower on the basis that the lot was simply too narrow. I realize this case in not precedent as it is unreported, but there is always wisdom in reviewing an unreported case for insight to appellate court thinking.

Having reviewed the *Sprint* holding and reasoning, I find this case should be distinguished from it for several reasons. Certainly the lot is narrow and could never be the location of a cell tower with a side yard setback of 200 feet. But the location of the compound as proposed allows flow of traffic and some parking in the front of the existing Legion Building. In order to move the tower as far away from single family residences to the west, the Petitioner proposes to locate the tower as close as possible to Painters Mill Road. This requires a front yard setback of 59.6 feet. This also allows the equipment compound to be located behind the existing fence as shown on site plan presumably to keep the look of the property reasonably the same from Painters Mill Road.

On the other hand while the property has enough depth to allow the transmitter compound to be located without a front yard variance, moving it back 200 feet from Painters Mill Road would place the rear of the compound nearly at the front door of the existing Legion Hall. There would only be approximately 24 feet to the front door of the Hall which would greatly restrict patrons' parking, ingress and egress. The regulations provide that variance may be granted only where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. (Emphasis supplied)

Considering the location of the existing structures (fence and Legion Hall) and the narrowness of the site, I find the site unique in a zoning sense. The location of existing structures and narrowness of the site causes the setback regulation to disproportionately impact this property as compared to others in the district.

I further find the owner would suffer hardship and practical difficulty if the cell tower zoning regulation were strictly enforced. The Legion would not be able to lease its property as proposed. I find that the hardship and practical difficulty are not self-imposed by selecting this site. The Petitioner outlined the extensive study done to locate the facility on existing structures and commercial sites in the area. None of these preferred locations was feasible. The Petitioner then listened to at least three suggestions from the community for alternative locations. The hearing was continued for several months for the Petitioner to investigate the feasibility of these sites. Unfortunately for all, they were unsuitable. Apparently this is the only available and suitable site in the area which will provide the needed signal strength for adequate coverage. The hardship falls not only on the Petitioners but the public who clearly do not have adequate signal strength in this area for reliable cell phone service. This can be more

than simply annoying as many cell phone users depend on such devices exclusively for communication which range from family matters to emergency calls.

Mr. Jones alleges in his written comments that the hardship is self imposed because the Legion sold off 3 acres of its property creating the narrow width with which we now have to deal. However the protestants provided no evidence of this sale at the hearing so that this allegation could be examined by all. I note that the cell tower regulations were imposed in 2001. Assuming the truth of the allegation, I do not know whether the sale was before or after the regulation was imposed.

Another issue in this case is whether or not the variances can be granted without adversely affecting the community. Mr. Jones included alleged health effects in his written testimony in Appendix B. However as Mr. Nelson points out, the Federal law removes this factor from consideration at this local level. The tower will be disguised as a flag pole, albeit a large one, from which the Legion will fly a large American flag. This is what one would expect an American Legion Post to do. As shown by the Petitioner's enhanced photographs, exhibit 3, the flagpole will not dominate the skyline or overwhelm the residential nature or look of residential communities nearby. The Tower Committee approved the site. Mr. Jones understandably feels the Committee did less that a thorough review. The Planning Office supports the location provided the antenna is disguised as a flagpole.

Considering all the testimony and evidence, I find that the variances can be granted within the spirit and intent of the cell tower regulations and will not adversely affect the community. In summary taking all the evidence presented into consideration, I will grant the requested variances.

Special Hearing

The Petitioner requests by special hearing to continue the use of the property as an American Legion Post in combination with a wireless telecommunications facility and to confirm that there is no conflict with prior zoning Case No. 2812-S. The standard of proof for special hearings has generally been whether the proposed use is within the spirit and intent of the regulations and will not adversely impact the community. The Legion serves a public as well as private purpose for its members. The tower will be disguised as a flagpole on a Legion property. For the reasons stated above, I find no reason that the cell tower will either adversely affect the community or conflict with the special exception granted for a Legion facility in the above case.

Special Exception

I find the proposed use meets the criteria specified in Section 502.1 of the BCZR and will not adversely affect the community for the reasons above. Therefore, I will grant the requested special exception to permit a wireless telecommunications facility on the subject property. I will order construction to be consistent with Petitioner's exhibit 4.

THEREFORE IT IS ORDERED, this 30th day of October, 2006, by the Deputy Zoning Commissioner, that the Variance request is to allow a tower with a 47.0 foot side yard setback and a 59.6 foot front yard setback to any other residential property line in lieu of the minimum required 200 feet for both be and is GRANTED; and

IT IS FURTHER ORDERED, that the Special Hearing to continue the use of the property as an American Legion Post in combination with a wireless telecommunications facility and to confirm that there is no conflict with prior zoning be and is hereby GRANTED; and

IT IS FURTHER ORDERED, that the Special Exception is to permit a wireless telecommunications facility and construction will be consistent with the accompanying be and is hereby granted; subject, however, to the restrictions below which are conditions precedent to the relief granted herein:

1. The Petitioners may apply for their permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The monopole will be disguised as a flagpole as described in Petitioner's exhibit 4.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:pz

IN RE: PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING & VARIANCE	*	BEFORE THE
S/S of Painters Mill Road, south of Lyons Mill Road	*	DEPUTY ZONING COMMISSIONER
2nd Election District	*	OF BALTIMORE COUNTY
4th Councilmanic District		
(4424 Painters Mill Road)	*	
American Legion Liberty Post 122, Leon McGee, Jr., Commander	*	CASE NO. 06-637-SPHXA
Legal Owner and Petitioner	*	

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as Petitions for Special Exception, Special Hearing and Variance filed by the legal owner of the subject property, American Legion Liberty Post 122, Leon McGee, Jr., Commander. The Petitioners are requesting special exception, special hearing and variance relief for property located at 4424 Painters Mill Road. The special hearing is to continue the use of the property as an American Legion Post in combination with a wireless telecommunications facility and to confirm that there is no conflict with prior zoning Case No. 2812-S. The special exception is to permit a wireless telecommunications facility and construction will be consistent with the accompanying plans. The variance request is to allow a tower with a 47.0 foot side yard setback and a 59.6 foot front yard setback to any other residential property line in lieu of the minimum required 200 feet for both.

The property was posted with Notice of Hearing on July 28, 2006, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on August 1, 2006, to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 502.1 of the B.C.Z.R. *Special Exceptions*

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;
B. Tend to create congestion in roads, streets or alleys therein;
C. Create a potential hazard from fire, panic or other danger;
D. Tend to overcrowd land and cause undue concentration of population;
E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
F. Interfere with adequate light and air; [Bill No. 45-1982]
G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the sprit and intent of these Zoning Regulations; [Bill No. 45-1982]
H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]
I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 zone. [Bill No. 74-2000]

Section 500.7 of the B.C.Z.R. *Special Hearings*

The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any non conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

Section 307 of the B.C.Z.R. *Variances*

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign 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. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to the public health, safety and general welfare. They shall have no

power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment letter was received from the Office of Planning dated June 22, 2006. That Office is supportive of the request provided the monopole is disguised as a flagpole. Copy of the comment is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on August 17, 2006 in support of the variance and special exception requests were Jack Barber, Syed S. Haider, Tim Stakes, Oakleigh Turame, and Leon McGee, Jr., Commander American Legion Liberty Post 122. Karl Nelson, Esquire, represented the Petitioners. Appearing in opposition to the requests was Richard Jones.

Appearing in the continued hearing on October 11, 2006 in support of the requests were Jack Barber, Syed S. Haider, and Oakleigh Turame. Karl Nelson, Esquire, represented the Petitioners. Appearing in opposition to the requests were Richard Jones, Towanda Maddox, Camille Green-Patterson, Joanna Kearney and Sylvester Kearney. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

August 17, 2006 Hearing

The Petitioner, New Cingular Wireless PSC, LLC proposes to construct a wireless transmitter and antenna on the grounds of the American Legion Post 122, as shown on exhibit

4. The antenna would be disguised as a flagpole with a large flag 125 feet high above the ground. The American Legion property contains 3 acres zoned DR 16 and is improved by the existing American Legion Building and two sheds. The property is located on Painters Mill Road across from T. Rowe Price offices and the McDonough school campus which is zoned OT. To the south, is an apartment complex while to the north is an office building. To the west are single family homes.

Mr. Nelson proffered that the request for variance arises because the site is only 208 feet wide. Any transmitter located on the site will not meet the 200 foot setback from other residential property line. In addition the transmitter is sited close to Painters Mill Road to move it as far as possible from residences along Eli Drive. He noted the location had been approved by the County's Tower Review Committee.

Mr. Nelson proffered the testimony of Mr. Haider, a consulting engineer, who indicated that his studies of available signal strength in the Painters Mill area reveal there is little or no signal for cell phone users as shown in exhibit 1. This causes cell phones to drop calls and be susceptible to interference. Mr. Nelson described the procedure that Cingular undertakes to fill in such holes in coverage. However their studies showed that existing tall structures were all too far from the coverage hole to be effective locations for the antenna.

Mr. Barber, a real estate consultant, testified that he came to the same conclusion that there were no existing tall structures in the area suitable for this task. He noted that his task is to find high existing structures in commercially zoned areas on which to build an antenna. For example he contacted WBAL regarding the possibility of mounting an antenna on the WBAL tower, but WBAL was not interested in allowing such. He recalled his unsuccessful efforts to locate the antenna on the T. Rowe Price property and or McDonough campus across Painters

Mill Road. While there is a small commercial center to the north of the property, this was too far away to solve the problem. See coverage for this commercial site, Petitioner's exhibit 1C. He was left with locating the antenna in a residentially zoned area and eventually contacted the American Legion Post who agreed to this idea. He opined that having a large flag pole on an American Legion Post is quite appropriate and consistent with community expectations.

He noted that the proposed flag pole antenna at 120 feet was the lowest height to get adequate coverage for the area. In support of this contention he presented signal strength map for an antenna 20 feet lower which showed inadequate coverage. See Petitioner's exhibit 1 B.

Mr. Barber opined that the property is unique from a zoning standpoint as the site is long and narrow. He further noted that the company studied the visual impact of the antenna from various aspects in the community by superimposing computer generated images of the antenna on photographs of locations in the community. See the map with enhanced photographs, Petitioner's exhibit 3.

Mr. Jones, who opposed the requested relief, suggested that there was a site across Painters Mill Road which the County owns and which would be an ideal location. See protestants exhibits 1, an aerial photograph of the area and photograph of the County site, exhibit 2. This is physically higher than the American Legion and farther away from residences. In addition it has utility poles which can be reproduced to provide stealth structures for antenna. Mr. Barber expressed concern that there might not be enough room for the transmitter equipment at the base of the antenna in this location.

Mr. Jones also contends that McDonough would likely be interested in locating a tower on their campus given the school's leasing of considerable portions of the property. Mr. Barber recounted his unsuccessful efforts to persuade McDonough to cooperate.

Mr. Jones testified that locating the antenna as proposed would permanently damage the community, would stick out like a sore thumb, and that alternative locations would provide better coverage without damaging the community. Upon questioning Mr. Jones admitted that he was not sure of the exact legal status of the County site across Painters Mill Road, and that he had no personal knowledge of the design of cell tower antennas.

At this point in the hearing the Petitioner requested and was granted a continuance to investigate the alternative locations suggested by Mr. Jones.

October 11, 2006 Continued Hearing

The Petitioner recalled Mr. Barber who reviewed his mandate to examine the alternative locations suggested by Mr. Jones. In regard to McDonough, he indicated that he spoke to a Mr. Steve Simmers at McDonough who identified himself as the person who makes decisions regarding lease of campus property. Mr. Barber indicated that McDonough was not interested in placing a transmitting tower on the campus. This conversation was confirmed by e-mail dated August 21, 2006, Petitioner's exhibit 5.

In regard to use of the BGE property across Painters Mill Road, Mr. Barber reported that while he confirmed the BGE right of way, he indicated that the property is actually owned by T. Rowe Price who he noted previously were not interested in locating a transmitter on their property. He also contacted BGE as to whether or not a transmitter could be attached to its wooden poles supporting the company's electrical distribution system and was told that BGE had adopted a company policy against such use. Finally he noted that the wooden poles were 50 feet high and so questioned Cingular engineers as to whether a transmitter on a wooden pole would solve the coverage problem. He reported that the engineer indicated the height would not be sufficient and that because the BGE site is 15–20 feet lower in elevation than the

American Legion site the Petitioner would have to build a tower 150 feet high to achieve coverage. He opined that the 10 foot right of way was also too narrow to be used.

Finally in regard to the suggestion of the Pohaska property, he indicated that T. Rowe Price owns this property as shown on Petitioner's exhibit 6 and may be planning a residential development on the OR-2 zoned land. He noted again that T. Rowe Price is not interested in locating a transmitter on their property.

Upon questioning by the protestants, he indicated that Mr. Simmers at McDonough was the right person to talk to about such use of the property as Mr. Simmers was either on the Board of Trustees or was the person the Board designated to make such decisions. He indicated that the highest structure on campus was the historical chapel whose steeple is about 40 feet high and would not be an appropriate location on which to mount the transmitter antenna.

In regard to concerns of the protestants that the radiation from the antenna may enter homes and pose a health threat to the community, Mr. Nelson indicated that the Federal Telecommunications Act of 1966 holds that such radiation is conclusively safe and local jurisdictions have no authority to question the federal finding. In addition he noted that the transmitting part of the system is high above the ground, the power transmitted is comparable to FM radio and that whatever complaints regarding health have occurred focus exclusively on hand held transmitters and not cell towers.

Ms. Maddox who indicated that she has an engineering background, expressed concern that the transmitter may inadvertently open automatic garage doors in the community. Mr. Nelson opined that Cingular owns and operates over 1,000 such transmitters around the country and has never encountered a problem with garage doors. She also inquired whether or not the

Petitioner had actually received complaints about lost coverage from the adjoining community. Mr. Nelson indicated that the basis of this request is the signal strength in the area as shown by the coverage plots and not specific complaints from this community. Finally she expressed concern about the safety of the tower structure.

Ms. Kearney indicated that the antenna on the American Legion property seems fine but was concerned what would happen if the American Legion sold the property. Mr. Nelson indicated the Petitioner has a 25 year lease with the Legion and any sale of property would be subject to the lease. He also noted that special exceptions run with the land so that new owners would be allowed to continue operations. However he indicated that his client would not object to a condition of approval that required the flagpole configuration for the antenna. She expressed concern about property values if the antenna is located on the Legion property.

Finally in response to Mr. Jones' concern that the base of the antenna structure was 5 feet in diameter, Mr. Nelson indicated that he was unsure of the actual diameter as the tower had not yet been ordered. He asserted however that the antenna will look like a flagpole tapering in diameter as the height increases and that no one will see the base behind the protective fencing. Mr. Barber recalled how he arrived at the decision to offer the lease to the Legion and some of the considerations which qualify a site. Mr. Nelson asserted that the Petitioner was very sensitive in selecting sites not to offend customers in the area.

Mr. Jones indicated his continued opposition to the request and presented written testimony marked as protestants' exhibit 3. Mr. Nelson indicated that an identical transmitter and antenna has been installed at Shawan and Falls Roads. Finally Ms. Given-Patterson indicated her doubt that the transmitter was really needed and worried that 20 years from now we may discover the health hazards of such antennas.

Findings of Fact and Conclusions of Law

Variances

In regard to the variance, the Petitioner indicates the property is unique in zoning sense by the fact that it is long and narrow. The site plan indicates that property is approximately 626 feet on the northern boundary, 672 feet on the southern boundary and 209 feet wide. As such the tower cannot be setback at least 200 feet from any other owner's residential property line as the width is only 209 feet. In fact the proposed tower is 47 feet from the property line of apartments to the south.

Mr. Jones cites the unreported case of *Sprint PCS v Baltimore County* COSA 8-3-05, 0047/04 before the Court of Special Appeals as authority for denying this variance. In this case the Court upheld the Board of Appeal denial of a cell tower on the basis that the lot was simply too narrow. I realize this case in not precedent as it is unreported, but there is always wisdom in reviewing an unreported case for insight to appellate court thinking.

Having reviewed the *Sprint* holding and reasoning, I find this case should be distinguished from it for several reasons. Certainly the lot is narrow and could never be the location of a cell tower with a side yard setback of 200 feet. But the location of the compound as proposed allows flow of traffic and some parking in the front of the existing Legion Building. In order to move the tower as far away from single family residences to the west, the Petitioner proposes to locate the tower as close as possible to Painters Mill Road. This requires a front yard setback of 59.6 feet. This also allows the equipment compound to be located behind the existing fence as shown on site plan presumably to keep the look of the property reasonably the same from Painters Mill Road.

On the other hand while the property has enough depth to allow the transmitter compound to be located without a front yard variance, moving it back 200 feet from Painters Mill Road would place the rear of the compound nearly at the front door of the existing Legion Hall. There would only be approximately 24 feet to the front door of the Hall which would greatly restrict patrons' parking, ingress and egress. The regulations provide that variance may be granted only where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. (Emphasis supplied)

Considering the location of the existing structures (fence and Legion Hall) and the narrowness of the site, I find the site unique in a zoning sense. The location of existing structures and narrowness of the site causes the setback regulation to disproportionately impact this property as compared to others in the district.

I further find the owner would suffer hardship and practical difficulty if the cell tower zoning regulation were strictly enforced. The Legion would not be able to lease its property as proposed. I find that the hardship and practical difficulty are not self-imposed by selecting this site. The Petitioner outlined the extensive study done to locate the facility on existing structures and commercial sites in the area. None of these preferred locations was feasible. The Petitioner then listened to at least three suggestions from the community for alternative locations. The hearing was continued for several months for the Petitioner to investigate the feasibility of these sites. Unfortunately for all, they were unsuitable. Apparently this is the only available and suitable site in the area which will provide the needed signal strength for adequate coverage. The hardship falls not only on the Petitioners but the public who clearly do not have adequate signal strength in this area for reliable cell phone service. This can be more

than simply annoying as many cell phone users depend on such devices exclusively for communication which range from family matters to emergency calls.

Mr. Jones alleges in his written comments that the hardship is self imposed because the Legion sold off 3 acres of its property creating the narrow width with which we now have to deal. However the protestants provided no evidence of this sale at the hearing so that this allegation could be examined by all. I note that the cell tower regulations were imposed in 2001. Assuming the truth of the allegation, I do not know whether the sale was before or after the regulation was imposed.

Another issue in this case is whether or not the variances can be granted without adversely affecting the community. Mr. Jones included alleged health effects in his written testimony in Appendix B. However as Mr. Nelson points out, the Federal law removes this factor from consideration at this local level. The tower will be disguised as a flag pole, albeit a large one, from which the Legion will fly a large American flag. This is what one would expect an American Legion Post to do. As shown by the Petitioner's enhanced photographs, exhibit 3, the flagpole will not dominate the skyline or overwhelm the residential nature or look of residential communities nearby. The Tower Committee approved the site. Mr. Jones understandably feels the Committee did less that a thorough review. The Planning Office supports the location provided the antenna is disguised as a flagpole.

Considering all the testimony and evidence, I find that the variances can be granted within the spirit and intent of the cell tower regulations and will not adversely affect the community. In summary taking all the evidence presented into consideration, I will grant the requested variances.

Special Hearing

The Petitioner requests by special hearing to continue the use of the property as an American Legion Post in combination with a wireless telecommunications facility and to confirm that there is no conflict with prior zoning Case No. 2812-S. The standard of proof for special hearings has generally been whether the proposed use is within the spirit and intent of the regulations and will not adversely impact the community. The Legion serves a public as well as private purpose for its members. The tower will be disguised as a flagpole on a Legion property. For the reasons stated above, I find no reason that the cell tower will either adversely affect the community or conflict with the special exception granted for a Legion facility in the above case.

Special Exception

I find the proposed use meets the criteria specified in Section 502.1 of the BCZR and will not adversely affect the community for the reasons above. Therefore, I will grant the requested special exception to permit a wireless telecommunications facility on the subject property. I will order construction to be consistent with Petitioner's exhibit 4.

THEREFORE IT IS ORDERED, this 30th day of October, 2006, by the Deputy Zoning Commissioner, that the Variance request is to allow a tower with a 47.0 foot side yard setback and a 59.6 foot front yard setback to any other residential property line in lieu of the minimum required 200 feet for both be and is GRANTED; and

IT IS FURTHER ORDERED, that the Special Hearing to continue the use of the property as an American Legion Post in combination with a wireless telecommunications facility and to confirm that there is no conflict with prior zoning be and is hereby GRANTED; and

IT IS FURTHER ORDERED, that the Special Exception is to permit a wireless telecommunications facility and construction will be consistent with the accompanying be and is hereby granted; subject, however, to the restrictions below which are conditions precedent to the relief granted herein:

1. The Petitioners may apply for their permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The monopole will be disguised as a flagpole as described in Petitioner's exhibit 4.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:pz

10/27/06

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

October 27, 2006

KARL NELSON, ESQUIRE
SAUL EWING, LLP
500 EAST PRATT STREET
BALTIMORE MD 21202

Re: Petitions for Special Exception, Special Hearing & Variance
Case No. 06-637-SPHXA
Property: 4224 Painters Mill Road

Dear Mr. Nelson:

Enclosed please find the decision rendered in the above-captioned case.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

John V. Murphy

John V. Murphy
Deputy Zoning Commissioner

JVM:pz

Enclosure

c: Richard Jones, PO Box 792, Owings Mills MD 21117
Jack Barber and Syed Haider, New Cingular Wireless PCS LLC, 7150 Standard Drive, Hanover MD 21076
Oakleigh Turame, 10605 Concord Street #420, Kingston MD 20845
Leon McGee, American Legion Liberty Post 122, 4424 Painters Mill Road, Owings Mills MD 21133
Towanda Maddox, 4315 Wynfield Drive, Owings Mills MD 21117
Camille Givens-Patterson, 6 Kentburg Court, Owings Mills MD 21117
Joanna and Sylvester Kearney, 8 Lancashire Court, Owings Mills MD 21117

A

follow ad AMR

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 4424 Painters Mill Road

which is presently zoned ~~DR-16~~

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 Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

A continued use of the property located at 4424 Painters Mill Road; Randallstown, Maryland 21133 as an American Legion Post. ~~New Cingular Wireless PCS, LLC has leased space from the property owners for the installation of an unmanned telecommunications facility, and is requesting a Special Exception, under separate application.~~ in combination with a wireless telecommunications facility and to confirm that there is no conflict with prior Zoning Case 2812-S.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, 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:

NEW CINGULAR WIRELESS PCS, LLC
Name - Type or Print

Jack E Thaler (CONTRACTOR)
Signature

7150 STANDARD DR 443 226 1529
Address Telephone No.

HANOVER MD 21076
City State Zip Code

Attorney For Petitioner:

KARL NELSON
Name - Type or Print

City

Signature

SAUL EWING
Company

500 E. PRATT ST 410-332-8663
Address Telephone No.

BALTIMORE MD 21202
City State Zip Code

Legal Owner(s):

AMERICAN LEGION LIBERTY POST 122 MD
Name - Type or Print

Leon McGee
Signature

LEON McGEE JR. COMMANDER
Name - Type or Print

Signature

4424 PAINTERS MILL RD 410 363 1696
Address Telephone No.

RANDALLSTOWN MD 21133
State Zip Code

Representative to be Contacted:

JACK E. BARBER
Name

7150 STANDARD DR 443.226.1529
Address Telephone No.

HANOVER MD 21076
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 06-637-SPHXA

Reviewed By JNP Date 6/12/06

REV 9/15/98

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 4424 Painters Mill Road

which is presently zoned DR3.5

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 Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

A wireless telecommunications facility to be located at 4424 Painters Mill Road; Randallstown, MD 21133. New Cingular Wireless PCS, LLC has leased space from the property owners for this purpose. The proposed project consists of a 125' AGL stealth Flagpole style monopole and an unmanned 11.5'x 20' ground based equipment shelter within a 50'x 50' fenced compound. Cingular antennas will be located at the top of the antenna structure. Construction will be consistent with the accompanying plans.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Exception, 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:

NEW CINGULAR WIRELESS PCS LLC
Name - Type or Print

Jack E Barber (CONTRACTOR)
Signature

7150 STANDARD DR. 443 226-1529
Address Telephone No.

HANOVER MD 21076
City State Zip Code

Attorney For Petitioner:

KARL NELSON
Name - Type or Print

Signature

SAUL EWING
Company

500 EAST PRATT ST. 410.332.8663
Address Telephone No.

BALTIMORE MD 21202
City State Zip Code

Legal Owner(s):

AMERICAN LEGION LIBERTY POST 122
Name - Type or Print

Leon L McGee
Signature

LEON McGEE JR. COMMANDER
Name - Type or Print

Signature

4424 PAINTERS MILL RD 410-363 1696
Address Telephone No.

RANDALLSTOWN, MD 21133
City State Zip Code

Representative to be Contacted:

JACK E. BARBER
Name

7150 STANDARD DR 443.226.1529
Address Telephone No.

HANOVER MD 21076
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By JNP Date 6/12/06

Case No. 06-637-SPHXA

REV 09/15/98

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 4424 PAINTERS MILL RD.

which is presently zoned DR-16

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) 426.6 (A)(2) TO ALLOW A TOWER WITH A 47.0' SIDEYARD SETBACK AND A 59.6' FRONT YARD SETBACK TO ANY OTHER RESIDENTIAL PROPERTYLINE, IN LIEU OF THE MINIMUM REQUIRED 200 FEET (FOR BOTH).

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 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:

NEW CINGULAR WIRELESS PCS, LLC
Name - Type or Print

Signature

7150 STANDARD DR. 443.226.1529
Address Telephone No.

HANOVER MD 21076
City State Zip Code

Attorney For Petitioner:

KARL NELSON
Name - Type or Print City

Signature

SAUL EWING
Company

500 E. PRATT ST 410-332-8668
Address Telephone No.

BALTIMORE MD 21202
City State Zip Code

Legal Owner(s):

x AMERICAN LEGION LIBERTY POST
Name - Type or Print

x Leon McGee Jr., Commander
Signature

Name - Type or Print

Signature

4424 PAINTERS MILL RD 410 3681696
Address Telephone No.

RANDALLSTOWN MD 21133
State Zip Code

Representative to be Contacted:

JACK E. BARBOR
Name

7150 STANDARD DR 4432261529
Address Telephone No.

HANOVER MD 21076
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 06-637-SPHXA

Reviewed By JNP Date 6/12/06

REV 9/15/98

CO

RECEIVED
AUG 16 2007
PEOPLE'S COUNSEL

Mr. Peter Max Zimmerman, Esq.
People's Counsel for Baltimore County
Old Court House
400 Washington Ave. Rm. 47
Towson, MD 21204

August 15, 2007

Re: Proposed Cell Tower
4424 Painters Mill Rd.
Case Number: 06-637-SPHXA

Dear Mr. Zimmerman,

By now you should have received notification from the Board of Appeals that the hearing date for the referenced case has been reset. (Letter attached)

Last June you called, and asked that we keep you informed about what is going on and whether or not we were going to be represented by Counsel. It is not our intention to be represented by Counsel.

As you will recall, Cingular's case is flawed for the following reasons:

1. The tower is proposed for a residential neighborhood.
2. The tower design does not minimize its visibility from the residential zone.
3. The property owners are most likely in violation of prior zoning special permit number 2812-S.
4. There property is not unique.
5. The property owner is subject to the tower regulations.
6. And the hardship that the Deputy Zoning Commissioner stated they would suffer, is self-imposed.

Very Truly Yours,

Richard A. Jones

P. O. Box 792
Owings Mills, MD 21117
(410 363-0942

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

July 31, 2007

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 06-637-SPHXA

IN THE MATTER OF: AMERICAN LEGION LIBERTY POST 122. Leon McGee, Jr., Commander – LO; NEW CINGULAR WIRELESSS PCS, LCC – C.PI /Petitioners 4424 Painters Mill Road
2nd Election District 4th Councilmanic District

10/30/06 – D.Z.C.'s Order in which requested special exception was GRANTED with restrictions; and requested variance and special hearing relief GRANTED.

which was scheduled to be heard on 8/14/07 has been **POSTPONED** due to unavailability of key witness; and has been

REASSIGNED FOR: **THURSDAY, NOVEMBER 15, 2007 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 B, 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 /Protestant : Richard A. Jones

Phyllis Brotman /McDonogh Field Assn.
Towanda Maddox
Camille Givens-Patterson
Joanna and Sylvester Kearney
Lynn Ketara

Counsel for Petitioners : Karl Nelson, Esquire
Petitioners : Cingular Wireless PSC, LLC
Jack E. Barber; Syed S. Haider; Tim Stakes
: Leon McGee, Jr., Commander
American Legion Liberty Post 122

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink on Recycled Paper

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 22656

DATE 11/16/06 ACCOUNT 001.006.6150

AMOUNT $ 100.00

RECEIVED FROM: McDonogh-Field Assn

FOR: Appeal 06-637-SPHXA
4424 Painters Mill Rd.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
11/17/2006	11/16/2006	09:50:57	2

REG WS02 MAIL JEVA JEE
>>RECEIPT # 490463 11/16/2006 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 022656
Recpt Tot $100.00
$100.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 22657

DATE 11/16/06 ACCOUNT 001.006.6150

AMOUNT $ 100.00

RECEIVED FROM: Owings Park, LLC

FOR: Appeal 06-637-SPHXA
4424 Painters Mill Rd

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
11/17/2006	11/16/2006	09:50:38	2

REG WS02 MAIL JEVA JEE
>>RECEIPT # 490462 11/16/2006 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 022657
Recpt Tot $100.00
$100.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 22658

DATE 11/16/06 ACCOUNT 001·006·6150

AMOUNT $ 200.00

RECEIVED FROM: Richard + Mary Jones

FOR: Appeal 06-637-SPHXA

4424 Painters Mill Rd.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
11/17/2006	11/16/2006	09:51:17	2

REG WS02 MAIL JEVA JEE
>>RECEIPT # 490464 11/16/2006 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 022658
Recpt Tot $200.00
$200.00 CK $.00 CA
Baltimore County, Maryland

Department of Permits and Development Management

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

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

July 10, 2006

NEW 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: 06-637-SPHXA
4424 Painters Mill Road
Southside of Painters Mill Road, 424.16 feet south of Lyons Mill Road
2nd Election District – 4th Councilmanic District
Legal Owners: American Legion Liberty Post 122, Leon McGee, Jr., Commander
Contract Purchaser: New Cingular Wireless ACS, LLC

Special Exception to permit a wireless telecommunications facility to be located at 4424 Painters Mill Road. Construction will be consistent with the accompanying plans. Special Hearing to continue use of the property as an American Legion Post in combination with a wireless telecommunications facility and to confirm that there is no conflict with prior zoning. Variance to allow a tower with a 47.0-foot sideyard setback and a 59.6-foot front yard setback to any other residential property line in lieu of the minimum required 200 feet (for both).

Hearing: Thursday, August 17, 2006 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Karl Nelson, Saul Ewing, 500 E. Pratt Street, Baltimore 21202
Leon McGee, 4424 Painters Mill Road, Randallstown 21133
Jack Barber, 7150 Standard Drive, Hanover 21076

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, AUGUST 2, 2006.**
(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.

B of A

PETITIONER'S

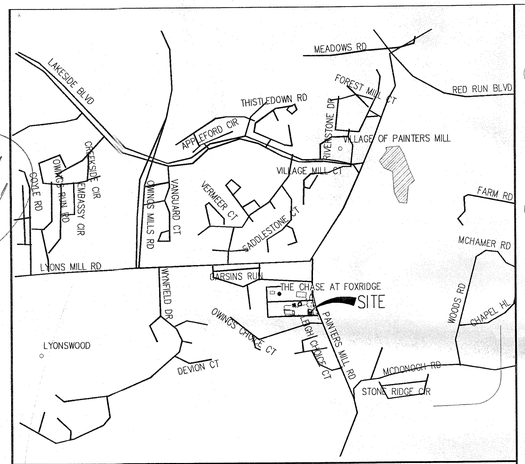
EXHIBITS

CASE NO. 06-637-SPHXA

PETITIONER'S EXHIBITS

Verified 11-15-07

✓	1.	Site Plan in support of the petition.
✓	2.	Picture of the standard shelter.
✓	3.	Aerial Photo of the location
✓	4.	Cingular Key Site #
✓	4A.	Picture of the saloon showing and toward the road
✓	4B.	Picture of the saloon
✓	4C.	Picture " " "
✓	4D.	Picture " " "
✓	4E.	Picture - Entrance to the T. Rowe Price Entrance.
✓	4F.	Picture - Can't see the saloon
✓	5.	Simulations of the flag - Photo
	5A.	" " " " - Photo
	5B.	" " " " "
	5C.	" " " " "
	5D.	" " " " "
	5E.	" " " " "
✓	6.	Town Committee Report.
✓	7.	E-Mail from Mr. Hrouda School.
Change exhibit # Rolled 2nd	8.	Cingular Wireless Existing Coverage Sites in the Area.
	8A.	Overlay For Exhibit 8 - Color Orange
	8B.	Overlay For Exhibit 8 - Site Cuid Site
	8C.	Overlay For Exhibit 8 - Lakeside Property



VICINITY MAP

SCALE: 1"=1000'-0"

TRUE NORTH

SITE INFORMATION

1.) SITE NAME: CHATTOLANE
SITE NUMBER: 1964

2.) THIS IS NOT A BOUNDARY SURVEY AND IS NOT TO BE USED FOR THE TRANSFER OF PROPERTY.

3.) THE PARENT PARCEL INFORMATION;
OWNER: AMERICAN LEGION LIBERTY POST 122 MD
ADDRESS: 4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

COUNTY: BALTIMORE COUNTY
TAX MAP: 67 PARCEL: 30
DISTRICT NUMBER: 02 ACCOUNT NUMBER: 0201500001
ADC MAP: N/A GRID N/A
ZONING: DR-16 (SEE BALTIMORE CO. ZONING MAPS 067A3 AND 067A2
USE: EXEMPT COMMERCIAL

4.) ELECTION DISTRICT: 11
COUNCILMANIC DISTRICT: 72 PRECINCT: 2-15

5.) THE RECORDED REFERENCES FOR THE PARENT PARCEL ARE AS FOLLOWS:
DEED: LIBER 2414 , FOLIO 296-298
PLAT: N/A
AREA: 134,600 SF (3.09 AC)

6.) THE DATUM'S ARE NAD 83 AND NAVD 88, AND THE BEARING BASE IS STATE GRID.

7.) NO UNDERGROUND UTILITIES HAVE BEEN LOCATED, THE PRESENCE OF ANY SUCH UTILITIES MUST BE CONFIRMED BY THE CONTRACTOR BEFORE CONSTRUCTION.

8.) NO WETLANDS HAVE BEEN DEFINED AND ANY AREAS SHOWN AS MARSH, PONDS OR DITCHES ARE DONE SO FROM VISIBLE SURFACE FEATURES AND IN NO WAY CONSTITUTE A DEFINED WETLAND.

9.) THE FLOOD ZONE OF THE PROPOSED TOWER IS AS FOLLOWS; FLOOD ZONE C, AREA OF MINIMAL FLOODING. SOURCE, FEMA FLOOD MAP FOR TALBOT COUNTY, MD. COMMUNITY PANEL NUMBER 240010 0220 C. REVISED, SEPTEMBER 3, 1992.

10.) NO TITLE REPORT WAS FURNISHED FOR THIS SURVEY.

11.) THE DATA COLLECTED AND SHOWN ON THIS DRAWING ARE FOR THE PURPOSES OF CONSTRUCTION OF A CELLULAR TOWER, ANY NECESSARY ANCILLARY EQUIPMENT AND ALL APPROPRIATE EASEMENTS.

12.) NO UNRECORDED EASEMENTS ARE SHOWN ON THIS SURVEY AND IT IS POSSIBLE THAT SUCH EASEMENTS IMPACT THE SITE.

13.) THIS PROPERTY IS SUBJECT TO ALL MATTERS OF PUBLIC RECORD.

14.) THE LOCATION OF THE PROPOSED TOWER IS AS FOLLOWS; THE VALUES LISTED BELOW ARE WITHIN ±50' HORIZONTAL AND ±20' VERTICAL.
LATITUDE: N 39° 23' 33.9"
LONGITUDE: W 76° 47' 20.3"
ELEVATION: ±573' AMSL

15.) AMERICAN LEGION PARKING WILL NOT BE ADVERSELY AFFECTED BY TOWER OR EQUIPMENT.

PROPERTY: ±3.09 ACRES GROSS AREA

AREA SUBJECT TO HEARING: 3,720 SF/0.09 AC

	YES	NO
CHESAPEAKE BAY CRITICAL AREA:	☐	☒
FLOOD PLAIN:	☐	☒
HISTORIC:	☐	☒

TAX INFORMATION

1. PARCEL 30
TAX MAP 67
ACCOUNT NO. 02-0201500001
N/F
AMERICAN LEGION LIBERTY POST 112 MD
PREMISES ADDRESS: 4424 PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 112
RANDALLSTOWN, MD 21133
DEED LIBER 1479, FOLIO 153
ZONING: DR-16 USE: COMMERCIAL

2. PARCEL 29
TAX MAP 67
ACCOUNT NO. 02-2300011948
N/F
OWINGS PARK LLC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 490
JOPPATOWNE, MD 21085-0490
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: APARTMENTS

3. PARCEL 511
TAX MAP 67
ACCOUNT NO. 02-2300006065
N/F
TRP SUBURBAN SECOND INC
PREMISES ADDRESS: 4401 PAINTERS MILL RD
MAILING ADDRESS: ATTN FIN RPT-13
P.O. BOX 89000
BALTIMORE, MD 21289-0001
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: COMMERCIAL

4. PARCEL 426
TAX MAP 67
ACCOUNT NO. 02-2200025451
N/F
TRP SUBURBAN SECOND INC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: ATTN FIN RPT-13
P.O. BOX 89000
BALTIMORE, MD 21289-0001
DEED LIBER 12290, FOLIO 259
ZONING: N/A USE: COMMERCIAL

5. PARCEL 425
TAX MAP 67
ACCOUNT NO. 02-2200018213
N/F
OWINGS CHOICE HOMEOWNERS ASSOC. INC
PREMISES ADDRESS: OWINGS CHOICE CT
MAILING ADDRESS: 139 N MAIN ST, STE 302
BEL AIR, MD 21014
DEED LIBER 10562, FOLIO 669
ZONING: N/A USE: RESIDENTIAL

6. PARCEL 29
TAX MAP 67
ACCOUNT NO. 02-2300011947
N/F
OWINGS PARK LLC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 490
JOPPATOWNE, MD 21085-0490
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: APARTMENTS

ZONING INFORMATION FOR DR-16

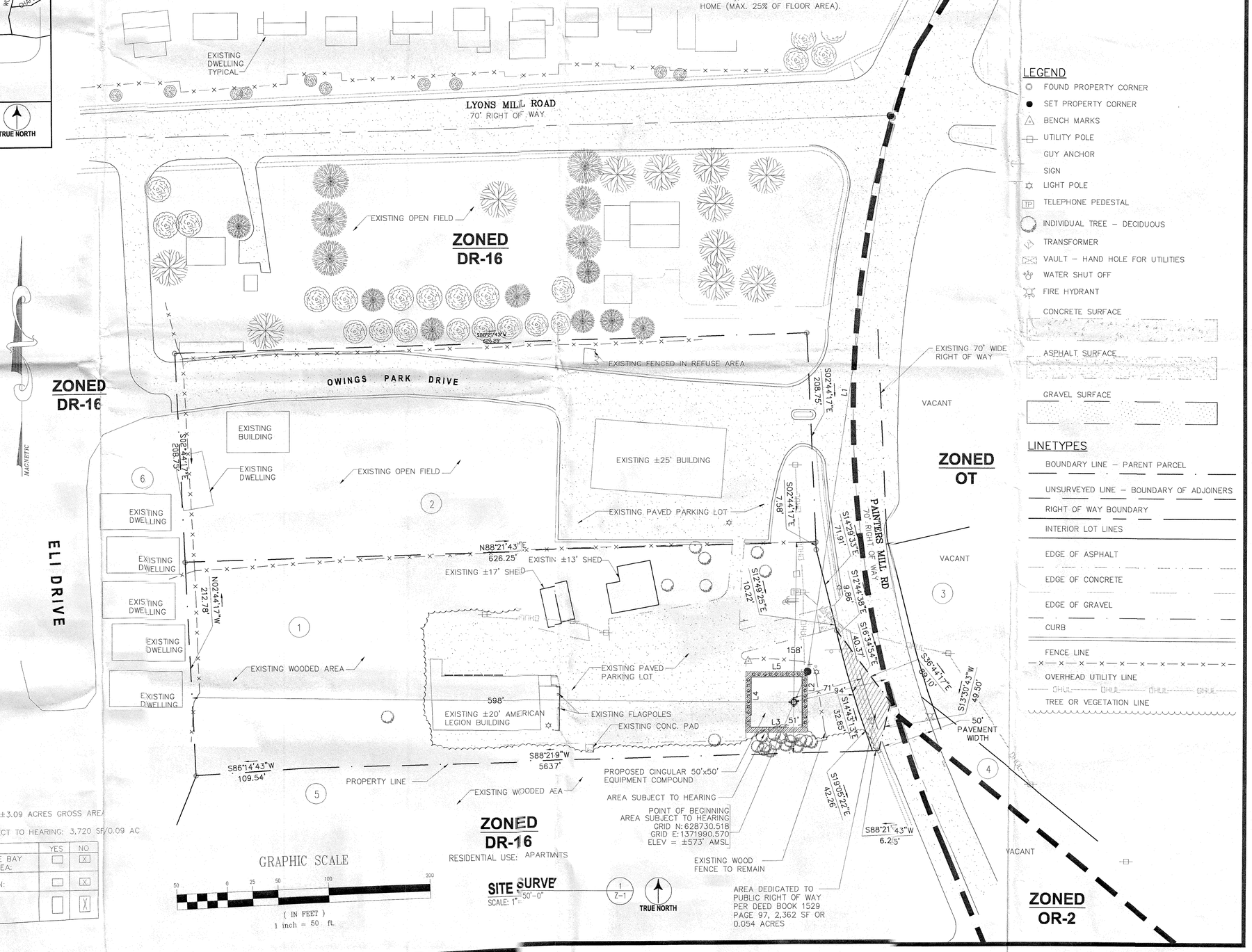
ZONE DESCIPTION: DENSITY RESIDENTIAL; 16 UNITS/ACRE

INTENT: TO FOSTER A GREATER VARIETY OF HOUSING TYPES MEETING THE NEEDS OF DIFFERENT HOUSING MARKET REQUIREMENTS; TO ALLOW MORE PRESERVATION OF NATURAL FEATURES AND INDUCE THE RESERVATION OF BETTER OPEN SPACE; TO PROVIDE GREATER CERTAINLY ABOUT DWELLING TYPES AND DENSITIES WITHIN EXISTING COMMUNITIES WITH THE GOAL OF CONSERVING AND MAINTAINING THESE AREAS.

TYPICAL USES PERMITTED BY RIGHT: SINGLE FAMILY, SEMI-DETACHED, DUPLEX, SINGLE FAMILY ATTACHED, MULTIFAMILY DWELLINGS.

TYPICAL USES PERMITTED SPACE EXCEPTION: CONVALESCENT HOMES, COMMUNITY BUILDING, CALSS B (UP TO 40 CHILDREN) GROUP CHILD CARE, ASSISSTED LIVING FACILITIES (CLASS B, NEW OR MODIFIED BUILDING), PROFESSIONAL OFFICES IN THE HOME (MAX. 25% OF FLOOR AREA).

LINE TABLE		
LINE	LENGTH	BEARING
L1	557.08	S08°13'20"W
L2	61.00	S00°00'00"E
L3	61.00	N90°00'00"W
L4	61.00	N00°00'00"E
L5	61.00	S90°00'00"E



GRAPHIC SCALE

50 0 25 50 100 200

(IN FEET)
1 inch = 50 ft.

SITE SURVEY
SCALE: 1"=50'-0"

TRUE NORTH

LEGEND

- FOUND PROPERTY CORNER
- SET PROPERTY CORNER
- BENCH MARKS
- UTILITY POLE
- GUY ANCHOR
- SIGN
- LIGHT POLE
- TP TELEPHONE PEDESTAL
- INDIVIDUAL TREE – DECIDUOUS
- TRANSFORMER
- VAULT – HAND HOLE FOR UTILITIES
- WATER SHUT OFF
- FIRE HYDRANT
- CONCRETE SURFACE
- ASPHALT SURFACE
- GRAVEL SURFACE

LINETYPES

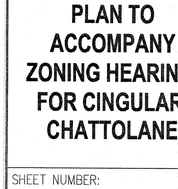
- BOUNDARY LINE – PARENT PARCEL
- UNSURVEYED LINE – BOUNDARY OF ADJOINERS
- RIGHT OF WAY BOUNDARY
- INTERIOR LOT LINES
- EDGE OF ASPHALT
- EDGE OF CONCRETE
- EDGE OF GRAVEL
- CURB
- FENCE LINE
- OVERHEAD UTILITY LINE
- TREE OR VEGETATION LINE

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FAX: (202)408-0961
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SUBMITTALS

DATE	DESCRIPTION	REV.
05-10-06	ZONING REVIEW	
05-30-06	ZONING	
06-07-06	ZONING	

SEAL:



cingular WIRELESS
7150 Standard Dr.
Hanover, MD 21076

PROJECT NO:	1087.022
DESIGNER:	TMF
ENGINEER:	C.G.

SCALE:
0 1/2 1
GRAPHIC SCALE IN INCHES

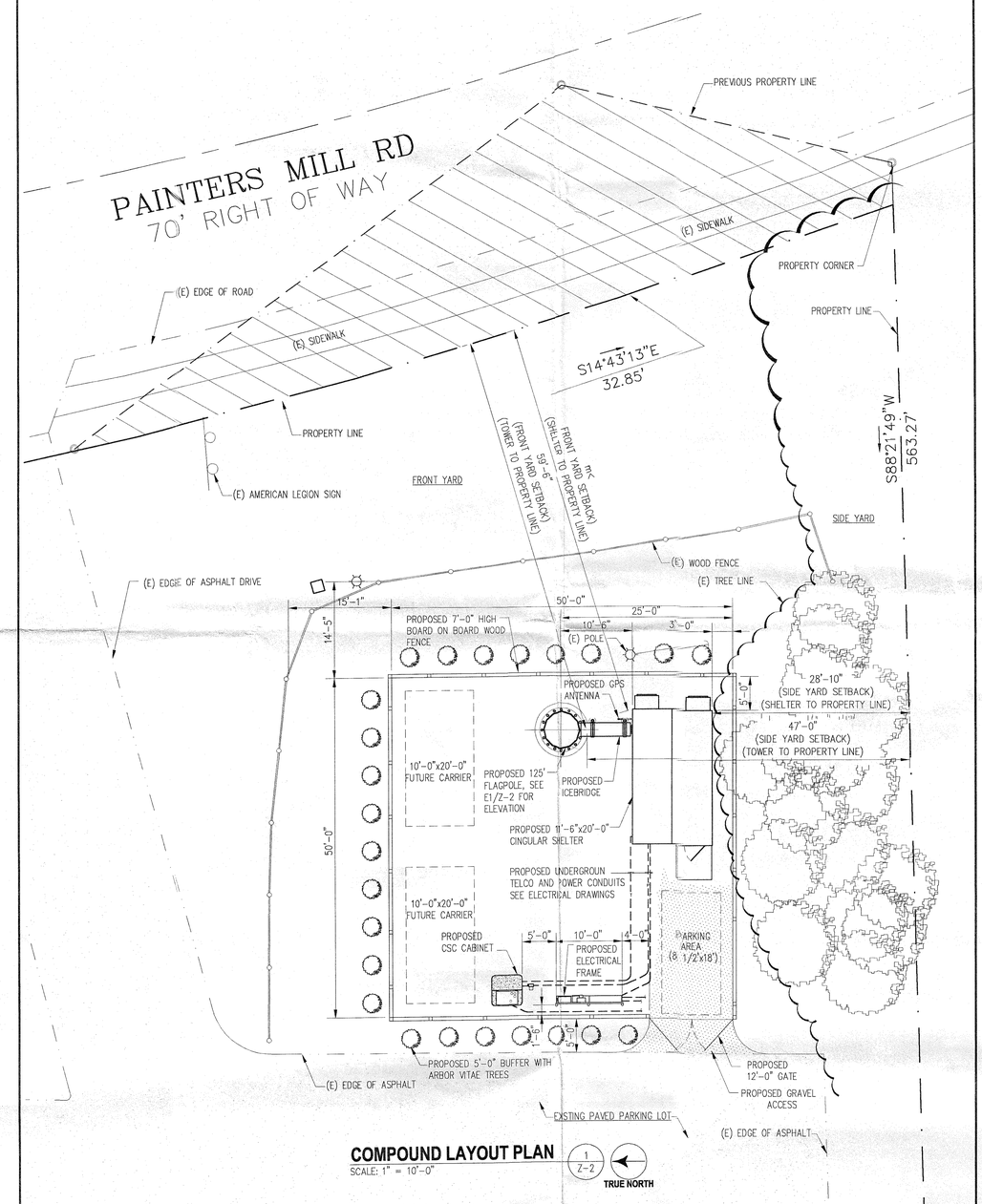
CHATTOLANE
1964
4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

TITLE:

PLAN TO ACCOMPANY ZONING HEARING FOR CINGULAR/ CHATTOLANE

SHEET NUMBER:

Z-1

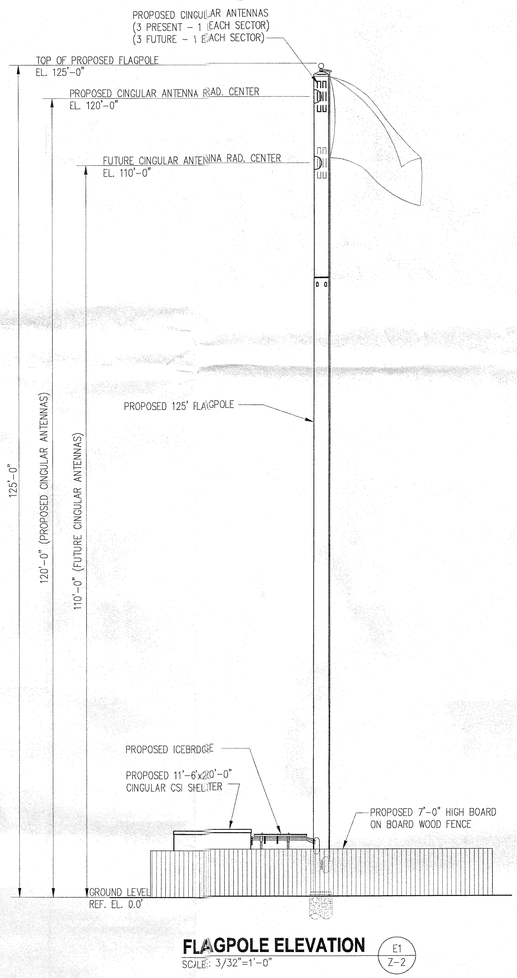


COMPOUND LAYOUT PLAN

SCALE: 1" = 10'-0"

1 / Z-2

TRUE NORTH



FLAGPOLE ELEVATION

SCALE: 3/32"=1'-0"

E1 / Z-2

SECTION 426.2

LEGISLATIVE POLICY FOR SITING OF WIRELESS TELECOMMUNICATIONS ANTENNAS AND TOWERS. IT IS THE INTENT OF BALTIMORE COUNTY THAT: [BILL NO. 121-2001]

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.

SECTION 426.5

LOCATION AND HEIGHT RESTRICTIONS FOR WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS. IN THIS SECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:

A. "R" MEANS BY RIGHT.

B. "SE" MEANS BY SPECIAL EXCEPTION.

C. THE COLUMN FOR ANTENNAS REFERS TO ANTENNAS LOCATED ON A TOWER, BUILDING OR STRUCTURE LEGALLY EXISTING PRIOR TO THE INSTALLATION OF THE ANTENNA EVEN IF THE TOWER, BUILDING OR STRUCTURE WAS APPROVED BY SPECIAL EXCEPTION.

D. THE HEIGHT OF A TOWER IS MEASURED FROM THE BASE OF THE TOWER TO THE TIP OF THE TOWER OR THE TIP OF THE HIGHEST ANTENNA ON THE TOWER, WHICHEVER DISTANCE IS GREATER.

		ANTENNAS	TOWERS	
	HOW PERMITTED	MAXIMUM ANTENNA HEIGHT AND ANTENNA DIAMETER	<200 FT. HIGH	>=200 FT. HIGH
RESIDENTIAL ZONES R.C., R.C.C., C.R. DISTRICT, D.R., R-O-A	R	15 FEET HIGH, DIAMETER 3 FEET	SE	SE R IF IN AN R.C. ZONE WITHIN THE RIGHTS-OF-WAY OF PUBLIC UTILITY OVERHEAD ELECTRICAL TRANSMISSION LINES CARRYING MORE THAN 69,000 VOLTS, PROVIDED THAT THE HEIGHT OF THE TOWER DOES NOT EXCEEED 250 FEET
TRANSITIONAL ZONES S-E, R-O, OR-1, B.M.M., B.M.Y.C., B.M.B., C.B.	R	15 FEET HIGH, DIAMETER 3 FEET	SE	SE
MEDIUM INTENSITY COMMERCIAL OR-2, B.L.R., B.L., B.M., B.R., M.R., M.L., M.L.R.	R	NOT REGULATED	SE	SE
HIGH INTENSITY COMMERCIAL O-3, O.T., M.H.	R	NOT REGULATED	SE	SE

SECTION 426.6

SETBACK REQUIREMENTS FOR WIRELESS TELECOMMUNICATIONS TOWERS.

A. SETBACKS. [BILL NO. 17-2002]

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.

3. NOTWITHSTANDING THE PROVISIONS OF SECTION 102.2 OF THESE REGULATIONS, IF MULTIPLE STRUCTURES HOUSING EQUIPMENT FOR A TOWER ARE LOCATED ON THE SAME OWNER'S PROPERTY, A YARD OR SETBACK IS NOT REQUIRED BETWEEN THE STRUCTURES.

B. EXCEPT AS REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION:

1. STROBOSCOPIC LIGHTS ARE NOT PERMITTED ON A TOWER.

2. THE TOWER, ANTENNA AND SUPPORTING LINES SHALL BE NEUTRAL IN COLOR.

C. IF A TOWER IS LOCATED IN A RESIDENTIAL OR TRANSITIONAL ZONE, ANY STRUCTURE HOUSING EQUIPMENT FOR THE TOWER SHALL BE:

1. SCREENED IN ACCORDANCE WITH THE LANDSCAPE MANUAL, CLASS "A" SCREENING REQUIREMENTS.

2. FACED WITH A MATERIAL COMPATIBLE WITH BUILDINGS OR STRUCTURES SURROUNDING THE TOWER.

D. UPON COMPLETION OF A TOWER AND EVERY FIVE YEARS AFTER THE DATE OF COMPLETION, THE OWNER OF THE TOWER SHALL SUBMIT TO THE CODE OFFICIAL WRITTEN CERTIFICATION FROM A PROFESSIONAL ENGINEER VERIFYING THAT THE TOWER AND ANY STRUCTURE HOUSING EQUIPMENT FOR THE TOWER MEETS ALL APPLICABLE BUILDING CODE AND SAFETY REQUIREMENTS.

E. THE OWNER OF A TOWER SHALL SUBMIT ANNUALLY TO THE TOWER COORDINATOR WRITTEN CERTIFICATION OF THE NUMBER OF PROVIDERS AND ANTENNAS ON THE TOWER.

SECTION 426.9

ADDITIONAL CONDITIONS FOR TOWERS PERMITTED BY EXCEPTION. TOWERS PERMITTED BY SPECIAL EXCEPTION SHALL MEET THE REQUIREMENTS OF THIS SECTION.

A. A PETITIONER SHALL HAVE THE BURDEN OF DEMONSTRATING THAT:

1. THE PETITIONER HAS MADE A DILIGENT ATTEMPT TO LOCATE THE ANTENNA ON AN EXISTING TOWER OR NONRESIDENTIAL BUILDING OR STRUCTURE;

2. DUE TO THE LOCATION, ELVATION, ENGINEERING, TECHNICAL FEASIBILITY OR INABILITY TO OBTAIN A LEASE OR OWNERSHIP PF A LOCATION ELSEWHERE, THE CONSTRUCTION OF A TOWER AT THE PROPOSED LOCATION IS WARRENTED;

3. TO THE EXTENT TECHNICALLY FEASIBLE, THE TOWER HAS BEEN DESIGNED TO ACCOMMODATE ANTENNAS OF AT LEAST TWO OTHER PROVIDERS; AND

4. THE HEIGHT OF THE TOWER IS NO HIGHER THAN WHAT IS REQUIRED TO ENABLE PRESENT AND FUTURE CO-LOCATION OF OTHER PROVIDERS.

B. THE ZONING COMMISSIONER SHALL REVIEW THE PETITIONER'S SUBMITTAL WITH REGARD TO THE LEGISLATIVE POLICY UNDER SECTION 426.2.

C. IN A RESIDENTIAL OR TRANSITIONAL ZONE, A TOWER SHALL MEET THE FOLLOWING ADDITIONAL REQUIREMENTS:

1. A PETITIONER SHALL HAVE THE BURDEN OF DEMONSTRATING THAT:

A. THERE IS NO AVAILABLE, SUITABLE SITE FOR THE TOWER IN A MEDIUM OR HIGH INTENSITY COMMERCIAL ZONE, IDENTIFYING WITH PARTICULARITY ANY SITES CONSIDERED; OR

B. DUE TO TOPOGRAPHICAL OR OTHER UNIQUE FEATURES, THE PROPOSED SITE IS MORE CONSISTENT WITH THE LEGISLATIVE POLICY UNDER SECTION 426.2 THAN A SITE IN AN AVAILABLE MEDIUM OR HIGH INTENSITY COMMERCIAL ZONE.

2. A TOWER IN AN R.C. ZONE SHALL BE LOCATED ON A LOT OF AT LEAST FIVE ACRES. IN ALL OTHER RESIDENTIAL OR TRANSITIONAL ZONES, A TOWER SHALL BE LOCATED ON A LOT OF AT LEAST THREE ACRES.

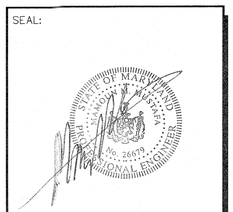
3. IN GRANTING A SPECIAL EXCEPTION, THE ZONING COMMISSIONER, OR BOARD OF APPEALS UPON APPEAL, SHALL IMPOSE CONDITIONS OR RESTRICTIONS AS PROVIDED IN SECTION 502.2. IN ADDITION, THE COMMISSIONER SHALL REQUIRE THAT THE TOWER BE DISGUISED AS A STRUCTURE OR NATURAL FORMATION, SUCH AS A FLAGPOLE, STEEPLE OR TREE, WHICH IS FOUND, OR LIKELY TO BE FOUND, IN THE AREA OF THE TOWER UNLESS THE COMMISSIONER FINDS THAT THE REQUIREMENT IS NOT REASONABLE OR ADVISABLE FOR THE PROTECTION OF PROPERTIES SURROUNDING THE TOWER.

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WASHINGTON, D.C. 20005
PHONE: (202)408-0960
FAX: (202)408-0961
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SUBMITTALS

DATE	DESCRIPTION	REV.
05-10-06	ZONING REVIEW	
05-30-06	ZONING	
06-07-06	ZONING	

SEAL:



cingular WIRELESS
7150 Standard Dr.
Hanover, MD 21076

PROJECT NO:	1087.022
DESIGNER:	TMF
ENGINEER:	H.M.

SCALE:

0 1/2 1

GRAPHIC SCALE IN INCHES

CHATTOLANE
1964
4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

TITLE:

COMPOUND LAYOUT PLAN, MONOPOLE ELEVATION AND ZONING NOTES

SHEET NUMBER:

Z-2

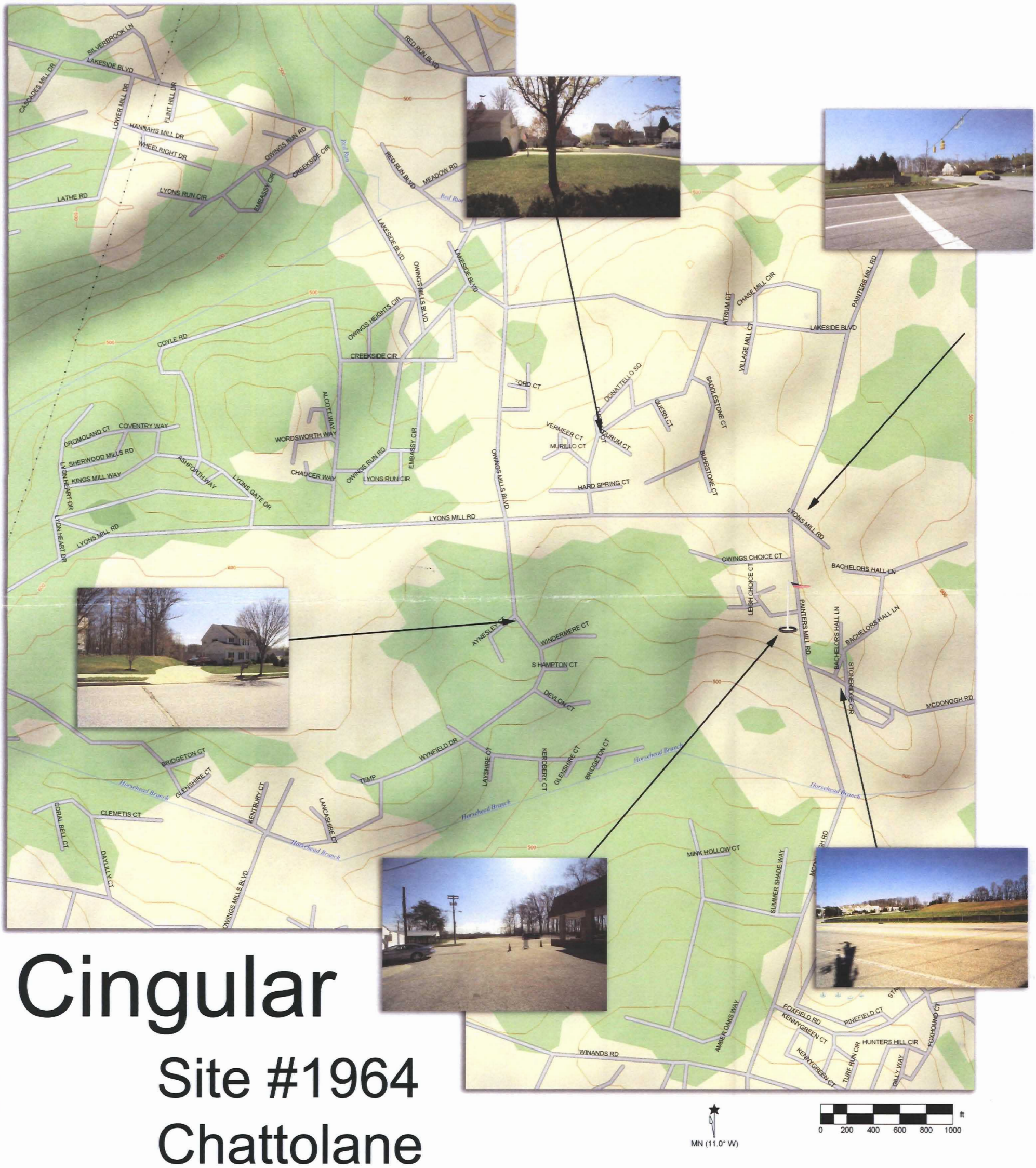
Ex. 2



CBA
PET. EXH.
No. 2

IBIT 2 (PETITIONER)

RAE 2
BLR
BL
LAKESIDE
CHASE MILL
LAKESIDE
PAINTERS MILL
RAE 1
VILLAGE MILL
MEADOW MILLS
VANGUARD
MURILLO
VERMEER
CHRISTOPHER SAMUEL OWINGS COURT
DURHAM
SADDLESTONE
BURRSTONE
HARD SPRING
OT
DR 16
LYONS MILL
DR
WINDERMERE
OWINGS GROVE
OR 2
DEVLON
DR 5.5



Cingular

Site #1964

Chattolane

CBA
PET. EXH.
NO. 4



CBA
PET. EXH
NO. 4A

4A

Cingular Site #1964, Chattolane,



Cingular Site #1964, Chattolane,View from Aynesly Ct. & Wynfield
39° 23.373 N, 76° 47.970 W, Before proposed installation.

CASE
PET. EXH
NO. 4B

4B



CBA
PET. EXH
4C

4C

Cingular Site #1964, Chattolane,View from Aynesly Ct. & Wynfield
39° 23.373 N, 76° 47.970 W, Before proposed installation.



CBA
PET. EXH
NO. 41.

4D

Cingular Site #1964, Chattolane, View from Mc Donogh Rd near Stone Ridge Lane
39° 23.230 N, 76° 47.397 W, before proposed installation.



CBA
Pet. Exh
No. 4E

4E

Cingular Site #1964, Chattolane, View from Painters Mill & Lyons Mill, @ T. Rowe Price
39° 23.509 N, 76° 47.523 W, Before proposed installation.



CBA
PET. EXH.
NO. 47

47

Cingular Site #1964, Chattolane, View from Durum Ct & Samuel Owings
39° 23.611 N, 76° 47.723 W, Before proposed installation.

BofA #5

3A













Cingular
Site #1964
Chattolane

MN (11.0° W)

0 200 400 600 800 1000 ft

OBA
PET. EXH
NO. 5

3F



B of A
SA

CBA
PET. EXH.
NO. 5A

Cingular Site #1964, Chattolane, View from American Legion Parking Lot.

3E

BOA
58

CBA
Pet. Exh
No. 5B

Cingular Site #1964, Chattolane, View from Aynesly Ct. & Wynfield
39° 23.373 N, 76° 47.970 W, With proposed stealth flagpole.

3C

BOCHA
SC
YBK

CBA
PET. EXH
NO. 5C

Cingular Site #1964, Chattolane, View from Mc Donogh Rd near Stone Ridge Lane
39° 23.230 N, 76° 47.397 W, with proposed stealth flagpole.



3B

BOA

5D

CBA PET. EXH No. 51

Cingular Site #1964, Chattolane, View from Painters Mill & Lyons Mill, @ T. Rowe Price
39° 23.509 N, 76° 47.523 W, With proposed stealth flagpole.

30



Cingular Site #1964, Chattolane, View from Durum Ct & Samuel Owings
39° 23.611 N, 76° 47.723 W, With proposed stealth flagpole.

S.E.

BALTIMORE COUNTY, MARYLAND
Interoffice Correspondence

B of A
#6

DATE: May 2, 2006

TO: Donald T. Rascoe, Development Manager
Department of Permits and Development Management

FROM: Tower Review Committee

SUBJECT: New Tower – Cingular Wireless – 4424 Painters Mill Road

The Tower Review Committee met first on November 29, 2005 and then on April 24, 2006 and is making the following advisory comments to the Development Review Committee (DRC) in accordance with section 426.4 of the Baltimore County Zoning Regulations in reference to the proposed construction of a new 125-foot disguised monopole (flagpole) to be located on the property of the American Legion, 4424 Painters Mill Road, Randallstown, MD 21133.

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

Findings: Cingular Wireless has provided all requested information to the Tower Review Committee (TRC) to successfully demonstrate that no other co-location opportunities exist at or near this location that would suffice in providing their requested coverage of the intended area. The TRC agrees with this finding. As such, Cingular Wireless has proposed to install a new 125-foot monopole.

- *If a tower must be built, the tower should be: Constructed to accommodate at least three providers.*

Findings: Cingular Wireless has stated, in the application to the TRC, that the new pole will be constructed so as to support 2 additional wireless service providers in addition to Cingular Wireless.

- *Erected in a medium or high intensity commercial zone when available.*

Findings: This area is located in a DR16 Zone. This tower will require a special exception hearing. No medium or high intensity commercial zones exist in this area.

- *Located and designed to minimize its visibility from residential and transitional zone.*

Findings: Based on the pictures and simulations presented by Cingular Wireless and an on-site visit, we find that the visual impact will be minimal at the height proposed. The

CBA
PET. EX A
NO. 6

Jack Barber

From: Steve Simmers [SSimmers@mcdonogh.org]
Sent: Monday, August 21, 2006 9:15 AM
To: Jack Barber
Subject: Re: Cellular facilities on the McDonogh Campus

B of A #7

Dear Mr. Barber:

McDonogh School is not interested in placing any type of structure on our campus.

Thank you,
Stephan Simmers
Superintendent of Buildings and Grounds

CBA PET. EXH NO. 7

B of A

APPELLANT'S

PROTESTANT'S

EXHIBITS

06-637-SPHXA

Amer. Leg. Post 122 - PROTESTANTS' EXHIBITS

Verified 11-15-07

New Cingular

1 1A. Site Plan

B. Appeal letter dated 11/13/06

2. Richard Jones letter dated 9/25/06 to John Murphy.

3A. Pictures of Monopole and Flagpole 1, 2, 3, 4.

B. Compound Layout Plan, Monopole Elevation and Zoning Notes.

4. Zoning Commission Order 10/30/06

5. Section 502 Special Exception.
Section 426.1 Wireless Telecommunication Facilities.

6. Pictures 12/06. Scale Model of proposed tower.

A1 Aerial View - Proposed site

A2 " " - Acheson Rd. site

B1 Pictures of Tall Bldgs. (3)

B2 " of Bldg. & ~~Pictometry~~ Site Plan.

B3 Baltimore County Aerial Map. Topo.

C Application For Wireless Communication Site Placement

8. Petition For Special Permit

9. Sale of the Three acres. Deed dated 5/23/00.

10. Section 307

11 A. MD of A and T data search

~~B. Appeal Board Order of the Jones Property pertaining to property value.~~

12. MD of A and T data search of American Legion Property.

PROTESTANTS' EXHIBITS

13. Plan to Accompany Zoning Hearing,

14. Schnabel, Cross + Etzel, Ltd.

45. Deed 12/30/53 Original Purchase of the Property

46. Bill No. 30-98 2/17/98

47. Court of Appeals 8/3/05

18. Cromwell Vs Ward.

APPELLANTS' EXHIBITS
1 - 18

FOR

BALTIMORE COUNTY
BOARD OF APPEALS

Case No. 06-637-SPHXA

Property: 4424 Painters Mill Road

P. 180
Richard A. & Mary D. Jones
9109 Lyons Mill Road
Owings Mills, MD 21117
3992/533
Residential
2-0210450620

P. 468
Summit Investment Company
37 Tenby Court
Timonium, MD 21093
8896/841
Vacant
2-2200010195

P. 487
Richard A. & Mary D. Jones
9109 Lyons Mill Road
Owings Mills, MD 21117
10226/347
Vacant
2-2000018395

P. 168
Albert D. Jones
9203 Lyons Mill Road
Owings Mills, MD 21117
10226/341
Residential
2-2200018396

D.R. 16

EX. DRIVE
EX. S.F.D.
EX. SRA (APPROX. LOCATION)
EX. SHED
EX. GAR.
EX. GRAVEL DRIVE
EX. WIRE FENCE
EX. LAWN
EX. UTILITY POLE (ABANDONED)
EX. MAC. DRIVE
EX. SIDEWALK
EX. CONC. BLOCK STANDS
EX. PICNIC PAVILLION
EX. BLDG.
EX. PARKING LOT
EX. WOODS
EX. SEPTIC TANK, EX. 16'x 18' LEECHING WELL (APPROXIMATE LOCATION)
EX. BLDG.
EX. REVERTIBLE SLOPE ESMNT. 7529/497
EX. ANTI-AIRCRAFT GUN
EX. SIGN
EX. C&P ESMNT. 8430/737
EX. R/W (VARIES)
EX. PAV. VARIES
EX. 6" GAS DWG. 96-12-6
EX. 20" WATER DWG. 62-895
EX. 20" WATER DWG. 96126
EX. 6" GAS
EX. 20" WATER
EX. UTILITY ESMNT. 7504/214
#068
#014
286686
#286688
#015
CcB2
McD2
CcC2
McC2
CcB2
McC2

N88°17'25"E
626.25'

N03°08'07"W
212.57'

S03°08'07"E
208.75'

570.75'

p. 30
THE AMERICAN LEGION
LIBERTY POST No. 122, MD.
G.L.B. 2414/296
P.O.Box 112
Randallstown, Md. 21133
Private Club
2-0201500001

Painters Mill Road
R/W 80-217-I
85-310-37 & 38
7529/497

Owings Mills Town Center
Lyons Mill Rd
McDonogh
Woodholme Park
Woodholme Country Club
Mt Wilson
Winands Rd
Oakland Park
Belle Farm Estates
Scotts Level Park
Old Court Rd
Scotts Level
Randallstown
Liberty Rd
Green Ln
Owings Mills Blvd
Painters Mill Rd
Northwest Expy
Reisterstown
Garrison Forest Rd
Brentwood Dr
Gwynns Falls Pkwy
140
26
125

IB

November 13, 2006

Zoning Review Office
Attn: Kristen Matthews - 410-887-3391
111 W. Chesapeake Ave.
Towson, MD 21204

Re: Case No.06-637-SPHXA

Dear Ms. Matthews:

This letter is to formally appeal the decision and order by the Deputy Zoning Commissioner in the above referenced case. As you instructed today, I have enclosed checks totaling $400, representing the fee to appeal the referenced case.

I have listed below the names and addresses of all parties that should be kept notified of all times, dates, and places of the appeal process.

Very Truly Yours,

Richard A. Jones

Richard Jones, PO Box 792, Owings Mills, MD 21117

Phyllis Brotman, McDonogh Field Assn., 8105 McDonogh Rd., Pikesville, MD 21208

Towanda Maddox, 4315 Wynfield Dr., Owings Mills, MD 21117

Camille Givens-Patterson, 6 Kentbury Ct., Owings Mills, MD 21117

Joanna & Sylvester Kearney, 8 Lancashire Ct., Owings Mills, MD 21117

Lynn Ketara, 9202 Owings Park Dr., Owings Mills, MD 21117

RECEIVED
NOV 16 2006
Per...

Andrea

Prot Ex 2

To: Mr. John V. Murphy
Deputy Zoning Commissioner
Zoning Commissioner's Office
401 Bosley Avenue
Suite 405
Towson, Maryland 21204

September 25, 2006

Re: Proposed Cell Tower
Case No. 06-637-SPHXA
American Legion Post
4424 Painters Mill Road
Owings Mills, MD

Dear Mr. Murphy:

We are submitting the following in opposition to the request by the referenced subject for a Special Exception (to permit a wireless telecommunications facility to be located at the referenced address), a Special Hearing (to continue use of the property as an American Legion Post in combination with a wireless telecommunication facility and to confirm that there is no conflict with prior Zoning), and a Variance (to allow a tower with a 47 foot side yard setback and a 59.6 foot front yard setback to any other residential property in lieu of the minimum required 200 feet for both).

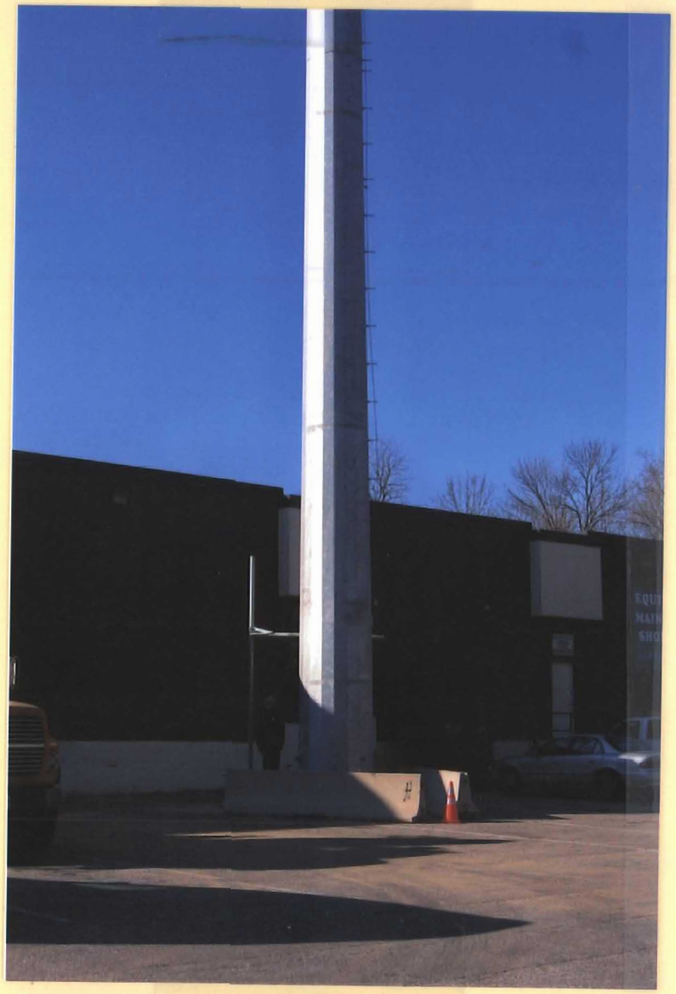
The referenced property is Residential DR16, and is being used by the American Legion in a non-conforming manner. (The property must revert to DR16 Residential use when the American Legion no longer uses the property.) If this cell tower is constructed, the property owner will have permanently altered the residential nature of their property, and this goes beyond the spirit and rules of non-conforming use, and the zoning laws of Baltimore County. They should leave the property as it was intended by the County.

The neighborhood surrounding the American Legion is composed of expensive single family homes, townhomes, and upscale apartments with garages. (Homes within a ½ mile radius of this property are in the price range of $350,000 to $750,000) There are no other obtrusive structures anywhere in the neighborhood. The construction of the tower would create an adverse impact on the neighborhood and would be visually incompatible with the neighborhood. The out of town and out of state consultants that Cingular has employed have totally disregarded this character of the neighborhood. There focus is strictly on the construction of the cell tower without consideration of the neighboring residences.

3A



1



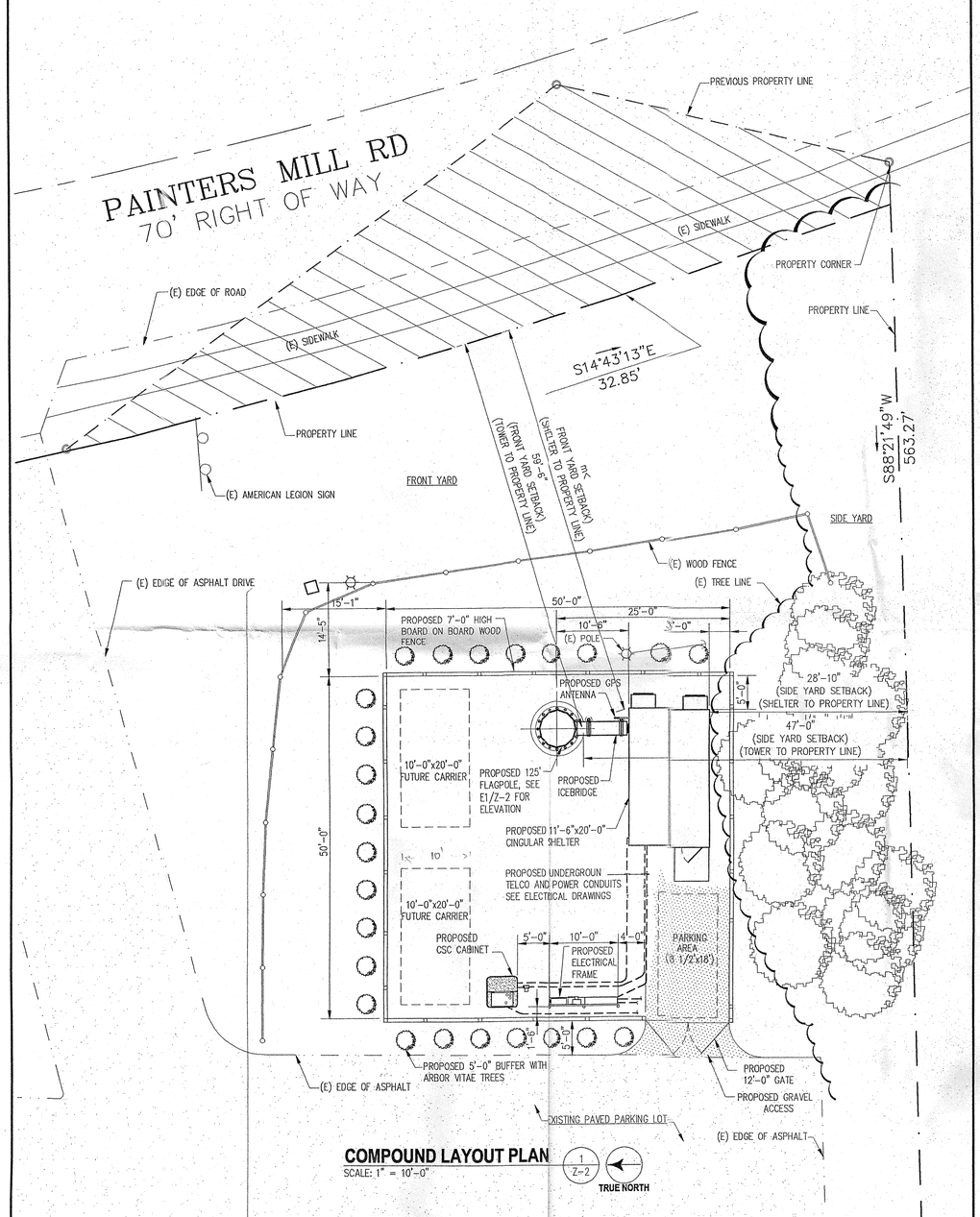
2



3



4

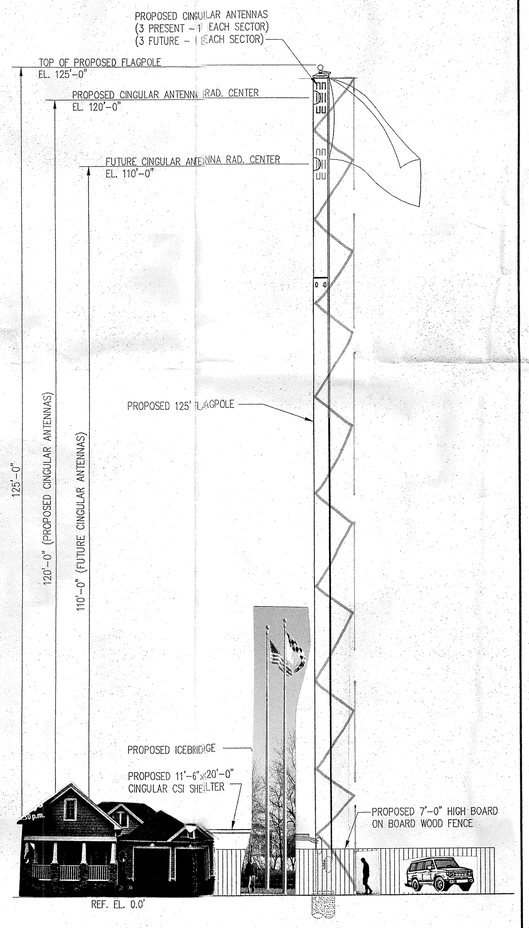


COMPOUND LAYOUT PLAN

SCALE: 1" = 10'-0"

1 / Z-2

TRUE NORTH



FLAGPOLE ELEVATION

SCALE: 3/32"=1'-0"

E1 / Z-2

SECTION 426.2

LEGISLATIVE POLICY FOR SITING OF WIRELESS TELECOMMUNICATIONS ANTENNAS AND TOWERS. IT IS THE INTENT OF BALTIMORE COUNTY THAT: **[BILL NO. 121-2001]**

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.

SECTION 426.5

LOCATION AND HEIGHT RESTRICTIONS FOR WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS. IN THIS SECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:

A. "R" MEANS BY RIGHT.

B. "SE" MEANS BY SPECIAL EXCEPTION.

C. THE COLUMN FOR ANTENNAS REFERS TO ANTENNAS LOCATED ON A TOWER, BUILDING OR STRUCTURE LEGALLY EXISTING PRIOR TO THE INSTALLATION OF THE ANTENNA EVEN IF THE TOWER, BUILDING OR STRUCTURE WAS APPROVED BY SPECIAL EXCEPTION.

D. THE HEIGHT OF A TOWER IS MEASURED FROM THE BASE OF THE TOWER TO THE TIP OF THE TOWER OR THE TIP OF THE HIGHEST ANTENNA ON THE TOWER, WHICHEVER DISTANCE IS GREATER.

		ANTENNAS	TOWERS	
	HOW PERMITTED	MAXIMUM ANTENNA HEIGHT AND ANTENNA DIAMETER	<200 FT. HIGH	>=200 FT. HIGH
RESIDENTIAL ZONES R.C., R.C.C., C.R. DISTRICT, D.R., R-O-A	R	15 FEET HIGH, DIAMETER 3 FEET	SE	SE
			R IF IN AN R.C. ZONE WITHIN THE RIGHTS-OF-WAY OF PUBLIC UTILITY OVERHEAD ELECTRICAL TRANSMISSION LINES CARRYING MORE THAN 69,000 VOLTS, PROVIDED THAT THE HEIGHT OF THE TOWER DOES NOT EXCEED 250 FEET	
TRANSITIONAL ZONES S-E, R-O, OR-1, B.M.M., B.M.Y.C, B.M.B., C.B.	R	15 FEET HIGH, DIAMETER 3 FEET	SE	SE
MEDIUM INTENSITY COMMERCIAL OR-2, B.L.R., B.L., B.M., B.R., M.R., M.L., M.L.R.	R	NOT REGULATED	SE	SE
HIGH INTENSITY COMMERCIAL O-3, O.T., M.H.	R	NOT REGULATED	SE	SE

SECTION 426.6

SETBACK REQUIREMENTS FOR WIRELESS TELECOMMUNICATIONS TOWERS.

A. SETBACKS. **[BILL NO. 17-2002]**

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.

3. NOTWITHSTANDING THE PROVISIONS OF SECTION 102.2 OF THESE REGULATIONS, IF MULTIPLE STRUCTURES HOUSING EQUIPMENT FOR A TOWER ARE LOCATED ON THE SAME OWNER'S PROPERTY, A YARD OR SETBACK IS NOT REQUIRED BETWEEN THE STRUCTURES.

B. EXCEPT AS REQUIRED BY THE FEDERAL AVIATION ADMINSTRATION:

1. STROBOSCOPIC LIGHTS ARE NOT PERMITTED ON A TOWER.

2. THE TOWER, ANTENNA AND SUPPORTING LINES SHALL BE NEUTRAL IN COLOR.

C. IF A TOWER IS LOCATED IN A RESIDENTIAL OR TRANSITIONAL ZONE, ANY STRUCTURE HOUSING EQUIPMENT FOR THE TOWER SHALL BE:

1. SCREENED IN ACCORDANCE WITH THE LANDSCAPE MANUAL, CLASS "A" SCREENING REQUIREMENTS.

2. FACED WITH A MATERIAL COMPATIBLE WITH BUILDINGS OR STRUCTURES SURROUNDING THE TOWER.

D. UPON COMPLETION OF A TOWER AND EVERY FIVE YEARS AFTER THE DATE OF COMPLETION, THE OWNER OF THE TOWER SHALL SUBMIT TO THE CODE OFFICIAL WRITTEN CERTIFICATION FROM A PROFESSIONAL ENGINEER VERIFYING THAT THE TOWER AND ANY STRUCTURE HOUSING EQUIPMENT FOR THE TOWER MEETS ALL APPLICABLE BUILDING CODE AND SAFETY REQUIREMENTS.

E. THE OWNER OF A TOWER SHALL SUBMIT ANNUALLY TO THE TOWER COORDINATOR WRITTEN CERTIFICATION OF THE NUMBER OF PROVIDERS AND ANTENNAS ON THE TOWER.

SECTION 426.9

ADDITIONAL CONDITIONS FOR TOWERS PERMITTED BY EXCEPTION. TOWERS PERMITTED BY SPECIAL EXCEPTION SHALL MEET THE REQUIREMENTS OF THIS SECTION.

A. A PETITIONER SHALL HAVE THE BURDEN OF DEMONSTRATING THAT:

1. THE PETITIONER HAS MADE A DILIGENT ATTEMPT TO LOCATE THE ANTENNA ON AN EXISTING TOWER OR NONRESIDENTIAL BUILDING OR STRUCTURE;

2. DUE TO THE LOCATION, ELVATION, ENGINEERING, TECHNICAL FEASIBILITY OR INABILITY TO OBTAIN A LEASE OR OWNERSHIP PF A LOCATION ELSEWHERE, THE CONSTRUCTION OF A TOWER AT THE PROPOSED LOCATION IS WARRENTED;

3. TO THE EXTENT TECHNICALLY FEASIBLE, THE TOWER HAS BEEN DESIGNED TO ACCOMMODATE ANTENNAS OF AT LEAST TWO OTHER PROVIDERS; AND

4. THE HEIGHT OF THE TOWER IS NO HIGHER THAN WHAT IS REQUIRED TO ENABLE PRESENT AND FUTURE CO-LOCATION OF OTHER PROVIDERS.

B. THE ZONING COMMISSIONER SHALL REVIEW THE PETITIONER'S SUBMITTAL WITH REGARD TO THE LEGISLATIVE POLICY UNDER SECTION 426.2.

C. IN A RESIDENTIAL OR TRANSITIONAL ZONE, A TOWER SHALL MEET THE FOLLOWING ADDITIONAL REQUIREMENTS:

1. A PETITIONER SHALL HAVE THE BURDEN OF DEMONSTRATING THAT:

A. THERE IS NO AVAILABLE, SUITABLE SITE FOR THE TOWER IN A MEDIUM OR HIGH INTENSITY COMMERCIAL ZONE, IDENTIFYING WITH PARTICULARITY ANY SITES CONSIDERED; OR

B. DUE TO TOPOGRAPHICAL OR OTHER UNIQUE FEATURES, THE PROPOSED SITE IS MORE CONSISTENT WITH THE LEGISLATIVE POLICY UNDER SECTION 426.2 THAN A SITE IN AN AVAILABLE MEDIUM OR HIGH INTENSITY COMMERCIAL ZONE.

2. A TOWER IN AN R.C. ZONE SHALL BE LOCATED ON A LOT OF AT LEAST FIVE ACRES. IN ALL OTHER RESIDENTIAL OR TRANSITIONAL ZONES, A TOWER SHALL BE LOCATED ON A LOT OF AT LEAST THREE ACRES.

3. IN GRANTING A SPECIAL EXCEPTION, THE ZONING COMMISSIONER, OR BOARD OF APPEALS UPON APPEAL, SHALL IMPOSE CONDITIONS OR RESTRICTIONS AS PROVIDED IN SECTION 502.2. IN ADDITION, THE COMMISSIONER SHALL REQUIRE THAT THE TOWER BE DISGUISED AS A STRUCTURE OR NATURAL FORMATION, SUCH AS A FLAGPOLE, STEEPLE OR TREE, WHICH IS FOUND, OR LIKELY TO BE FOUND, IN THE AREA OF THE TOWER UNLESS THE COMMISSIONER FINDS THAT THE REQUIREMENT IS NOT REASONABLE OR ADVISABLE FOR THE PROTECTION OF PROPERTIES SURROUNDING THE TOWER.

entrex
communication services, inc.
1575 Eye Street, N.W. Suite 350
WASHINGTON, D.C. 20005
PHONE: (202)408-0960
FAX: (202)408-0961
VelociTel®

SUBMITTALS

DATE	DESCRIPTION	REV.
05-10-06	ZONING REVIEW	
05-30-06	ZONING	
06-07-06	ZONING	

SEAL:



cingular WIRELESS
7150 Standard Dr.
Hanover, MD 21076

PROJECT NO: 1087.022
DESIGNER: TMF
ENGINEER: H.M.

SCALE:
0 1/2 1
GRAPHIC SCALE IN INCHES

CHATTOLANE
1964
4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

TITLE:

COMPOUND LAYOUT PLAN, MONOPOLE ELEVATION AND ZONING NOTES

SHEET NUMBER:

Z-2

3B

Prot Ex 4

IN RE: PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING & VARIANCE S/S of Painters Mill Road, south of Lyons Mill Road 2nd Election District 4th Councilmanic District **(4424 Painters Mill Road)**	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY
American Legion Liberty Post 122, Leon McGee, Jr., Commander *Legal Owner and Petitioner*	*	CASE NO. 06-637-SPHXA

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as Petitions for Special Exception, Special Hearing and Variance filed by the legal owner of the subject property, American Legion Liberty Post 122, Leon McGee, Jr., Commander. The Petitioners are requesting special exception, special hearing and variance relief for property located at 4424 Painters Mill Road. The special hearing is to continue the use of the property as an American Legion Post in combination with a wireless telecommunications facility and to confirm that there is no conflict with prior zoning Case No. 2812-S. The special exception is to permit a wireless telecommunications facility and construction will be consistent with the accompanying plans. The variance request is to allow a tower with a 47.0 foot side yard setback and a 59.6 foot front yard setback to any other residential property line in lieu of the minimum required 200 feet for both.

The property was posted with Notice of Hearing on July 28, 2006, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on August 1, 2006, to notify any interested persons of the scheduled hearing date.

Prot. Ex 5a

Section 502, Special Exceptions [BCZR 1955]

(See Section 270, Schedule of Special Exceptions.)

NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junkyards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety or general welfare of the public, the uses listed as special exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the County Board of Appeals.

In granting any special exception, the Zoning Commissioner and the County Board of Appeals, upon appeal, shall be governed by the following principles and conditions.

502.1 Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

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

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

C. Create a potential hazard from fire, panic or other danger;

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

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

F. Interfere with adequate light and air; [Bill No. 45-1982]

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; [Bill No. 45-1982]

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]

Section 426
Wireless Telecommunications Facilities
[Bill No. 30-1998[10]]

426.1 Definitions. In this section, the following words have the meanings indicated: **[Bill No. 121-2001]**

ANTENNA — A wireless telecommunications antenna.

OWNER — The owner, agent, lessee or person in control of a wireless telecommunications tower.

PROVIDER — A wireless telecommunications service provider.

SCENIC VIEWSHED — A scenic route or view as designated in the Baltimore County Master Plan.

SCENIC VIEWSHED ELEMENTS:

A. Those visual elements of a scenic viewshed which are of a quality, character, rarity and nature to cause a viewshed to be designated in the Baltimore County Master Plan by the Baltimore County Planning Board; and

B. Which are catalogued by the Planning Board in accordance with § 32-4-417 of the Baltimore County Code. **[Bill No. 137-2004]**

TOWER — A wireless telecommunications tower.

TOWER APPLICANT — A person who applies to the Committee pursuant to Section 426.4.

426.2 Legislative policy for siting of wireless telecommunications antennas and towers. It is the intent of Baltimore County that: **[Bill No. 121-2001]**

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.

426.3 Exceptions. The provisions of this section do not apply to: **[Bill No. 121-2001]**

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10 Editor's Note: This bill also repealed former Section 426, Wireless Transmitting or Receiving Structures, added by Bill No. 64-1986. In addition, Section 5 of Bill No. 30-1998 provided that "...this Act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any person who has had a hearing on a proposed tower before the Zoning Commissioner before the effective date of this Act" (March 30, 1998), and Section 6 of Bill No. 30-1998 provided that "...the provisions of this Act shall be interpreted consistent with the Telecommunications Act of 1996."

1



2



3



4

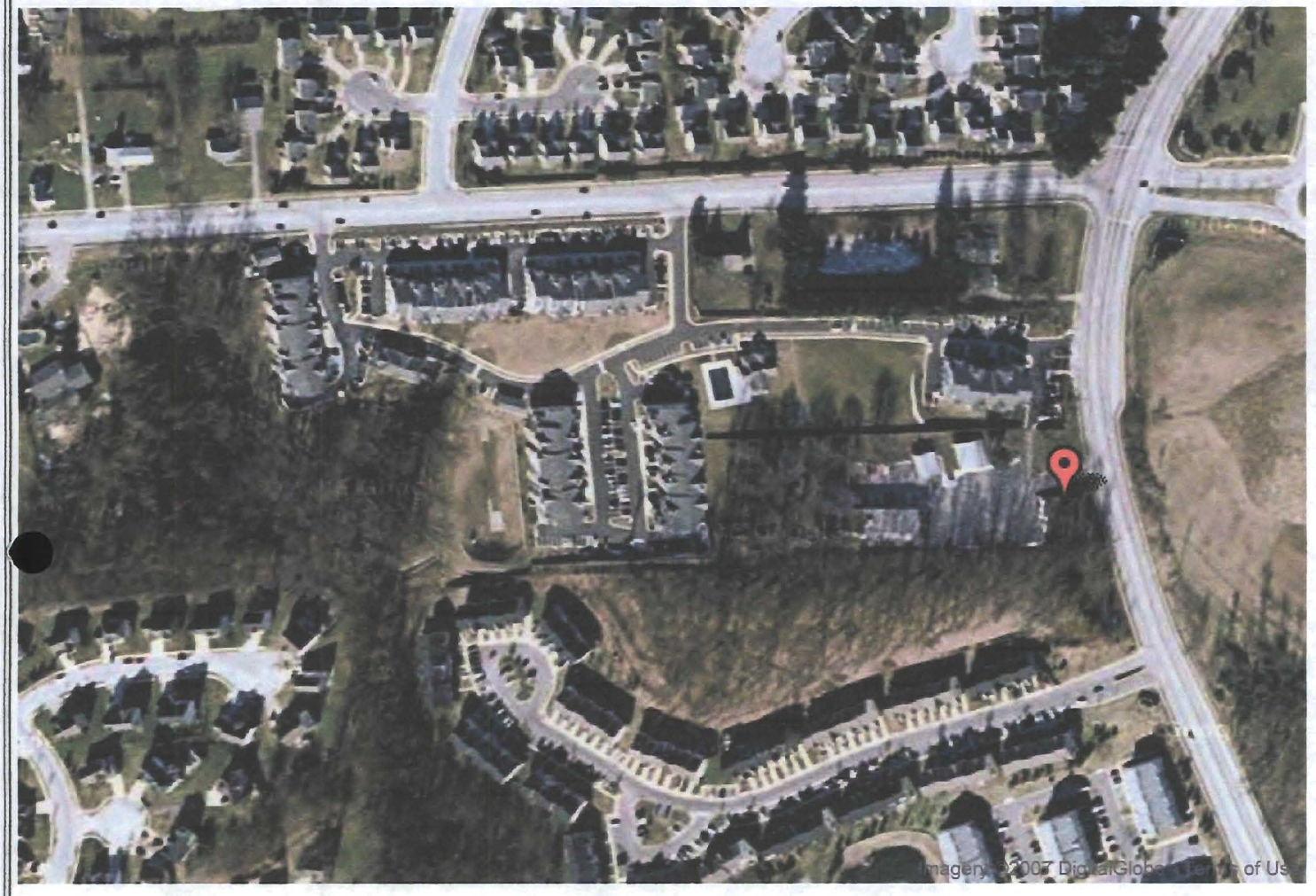


5



7A1

AERIAL VIEW 1



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7A 2

AERIAL VIEW 2



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7B1



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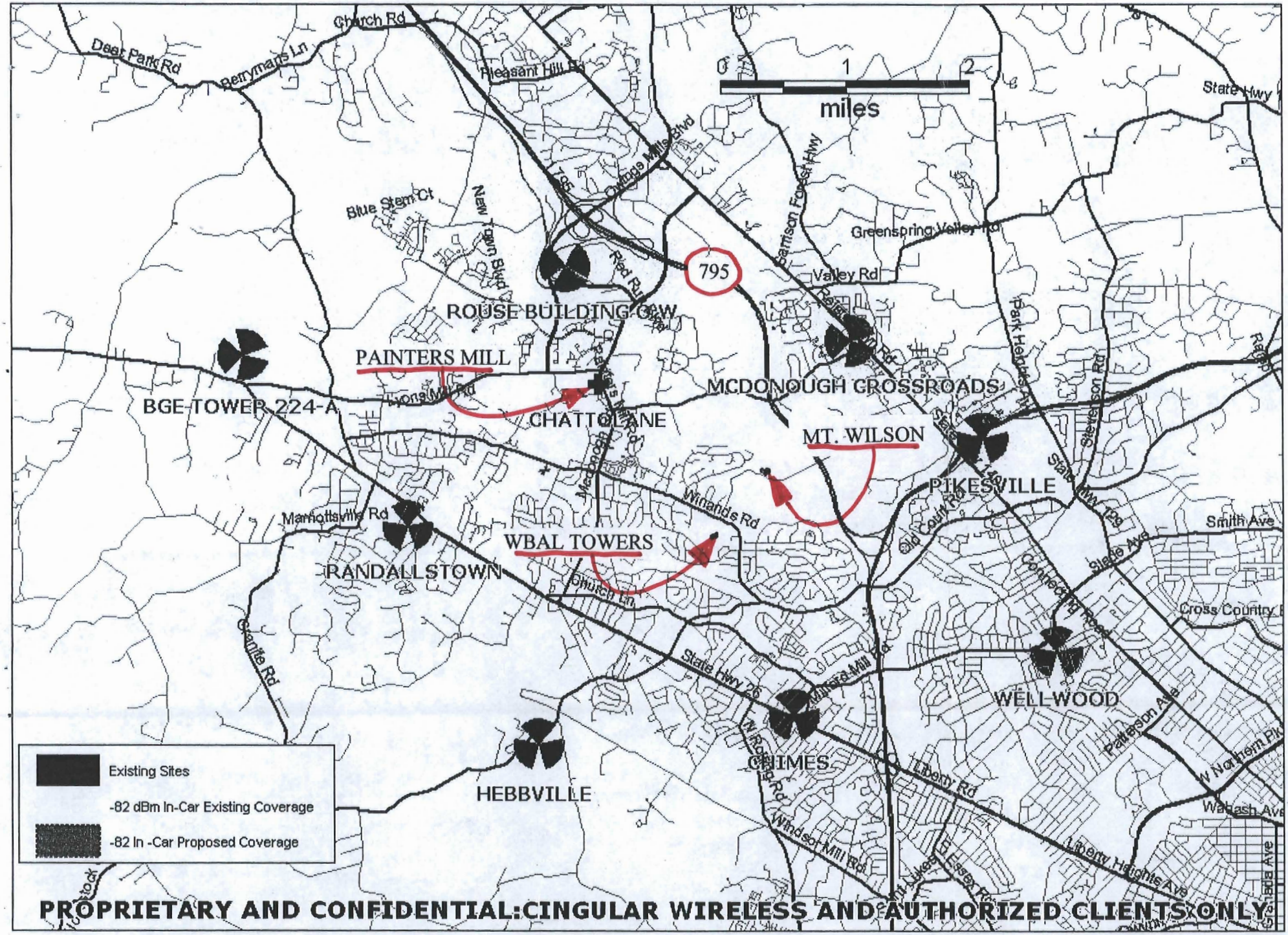
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3

7B2

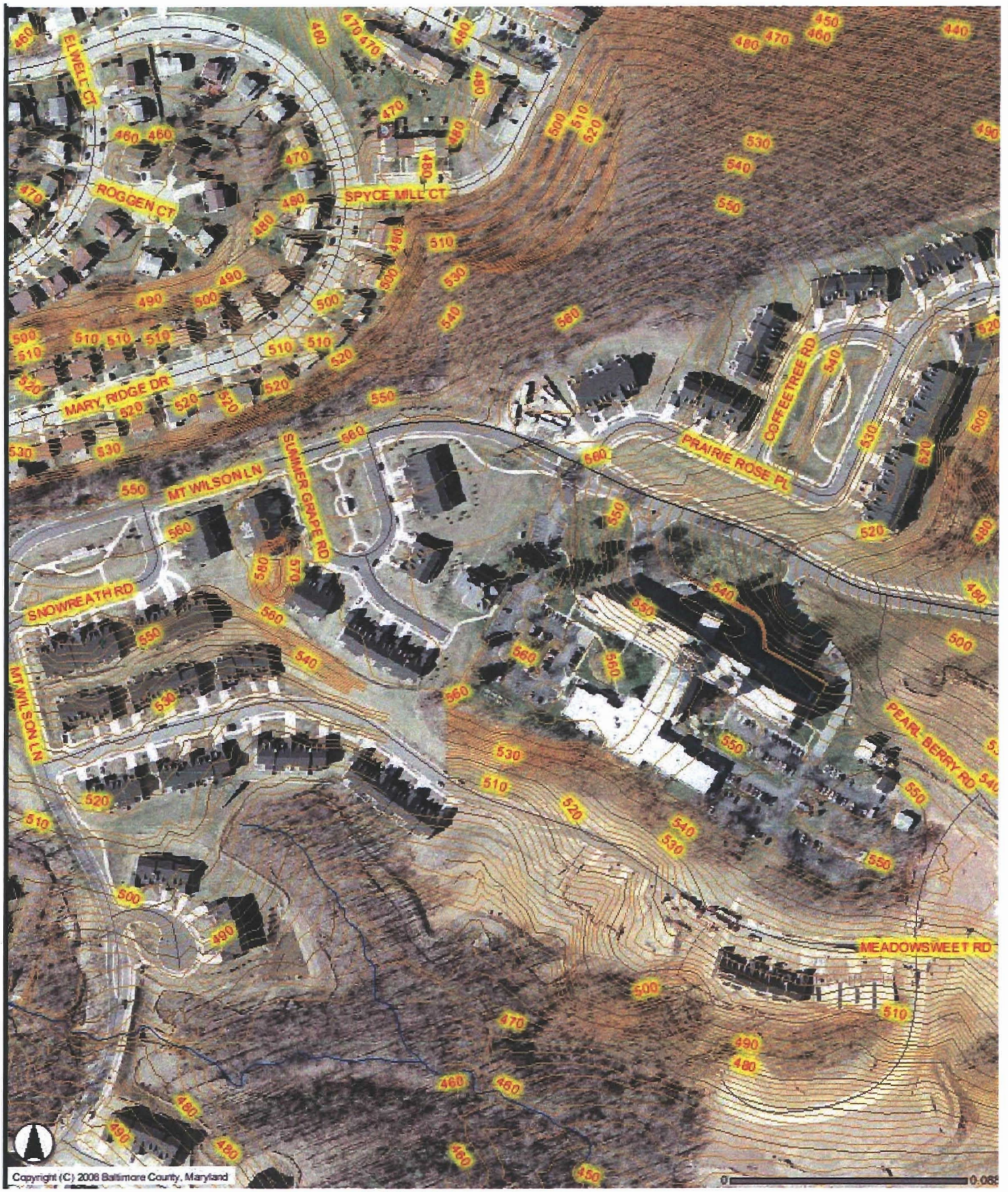
CINGULAR WIRELESS EXISTING COVERAGE WITHOUT CHATTOLANE SITE



PROPRIETARY AND CONFIDENTIAL:CINGULAR WIRELESS AND AUTHORIZED CLIENTS ONLY

7B3

My Neighborhood: PlanTopo - Map Output



http://bamaps1.baltimorecountymd.gov/arcims_path/bcgims?ServiceName=PlanTopo&ClientVersion=4.0&Form=Tr

cingular
WIRELESS

7C

October 27, 2005

Tower Review Committee
Richard Bohn, Chief
C/O Electronic Services/ Telecommunications
11112 Gilroy Road; Suite 101
Hunt Valley, Maryland 21031

OCT 28 [redacted]

Dear Mr. Bohn,

I respectfully request a meeting with the Tower Review Committee for the attached project called "Chattolane." I am submitting all required technical information, and will be available to supply anything additional that you may need to make your decision.

Please contact me at your earliest convenience, should you need anything further. Thank you for your valuable time and consideration.

Best regards,

Jack E. Barber
Site Acquisition Manager
Velocitel, Inc.
443.226.1529
j.barber@velocitel.net

CBA
Pro. EXH
No. 7C

Prot Ex 8

#2812-S

MAP #2-B "S" PRIVATE CLUB 11/25/53

PETITION FOR SPECIAL PERMIT

IN THE MATTER OF : BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

LOUIS I. PLACK, Sr. et al :

For a Special Permit

To The Zoning Commissioner of Baltimore County

Louis I. Plack, Sr. and Nellie C. Plack, his wife
Earl B. Jones and Frances Jones, his wife
Legal Owners

The American Legion Department of Maryland, Liberty Post No. 122, Inc.
Contract Purchaser

hereby petition for a Special Permit, Under the Zoning Regulations and Restrictions passed by the County Commissioners of Baltimore County, agreeable to Chapter 377 of the Acts of the General Assembly of Maryland of 1943, for a certain permit and use, as provided under said Regulations and Act, as follows:

A Special Permit to use the land (and improvements now or be erected thereon) hereinafter described for a private club - BEGINNING for the same in the center of Lyons Mill Road, approximately 197 feet South from the right angle turn in Lyons Mill Road at Painters Lane, said beginning being also at the end of the first line in a deed dated Dec 31, 1942 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1272, folio 192, from Richard T. Jones and wife to Nellie C. Plack etal, running thence North 83 degrees 43 minutes West 626.25 feet, South 5 degrees 11 minutes West 421.53 feet, South 85 degrees, 50 minutes East 109.54 feet, South 83 degrees, 43 minutes East 569.51 feet and North 21 degrees 26 minutes East 49.50 to the center of Lyons Mill Road and thence binding thereon, North 28 degrees 49 minutes West 89.10 feet, North 6 degrees, 34 minutes West 82.5 feet and North 5 degrees 11 minutes East 216.33 feet to the place of beginning.

The American Legion Department of Md.
Contract Purchaser
Liberty Post No. 122, Inc.
By Charles W. Weidman President
Randallstown, Maryland
Address

Earl B. Jones
Legal Owner
Frances Jones
3129 Kenyon Avenue,
Baltimore 13, Md.
Address

Louis I. Plack Sr.
Legal Owner
Nellie C. Plack
913 Lyndhurst Street,
Baltimore 29, Md.
Address

Notify

12/7

0014503 628

Prot Ex 9

RETURN TO:
HAMMOND & HAMMOND, LLC
P.O. BOX 569, 465 MAIN STREET
REISTERSTOWN, MD. 21136
410-833-7576
FILE NO. 6064

THIS DEED, made this 23rd day of May, 2000, by and between **THE AMERICAN LEGION, DEPARTMENT OF MARYLAND, LIBERTY POST 122, INC., a Maryland Corporation**, Grantor, party of the first part, and **SAMUEL R. ROTHBLUM AND CHRISTOPHER S. HOWELL**, parties of the second part, Grantees.

WITNESSETH, that in consideration of sum of TWO HUNDRED FORTY THOUSAND and no/100ths Dollars ($240,000.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said party of the first part does grant and convey unto the said parties of the second part, as tenants in common, their personal representatives, heirs and assigns, in fee simple, all that lot of ground situate in the Second (2nd) Election District, Baltimore County, State of Maryland, and described as follows, that is to say:

FOR LEGAL DESCRIPTION SEE ATTACHED EXHIBIT "A"

BEING THE SECONDLY DESCRIBED PARCEL OF LAND in a Deed dated December 30, 1953 and recorded among the Land Records of Baltimore County in Liber GLB No.2414, Folio 296, was granted and conveyed by Earl B. Jones, et al unto The American Legion, Department of Maryland, Liberty Post 122, Inc, the Grantor herein.

SUBJECT to covenants and restrictions of record.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises to the said parties of the second part, as tenants in common, their personal representatives, heirs and assigns, in fee simple forever in the following shares and proportion:

As to Samuel R. Rothblum a 50% undivided interest;

As to Christopher S. Howell a 50% undivided interest.

REVIEWED SDAT
BY 6/5/00
DATE

BA CIRCUIT COURT (Land Records) [MSA CE 62-14358] SM 14503, p. 0628. Printed 09/19/2006. Online 04/08/2005

Variance - pet Bach.

Prot Ex 10

Baltimore City Zoning Regulations

Section 307, Variances [BCZR 1955; Bill Nos. 107-1963; 32-1988; 2-1992; 9-1996]

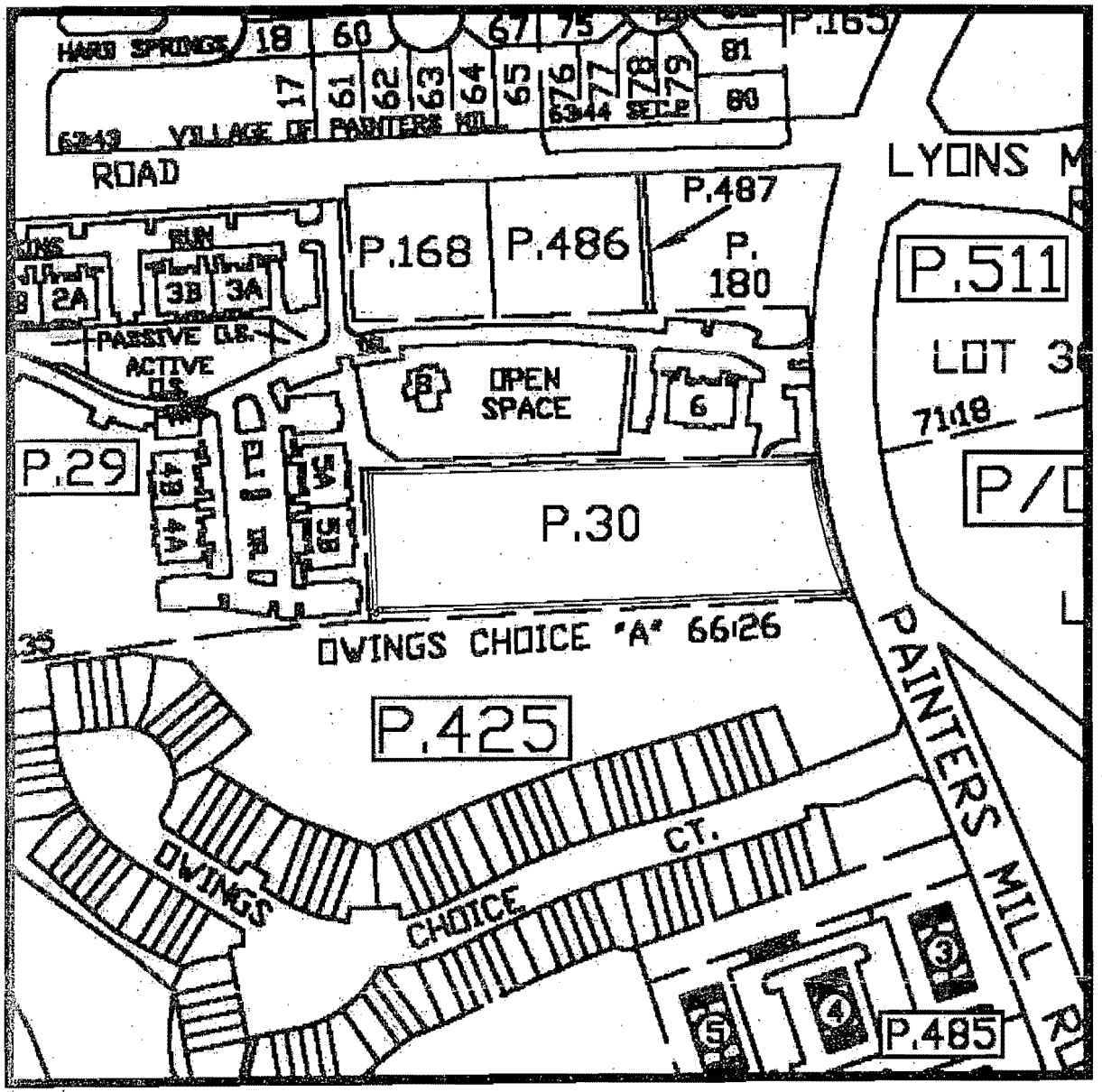
307.1 The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances 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. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. [EN] Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance.

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

11A

Go Back
View Map
New Search

District - 02Account Number - 0201500001



Property maps provided courtesy of the Maryland Department of Planning ©2004.
For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/webcom/index.html

Ex. 11B

STATE OF MARYLAND
Property Tax Assessment Appeals Board
Baltimore County

Hampton Plaza
300 E. Joppa Road, Suite 404
Towson, Maryland 21286

Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor
Kent T. Finkelsen
Administrator
Julie M. Greene
Executive Associate

June 18, 2007

JONES, Richard A. & Mary D.
P.O. Box 792
Owings Mills, MD 21117-0792

Appeal Number: 07-84
Account Number: 020210450620

Re: 9109 Lyons Mill Rd.

ORDER

I HEREBY CERTIFY THAT THE PROPERTY TAX ASSESSMENT APPEALS BOARD HAS CONSIDERED THE ABOVE NUMBERED CASE AND HAS RULED THAT THE DETERMINATION BY THE DEPARTMENT OF ASSESSMENTS AND TAXATION IS HEREBY: **REVERSED** and a reduction of $15,340.00 has been made on the improvements for tax year beginning 7/1/07. The full cash value will be as follows:

Land - $ 87,800.00

Imps. - 159,580.00

$ 247,380.00

Memorandum of Grounds for Decision – Reduction reflects additional functional obsolescence for proximity to cell tower and commercial encroachment, etc..

P.S.Johnson
Clerk to the Board

cc: Department of Assessments

NOTICE: Under the provisions of the Tax-Property Article, Section 14-512 of the Annotated Code of Maryland, you have the right to appeal the above order to the Maryland Tax Court, 301 West Preston Street, Suite 1513, Baltimore, Maryland 21201. Your appeal must be filed in the Maryland Tax Court within thirty (30) days from the date indicated above. Should you have questions concerning the filing of your appeal, you may contact Maryland Tax Court at 410-767-4830. You may obtain further information about Maryland Tax Court by visiting their website: www.txcrt.state.md.us

Post Ex 12

Click here for a plain text ADA compliant screen.

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 02 **Account Number** - 0201500001

Owner Information

Owner Name:	AMERICAN LEGION LIBERTY POST 122 MD	**Use:**	EXEMPT COMMERCIAL
		Principal Residence:	NO
Mailing Address:	P O BX 112	**Deed Reference:**	1)
	RANDALLSTOWN MD 21133		2)

Location & Structure Information

Premises Address
4424 PAINTERS MILL RD

Legal Description
3.0957 AC WS
PAINTERS MILL RD
1320 W MCDONOUGH RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
67	14	30						1	Plat Ref:

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1958	1,387 SF	3.09 AC	01

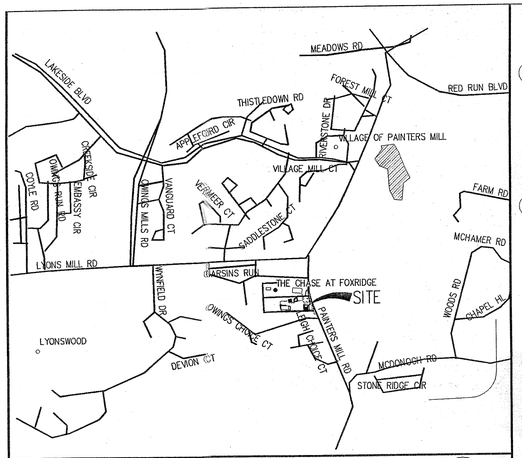
Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2006	As Of 07/01/2007
Land:	386,900	386,900		
Improvements:	31,800	31,800		
Total:	418,700	418,700	418,700	NOT AVAIL
Preferential Land:	0	0	0	NOT AVAIL

Transfer Information

Seller:	Date:	Price:



VICINITY MAP

SCALE: 1"=1000'-0"

TRUE NORTH

SITE INFORMATION

1.) SITE NAME: CHATTOLANE
SITE NUMBER: 1964

2.) THIS IS NOT A BOUNDARY SURVEY AND IS NOT TO BE USED FOR THE TRANSFER OF PROPERTY.

3.) THE PARENT PARCEL INFORMATION:
OWNER: AMERICAN LEGION LIBERTY POST 122 MD
ADDRESS: 4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

COUNTY: BALTIMORE COUNTY
TAX MAP: 67 PARCEL: 30
DISTRICT NUMBER: 02 ACCOUNT NUMBER: 0201500001
ADC MAP: N/A GRID N/A
ZONING: DR-16 (SEE BALTIMORE CO. ZONING MAPS 067A3 AND 067A2
USE: EXEMPT COMMERCIAL

4.) ELECTION DISTRICT: 11
COUNCILMANIC DISTRICT: 72 PRECINCT: 2-15

5.) THE RECORDED REFERENCES FOR THE PARENT PARCEL ARE AS FOLLOWS:
DEED: LIBER 2414 , FOLIO 296-298
PLAT: N/A
AREA: 134,600 SF (3.09 AC)

6.) THE DATUM'S ARE NAD 83 AND NAVD 88, AND THE BEARING BASE IS STATE GRID.

7.) NO UNDERGROUND UTILITIES HAVE BEEN LOCATED, THE PRESENCE OF ANY SUCH UTILITIES MUST BE CONFIRMED BY THE CONTRACTOR BEFORE CONSTRUCTION.

8.) NO WETLANDS HAVE BEEN DEFINED AND ANY AREAS SHOWN AS MARSH, PONDS OR DITCHES ARE DONE SO FROM VISIBLE SURFACE FEATURES AND IN NO WAY CONSTITUTE A DEFINED WETLAND.

9.) THE FLOOD ZONE OF THE PROPOSED TOWER IS AS FOLLOWS; FLOOD ZONE C, AREA OF MINIMAL FLOODING. SOURCE, FEMA FLOOD MAP FOR TALBOT COUNTY, MD.
COMMUNITY PANEL NUMBER 240010 0220 C.
REVISED, SEPTEMBER 3, 1992.

10.) NO TITLE REPORT WAS FURNISHED FOR THIS SURVEY.

11.) THE DATA COLLECTED AND SHOWN ON THIS DRAWING ARE FOR THE PURPOSES OF CONSTRUCTION OF A CELLULAR TOWER, ANY NECESSARY ANCILLARY EQUIPMENT AND ALL APPROPRIATE EASEMENTS.

12.) NO UNRECORDED EASEMENTS ARE SHOWN ON THIS SURVEY AND IT IS POSSIBLE THAT SUCH EASEMENTS IMPACT THE SITE.

13.) THIS PROPERTY IS SUBJECT TO ALL MATTERS OF PUBLIC RECORD.

14.) THE LOCATION OF THE PROPOSED TOWER IS AS FOLLOWS; THE VALUES LISTED BELOW ARE WITHIN ±50' HORIZONTAL AND ±20' VERTICAL.
LATITUDE: N 39° 23' 33.9"
LONGITUDE: W 76° 47' 20.3"
ELEVATION: ±573' AMSL

15.) AMERICAN LEGION PARKING WILL NOT BE ADVERSELY AFFECTED BY TOWER OR EQUIPMENT.

PROPERTY: ±3.09 ACRES GROSS AREA

AREA SUBJECT TO HEARING: 3,720 SF/0.09 AC

	YES	NO
CHESAPEAKE BAY CRITICAL AREA:	☐	☒
FLOOD PLAIN:	☐	☒
HISTORIC:	☐	☒

TAX INFORMATION

(1) PARCEL 30
TAX MAP 67
ACCOUNT NO. 02-0201500001
N/F
AMERICAN LEGION LIBERTY POST 112 MD
PREMISES ADDRESS: 4424 PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 112
RANDALLSTOWN, MD 21133
DEED LIBER 1479, FOLIO 153
ZONING: DR-16 USE: COMMERCIAL

(2) PARCEL 29
TAX MAP 67
ACCOUNT NO. 02-2300011948
N/F
OWINGS PARK LLC
PREMISES ADDRESS:PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 490
JOPPATOWNE, MD 21085-0490
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: APARTMENTS

(3) PARCEL 511
TAX MAP 67
ACCOUNT NO. 02-2300006065
N/F
TRP SUBURBAN SECOND INC
PREMISES ADDRESS: 4401 PAINTERS MILL RD
MAILING ADDRESS: ATTN FIN RPT-13
P.O. BOX 89000
BALTIMORE, MD 21289-0001
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: COMMERCIAL

(4) PARCEL 426
TAX MAP 67
ACCOUNT NO. 02-2300025451
N/F
TRP SUBURBAN SECOND INC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: ATTN FIN RPT-13
P.O. BOX 89000
BALTIMORE, MD 21289-0001
DEED LIBER 12290, FOLIO 259
ZONING: N/A USE: COMMERCIAL

(5) PARCEL 425
TAX MAP 67
ACCOUNT NO. 02-2200018213
N/F
OWINGS CHOICE HOMEOWNERS ASSOC. NC
PREMISES ADDRESS: OWINGS CHOICE CT
MAILING ADDRESS: 139 N MAIN ST, STE 302
BEL AIR, MD 21014
DEED LIBER 10562, FOLIO 669
ZONING: N/A USE: RESIDENTIAL

(6) PARCEL 29
TAX MAP 67
ACCOUNT NO. 02-2300011947
N/F
OWINGS PARK LLC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 490
JOPPATOWNE, MD 21085-0490
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: APARTMENTS

ZONING INFORMATION FOR DR-16

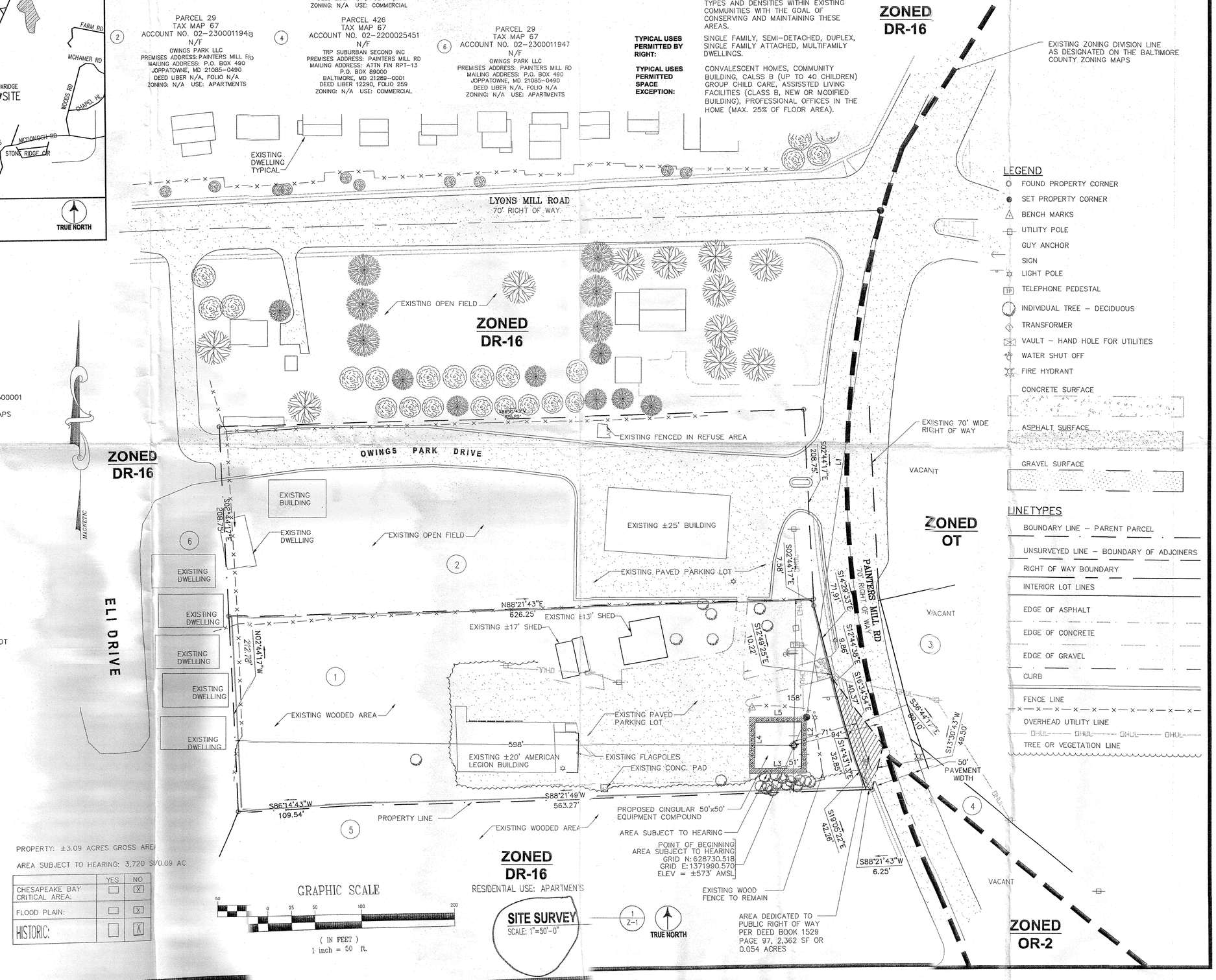
ZONE DESCIPTION: DENSITY RESIDENTIAL; 16 UNITS/ACRE

INTENT: TO FOSTER A GREATER VARIETY OF HOUSING TYPES MEETING THE NEEDS OF DIFFERENT HOUSING MARKET REQUIREMENTS; TO ALLOW MORE PRESERVATION OF NATURAL FEATURES AND INDUCE THE RESERVATION OF BETTER OPEN SPACE; TO PROVIDE GREATER CERTAINLY ABOUT DWELLING TYPES AND DENSITIES WITHIN EXISTING COMMUNITIES WITH THE GOAL OF CONSERVING AND MAINTAINING THESE AREAS.

TYPICAL USES PERMITTED BY RIGHT: SINGLE FAMILY, SEMI-DETACHED, DUPLEX, SINGLE FAMILY ATTACHED, MULTIFAMILY DWELLINGS.

TYPICAL USES PERMITTED SPACE EXCEPTION: CONVALESCENT HOMES, COMMUNITY BUILDING, CALSS B (UP TO 40 CHILDREN) GROUP CHILD CARE, ASSISTED LIVING FACILITIES (CLASS B, NEW OR MODIFIED BUILDING), PROFESSIONAL OFFICES IN THE HOME (MAX. 25% OF FLOOR AREA).

LINE TABLE		
LINE	LENGTH	BEARING
L1	557.08	S08°13'20"W
L2	61.00	S00°00'00"E
L3	61.00	N90°00'00"W
L4	61.00	N00°00'00"E
L5	61.00	S90°00'00"E



LEGEND
FOUND PROPERTY CORNER
SET PROPERTY CORNER
BENCH MARKS
UTILITY POLE
GUY ANCHOR
SIGN
LIGHT POLE
TELEPHONE PEDESTAL
INDIVIDUAL TREE - DECIDUOUS
TRANSFORMER
VAULT - HAND HOLE FOR UTILITIES
WATER SHUT OFF
FIRE HYDRANT
CONCRETE SURFACE
ASPHALT SURFACE
GRAVEL SURFACE

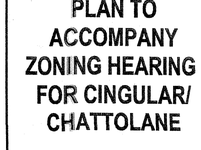
LINETYPES
BOUNDARY LINE - PARENT PARCEL
UNSURVEYED LINE - BOUNDARY OF ADJOINERS
RIGHT OF WAY BOUNDARY
INTERIOR LOT LINES
EDGE OF ASPHALT
EDGE OF CONCRETE
EDGE OF GRAVEL
CURB
FENCE LINE
OVERHEAD UTILITY LINE
TREE OR VEGETATION LINE

entrex
communication services, inc.
1575 Eye Street, N.W. Suite 350
WASHINGTON, D.C. 20005
PHONE: (202)408-0960
FAX: (202)408-0961
VelociTel®

SUBMITTALS

DATE	DESCRIPTION	REV.
05-10-06	ZONING REVIEW	
05-30-06	ZONING	
06-07-06	ZONING	

SEAL:



cingular WIRELESS
7150 Standard Dr.
Hanover, MD 21076

PROJECT NO:	1087.022
DESIGNER:	TMF
ENGINEER:	C.G.

SCALE:
0 1/2 1
GRAPHIC SCALE IN INCHES

CHATTOLANE
1964
4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

TITLE:

PLAN TO ACCOMPANY ZONING HEARING FOR CINGULAR/ CHATTOLANE

SHEET NUMBER:

Z-1

Prot Ex 14

Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

SCOTT A. LINDGREN
PROFESSIONAL LAND SURVEYOR #21081
PROJECT MANAGER

320 East Towsontown Boulevard
Suite 100
Towson, Maryland 21286

Phone: (410) 823-4470
Fax: (410) 823-4473
www.slindgren@gcelimited.com

Pet Ex 15

LIBER 2414 PAGE 296

THIS DEED, Made this 30th day of December in the year nineteen hundred and fifty-three, by and between EARL B. JONES and FRANCES V. JONES, his wife, and WILLIE C. BLACK and LOUIS D. BLACK, her husband, of Baltimore City, parties of the first part, and THE AMERICAN LEGION, DEPARTMENT OF MARYLAND, LIBERTY POST NO. 122, INC., a corporation of the State of Maryland, party of the second part.

WITNESSETH, That in consideration of the sum of five dollars and other good and valuable considerations, this day paid, the receipt whereof is hereby acknowledged, the said EARL B. JONES and FRANCES V. JONES, his wife, and WILLIE C. BLACK and LOUIS D. BLACK, her husband, do grant and convey unto the said THE AMERICAN LEGION, DEPARTMENT OF MARYLAND, LIBERTY POST NO. 122, INC., its successors and assigns, in fee simple, all those two parcels of land situate, lying and being in the second Election District of Baltimore County and described as follows, that is to say:

1. BEGINNING for the same at a stone heretofore set at the beginning of the South 86-1/2 degrees East 96 perch line of a parcel of land which by a deed dated March 27, 1928 and recorded among the Land Records of Baltimore County in Liber C.W.B. No. 2250, folio 186, was conveyed by Paul Culotta and wife to Richard T. Jones and wife and running thence with and binding on the outlines of said land as now surveyed the two following courses and distances viz: South 83 degrees 42 minutes East 360.11 feet and North 21 degrees 26 minutes East 49.50 feet to a point in the bed of the Lyons Mill Road (formerly Old Church Road), thence binding in or near the center of said Road and continuing to bind on the outlines of said parcel of land the three following courses and distances viz: North 28 degrees 49 minutes West 89.10 feet North 6 degrees 34 minutes West 82.50 feet

BALTIMORE COUNTY CIRCUIT COURT (Land Records) [MSA CE 62-2259] GLB 2414, p. 0296. Printed 12/19/2006. Image available as of 11/03/2005.

Prot Ex 16

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 1998, Legislative Day No. 4

Bill No. 30-98

All Councilmembers

By the County Council, February 17, 1998

A BILL
ENTITLED

AN ACT concerning

Zoning - Wireless Telecommunications Towers and Antennas

FOR the purpose of amending the Zoning Regulations in order to establish guidelines regarding the regulation of certain towers and antennas; excepting certain towers and antennas from regulation; establishing the Tower Review Committee; requiring certain persons to meet with and submit certain information to the Committee; authorizing the Committee to provide certain comments; authorizing certain towers and antennas to be located in certain zones under certain circumstances; requiring certain towers and structures to meet certain requirements; requiring a security bond or fee; requiring the owner of certain towers and structures to take certain actions; providing for the issuance of certain notices under certain circumstances; providing for the removal of a tower under certain circumstances; requiring towers by special exception to meet certain conditions;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining INDICATES AMENDMENTS TO BILL.

Prot Ex 17

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0047

September Term, 2004

COURT COSA

FILED 8-3-05 DOCKET/TERM 0047/04 JUDGE ADKINS

SPRINT PCS, ET AL.

v.

BALTIMORE COUNTY, MARYLAND

Eyler, James R.,
Adkins,
Barbera,

JJ.

Opinion by Adkins, J.

Filed: August 3, 2005

3C03005849

see no error in these findings.[3] Accordingly, the court correctly directed Ms. Droney to transfer the home in its 1992 Order; the court's finding of contempt in the 1994 Order, based on Ms. Droney's failure to comply, was not an abuse of discretion.

III.

[13] Ms. Droney contends that even if the court did not err in finding that the term "real estate" encompassed the home, the court lacked the statutory authority to order her to transfer her interest in property, either as part of a divorce decree or in the enforcement thereof. Under Md.Fam.Law Code Ann., § 8–202(a) (1991), the court may determine ownership of disputed property when the court grants an absolute divorce, but the statute expressly denies the court the power to transfer property, other than money, as part of an award. *See also, Kline v. Kline,* 93 Md.App. 696, 703, 614 A.2d 984 (1992). At the same time, the court can merge the terms of a deed, agreement, or settlement made between the parties during the divorce as a part of the divorce decree. Md.Fam. Law Code Ann., § 8–105(a); *Goldberg v. Goldberg,* 290 Md. 204, 210 n. 6, 428 A.2d 469 (1981). Once the terms are so merged, the court has the power to enforce those terms using the contempt power. Md.Fam.Law Code Ann., § 8–105(a);

3. In addition, our decision finds logical support in the area of lawful warrantless searches of vehicles under the Fourth Amendment of the United States Constitution. In *California v. Carney,* 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985), the Supreme Court held that the mobile home in question was sufficiently mobile that it fell within the "automobile exception" to the prohibition on warrantless searches, even if it was being used primarily as a residence and not as a means of transportation. *Id.* at 393, 105 S.Ct. at 2070. The Court suggested, however, that the same home, on blocks and connected to utility lines in a mobile home park, would not have been subject to a warrantless search, because the critical element of mobility would be lacking. *Id.* at 394 n. 3, 105 S.Ct. at 2071 n. 3. *See also, Doering v. State,* 313 Md. 384, 398–99, 545 A.2d 1281 (1988) (interpreting *Carney,* defendant's bus, which had been converted into lodging, was subject to warrantless search as it had all of its tires fully inflated, had all its windows intact, had all its lights in apparently functional condition, and was near a road).

Prot Ex 18

Md.Rule 2–648; *Mendelson v. Mendelson,* 75 Md.App. 486, 497–98, 541 A.2d 1331 (1988).

Ms. Droney relies on the case of *McAlear v. McAlear,* 298 Md. 320, 469 A.2d 1256 (1984) for the proposition that contempt may not be used to enforce a "property disposition award." In *McAlear,* the divorced wife sought to have her ex-husband held in contempt for his failure to pay the monetary award specified in the judgment of absolute divorce. The Court held that, unlike alimony, a monetary award in a divorce case constitutes a "debt," and as the Maryland Constitution, Art. III, § 38 forbids incarceration for the failure to pay a debt, contempt was not an available method of enforcement. *Id.* at 349–52, 469 A.2d 1256.

Ms. Droney's reliance on *McAlear* is inapposite. The Court did not consider Fam.Law, § 8–105(a), and we find nothing in *McAlear* that approaches the question of whether a court may use contempt to enforce the lawful terms of its own orders. Given the clear statutory authority to merge the terms of an agreement into a judgment of divorce and to enforce such terms with contempt, the court did not err in seeking to enforce the terms of the Judgment by ordering Ms. Droney to transfer her ownership of the Property to Mr. Droney.

AFFIRMED. COSTS TO BE PAID BY APPELLANT.

---

651 A.2d 424

David CROMWELL, et al. appellant

v.

Arthur Thomas WARD, III. appellee defendant

No. 617, Sept. Term, 1994.

Court of Special Appeals of Maryland.

Decided Jan. 4, 1995.

The Circuit Court, Baltimore County, Lawrence Daniels, J., affirmed order of board of appeals granting height variance

PEOPLE'S COUNSEL'S EXHIBITS

PEOPLE'S COUNSEL EXHIBITS

Verified
11-15-07

1. Overlay of the American Legion Property

2. A Zoning Map - North
B. Zoning Map - South

3. Petition For Special Permit For Use as a Private Club

PC #1

4424 Painters Mill Road



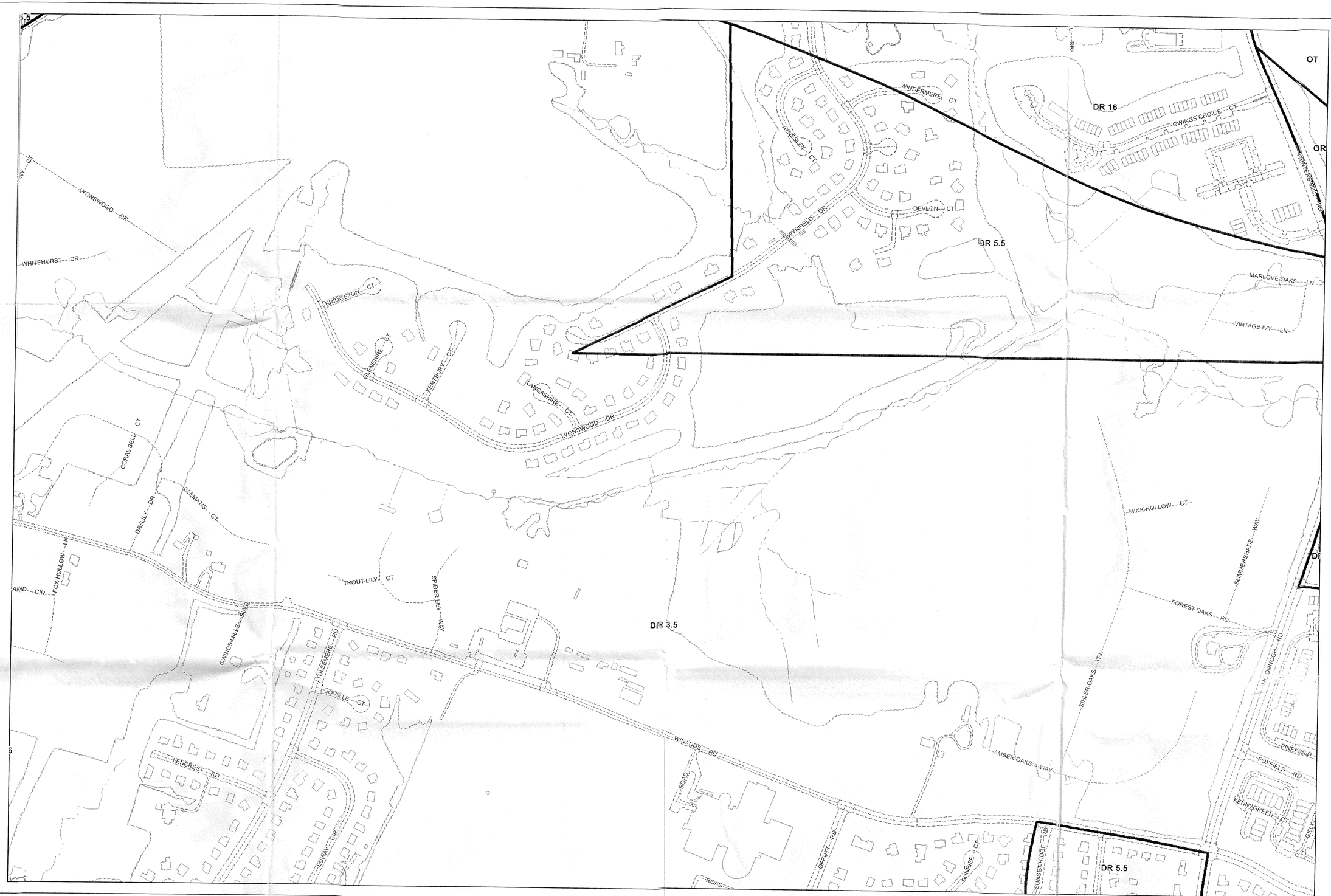
Produced by Baltimore County GIS Services Unit
Date: October 26, 2007
Date of Imagery: April 2005

1 inch equals 50 feet

The Cadastral Information on this Plot was compiled from existing deed information. This Information is not to be considered authoritative. The Survey Information was not field checked and Certified by a licensed land surveyor.

PC #1 IO637SPHKA

Site South of Site
CBA
BC 2A-22
No.



Plan Sheet: *067A3*

Note:
The zoning depicted in this application incorporates the actions associated with County Council Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04 adopted by the County Council on August 31, 2004. *The action associated with County Council Bill* 130-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-01, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Legend

Zoning
Buildings
Streams
Roads
Vegetation
Rail Lines

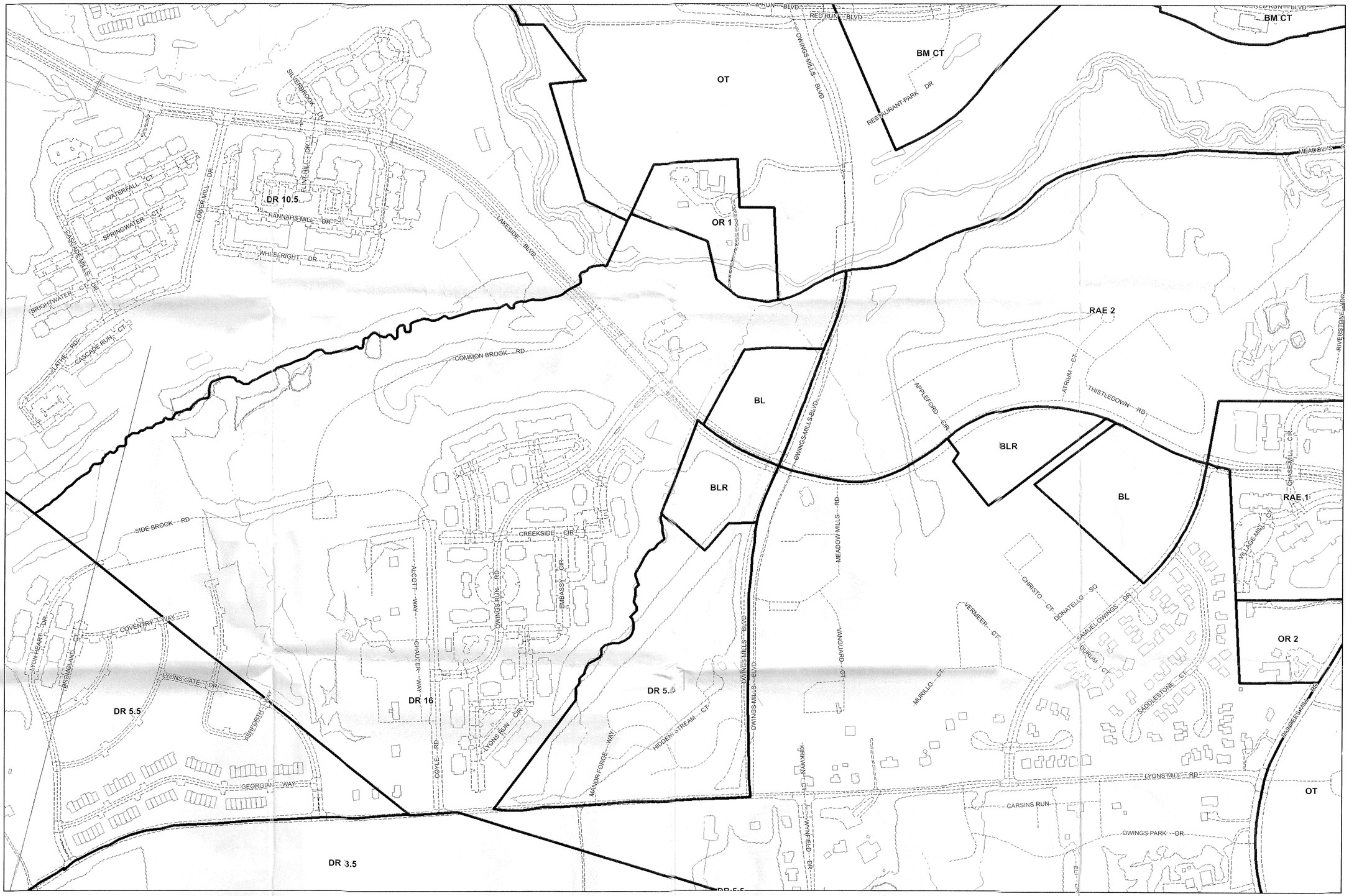
Baltimore County
Office of Planning and Zoning
Official Zoning Map

066B2	066C2	067A2	067B2	067C2
066B3	066C3	067A3	067B3	067C3
076B1	076C1	077A1	077B1	077C1

Scale
1" = 200'
0 100 200 400 Feet

1

Data Sources:
Planametric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004



Site is north of site

Plan Sheet: *067A2*

Note: The zoning depicted in this application incorporates the actions associated with County Council Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, and 89-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill 130-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-01, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Legend

Zoning — Streams — Vegetation

Buildings — Roads — Rail Lines

Baltimore County
Office of Planning and Zoning
Official Zoning Map

066B1	066C1	067A1	067B1	067C1
066B2	066C2	067A2	067B2	067C2
066B3	066C3	067A3	067B3	067C3

Scale

1" = 200'

0 100 200 400 Feet

1

Data Sources:
Planametric Data - Baltimore County OIT/GIS Services Unit 1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning 1:2400, 2004

#2912-S

MAP #2-B "S" PRIVATE ave 11/25/53

PETITION FOR SPECIAL PERMIT

IN THE MATTER OF : BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

LOUIS I. PLACK, Sr. et al :

:

:

For a Special Permit

To The Zoning Commissioner of Baltimore County

Louis I. Plack, Sr. and Nellie C. Plack, his wife
Earl B. Jones and Frances Jones, his wife
Legal Owners

The American Legion Department of Maryland, Liberty Post No. 122, Inc.
Contract Purchaser

hereby petition for a Special Permit, Under the Zoning Regulations and Restrictions passed by the County Commissioners of Baltimore County, agreeable to Chapter 377 of the Acts of the General Assembly of Maryland of 1943, for a certain permit and use, as provided under said Regulations and Act, as follows:

A Special Permit to use the land (and improvements now or be erected thereon) hereinafter described for a private club - BEGINNING for the same in the center of Lyons Mill Road, approximately 197 feet South from the right angle turn in Lyons Mill Road at Painters Lane, said beginning being also at the end of the first line in a deed dated Dec 31, 1942 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1272, folio 192, from Richard T. Jones and wife to Nellie C. Plack etal, running thence North 83 degrees 43 minutes West 626.25 feet, South 5 degrees 11 mimutes West 421.53 feet, South 85 degrees, 50 minutes East 109.54 feet, South 83 degrees, 43 minutes East 569.51 feet and North 21 degrees 26 minutes East 49.50 to the center of Lyons Mill Road and thence binding thereon, North 28 degrees 49 minutes West 89.10 feet, North 6 degrees, 34 minutes West 82.5 feet and North 5 degrees,11 minutes East 216.33 feet to the place of beginning.

The American Legion Department of Md.
Liberty Post No. 122, Inc.
Contract Purchaser

By Charles W. Weidman
President

Randallstown, Maryland
Address

Earl B. Jones
Legal Owner

Frances Jones
3129 Kenyon Avenue,
Baltimore 13, Md.
Address

Louis I. Plack, Sr.
Legal Owner

Nellie C. Plack
913 Lyndhurst Street,
Baltimore 29, Md.
Address

Notify

12/7

CBA PC EXH NO. 3

PC

PMR
cd

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management

August 10, 2006

Karl Nelson
Saul Ewing
500 E. Pratt Street
Baltimore, MD 21202

Dear Mr. Nelson:

RE: Case Number: 06-637-SPHXA, 4424 Painters Mill Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on June 12, 2006.

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.
Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel
American Legion Liberty Post 122 MD Leon McGee, Jr. Commander 4424 Painters Mill Road Randallstown 21133
Jack E. Barber 7150 Standard Dr Hanover 21076
New Cingular Wireless PCS, LLC 7150 Standard Drive Hanover 21076

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits & Development Management

DATE: June 27, 2006

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For June 21, 2006
Item Nos. 611, 621, 622, 623, 624, 626, 627, 628, 632, 633, 635, 636, 637, 640, 641, 642, and 643

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

DAK:CEN:clw
cc: File
ZAC-NO COMMENTS- 06272006.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: June 22, 2006

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

SUBJECT: 4424 Painters Mill Road

INFORMATION:

Item Number: 6-637

Petitioner: American Legion Liberty Post

Zoning: DR 16

Requested Action: **Variance and Special Exception**

SUMMARY OF RECOMMENDATIONS:
The Office of Planning has met with the petitioner and reviewed their request. It has been determined that the requested variance would not create any unsightly structures on the subject site. A stealth monopole (flagpole) is being proposed to mitigate the requested variance and special exception. The Office of Planning supports the petitioner's request provided the monopole is in fact disguised as a flagpole.

For further information concerning the matters stated here in, please contact Dave Green at 410-887-3480.

Prepared by: _____

Division Chief: _____
AFK/LL: CM

PM 1

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: June 22, 2006

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

SUBJECT: 4424 Painters Mill Road

INFORMATION:

Item Number: 6-637

Petitioner: American Legion Liberty Post

Zoning: DR 16

Requested Action: **Variance and Special Exception**

SUMMARY OF RECOMMENDATIONS:
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For further information concerning the matters stated here in, please contact Dave Green at 410-887-3480.

Prepared by: Curtis Murray

Division Chief: Lynn Lanham
AFK/LL: CM

W:\DEVREV\ZAC\6-637.doc

Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

June 20, 2006

ATTENTION: Zoning Review Planners

Distribution Meeting Of: June 19, 2006

Item Numbers: Item Number 611, 621, 624-637, 639-643

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

1. The Fire Marshal's Office has no comments at this time.

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C)443-829-2946
MS-1102F

cc: File

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*

SHA State Highway Administration
Driven to Excel
Maryland Department of Transportation

Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

Date: 6.20.06

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

RE: Baltimore County
Item No. 637 JAP

Dear. Ms. Matthews:

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,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

RE:	PETITION FOR SPECIAL HEARING SPECIAL EXCEPTION & VARIANCE 4424 Painters Mill Road; S/S Painters Mill Road, 424.16' S Lyons Mill Road 2nd Election & 4th Councilmanic Districts Legal Owner(s):American Legion Commander Liberty Post 122 by Leon McGee, Jr Contract Purchaser(s): New Cingular Wireless Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 06-637-SPHXA

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

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and 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 26th day of June, 2006, a copy of the foregoing Entry of Appearance was mailed to Jack Barber, 7150 Standard Drive, Hanover, MD 21076 and Karl Nelson, Esquire, 500 East Pratt Street, Baltimore, MD 21202, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
JUN 26 2006
Per SA

BALTIMORE COUNTY, MARYLAND

Inter-Office Memorandum

DATE: September 16, 2006

TO: Kristen Matthews
Department of Permits & Development Management

FROM: Patti Zook, Legal Secretary to
John V. Murphy, Deputy Zoning Commissioner

SUBJECT: Case No. 06-637-SPHXA
Petitions for Special Hearing, Variance and Special Exception

---

The above-referenced case file is being returned to you. The original hearing date was Thursday, August 17, 2006. The hearing was continued to allow the Petitioner to investigate other possible locations. Karl Nielson, Esquire, attorney for the Petitioner, will contact you to reschedule the hearing. The hearing will then have to be re-advertised and the site re-posted.

Please notify Richard James of the new hearing date. His address and phone numbers are in the case file.

Thank you for your attention and cooperation in this matter.

JVM:pz

Attachment

Pet 6

BALTIMORE COUNTY, MARYLAND
Interoffice Correspondence

DATE: May 2, 2006

TO: Donald T. Rascoe, Development Manager
Department of Permits and Development Management

FROM: Tower Review Committee

SUBJECT: New Tower – Cingular Wireless – 4424 Painters Mill Road

The Tower Review Committee met first on November 29, 2005 and then on April 24, 2006 and is making the following advisory comments to the Development Review Committee (DRC) in accordance with section 426.4 of the Baltimore County Zoning Regulations in reference to the proposed construction of a new 125-foot disguised monopole (flagpole) to be located on the property of the American Legion, 4424 Painters Mill Road, Randallstown, MD 21133.

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

Findings: Cingular Wireless has provided all requested information to the Tower Review Committee (TRC) to successfully demonstrate that no other co-location opportunities exist at or near this location that would suffice in providing their requested coverage of the intended area. The TRC agrees with this finding. As such, Cingular Wireless has proposed to install a new 125-foot monopole.

- *If a tower must be built, the tower should be: Constructed to accommodate at least three providers.*

Findings: Cingular Wireless has stated, in the application to the TRC, that the new pole will be constructed so as to support 2 additional wireless service providers in addition to Cingular Wireless.

- *Erected in a medium or high intensity commercial zone when available.*

Findings: This area is located in a DR16 Zone. This tower will require a special exception hearing. No medium or high intensity commercial zones exist in this area.

- *Located and designed to minimize its visibility from residential and transitional zone.*

Findings: Based on the pictures and simulations presented by Cingular Wireless and an on-site visit, we find that the visual impact will be minimal at the height proposed. The

06-637-SPHXA

monopole will be disguised as a flagpole and located close to the roadway on an elevated spot and probably not visible by drivers on the roadway. The site is adjacent to a wooded area and will be visible from a limited radius. An attempt has been made to minimize the visual impact to the area by disguising the pole as a flagpole.

Conclusion

By a unanimous decision of the Tower Review Committee, it was agreed that the advisory comments provided above be forwarded to the Development Review Committee for further processing. It is the recommendation of the committee, that the 125-foot monopole would meet all the requirements of Section 426, while allowing much needed emergency and non-emergency communications for the citizens of the area. A reduction in the height will only reduce the coverage, eliminate the possibility of other wireless carrier co-location and delay new technology wanted and needed throughout this area of the County.

Additional Information

This site was reviewed on November 29, 2005 and additional information was requested. The additional information was provided on March 24' 2006 and a final review was made on April 25, 2006. The additional requested information was related to investigation of location of antennas in a church steeple and this was investigated and pronounced as not possible. Other information requested was related to FCC licensing and regulations to provide services to the public.

Tower Review Committee

Richard A. Bohn, Tower Coordinator
Curtis Murray , Office of Planning
Harry Wujek, Community Member TRC
Richard Sterba, OIT Representative

CC: Jeffrey Barmach, Baltimore County Office of Law
Jack Barber, Site Acquisition Manager, Velocitel, Inc.
Robert Stradling, Director, Baltimore County Office of Information Technology

06-637-SPHXA

Are we going to participate C&D

RECEIVED
JAN 10 2007
PEOPLE'S COUNSEL

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management

January 4, 2007

American Legion Liberty Post 122 MD
4424 Painters Mill Road
Randallstown, MD 21133

Dear Mr. McGee:

RE: Case: 06-637-SPHXA, 4424 Painters Mill Road

Please be advised that an appeal of the above-referenced case was filed in this office on November 16, 2006 by Richard A. Jones. 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,

Timothy Kotroco

Director

TK:amf

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Leon McGee, Jr. 19 Matinee Ct, Apt C Owings Mills 21117
Karl Nelson Saul Ewing 500 E. Pratt Street Baltimore 21202
Jack E. Barber New Cingular Wireless PCS, LLC 7150 Standard Drive Hanover 21076
Richard Jones PO Box 792 Owings Mills 21117
Phyllis Brotman McDonogh Field Assn 8105 McDonogh Road Pikesville 21208
Towanda Maddox 4315 Wynfield Drive Owings Mills 21117
Camille Givens-Patterson 6 Kentbury Court Owings Mills 21117
Joanna & Sylvester Kearney 8 Lancashire Court Owings Mills 21117
Lynn Ketara 9202 Owings Park Drive Owings Mills 21117
Syed S. Haider 7150 Standard Drive Hanover 21076
Tim Stakes 7150 Standard Drive Hanover 21076

APPEAL

Petition for Special Exception, Special Hearing & Variance
4424 Painters Mill Road
South side of Painters Mill Road, south of Lyons Mill Road
2nd Election District – 4th Councilmanic District
Legal Owner(s): American Legion Liberty Post 122, Leon McGee, Jr., Commander
Contract Purchaser(s): New Cingular Wireless PCS, LLC

Case No.: 06-637-SPHXA

Petition for Special Exception, Special Hearing, Variance (June 12, 2006)

Zoning Description of Property

Notice of Zoning Hearing (June 20, 2006)
New Notice of Zoning Hearing (July 10, 2006)

Certification of Publication (August 3, 2006)

Certificate of Posting (July 31, 2006) by Linda O'Keefe

Entry of Appearance by People's Counsel (June 26, 2006)

Petitioner(s) Sign-In Sheet – 2 Sheets

Protestant(s) Sign-In Sheet – None

Citizen(s) Sign-In Sheet – 2 Sheets

Zoning Advisory Committee Comments

Petitioners' Exhibit
1) Cingular Wireless existing and proposed coverage maps
2) Large scale neighborhood map
3) Not included in folder
4) Plan to accompany zoning hearing for Cingular/Chattolane
5) Memo from McDonogh Campus to Jack Barber
6) Real property search for TRP Suburban Second, Inc.

Protestants' Exhibits:
1) Baltimore County large scale GIS map
2) Photograph
3) Letter of concern from Richard A. Jones
   a) Through e) Photographs of neighborhood

Miscellaneous (Not Marked as Exhibit)
1) Baltimore County Interoffice Correspondence to Donald T. Rascoe (5-2-06)
2) Request to re-schedule from Karl J. Nelson (7-5-06)
3) Baltimore County Interoffice Correspondence to Kristen Matthews (9-16-06)
4) Letter to permit continuation from John V. Murphy (9-26-06)

Deputy Zoning Commissioner's Order (GRANTED in accordance with order – October 30, 2006)

Notice of Appeal received on November 16, 2006 from Richard A. Jones

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Leon McGee, Jr. 19 Matinee Ct, Apt C Owings Mills 21117
Karl Nelson Saul Ewing 500 E. Pratt Street Baltimore 21202
Jack E. Barber New Cingular Wireless PCS, LLC 7150 Standard Drive Hanover 21076
Richard Jones PO Box 792 Owings Mills 21117
Phyllis Brotman McDonogh Field Assn 8105 McDonogh Road Pikesville 21208
Towanda Maddox 4315 Wynfield Drive Owings Mills 21117
Camille Givens-Patterson 6 Kentbury Court Owings Mills 21117
Joanna & Sylvester Kearney 8 Lancashire Court Owings Mills 21117
Lynn Ketara 9202 Owings Park Drive Owings Mills 21117
Syed S. Haider 7150 Standard Drive Hanover 21076
Tim Stakes 7150 Standard Drive Hanover 21076

date sent January 5, 2007, amf

County Board of Appeals of Baltimore County

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

RECEIVED BY
JAN 16 2008
People's Counsel
for Baltimore County

January 15, 2008

VIA FACSIMILE 410-332-8155 and US MAIL

Gregory E. Rapisarda, Esquire
SAUL EWING LLC
Lockwood Place
500 E. Pratt Street
Baltimore, MD 21202

RE: *In the Matter of: American Legion Liberty Post 122 and New CingularPCS, LLC* / Case No. 06-637-SPHXA
Extension of Time for Filing Memos

Dear Mr. Rapisarda:

In response to your telephone request this date, as confirmed in your letter received via facsimile, and without opposition by the Office of People's Counsel nor by Appellant, Richard Jones, your request for a brief extension for filing of the requested memoranda in the subject matter has been granted. **The requested briefs are now due from all parties by close of business on Wednesday, January 23, 2008** (original for file and three copies for distribution to the Board).

Please note that, while Mr. Jones has already filed his Post-Hearing Memorandum, I have confirmed with him by telephone this afternoon that his closing brief will not be placed in the file nor be distributed to anyone, including the Board, until the extended filing date of January 23, 2008. At that time, copies will be provided to all parties.

Should you have any questions, please call me.

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

c: Carole S. Demilio, Deputy People's Counsel
for Baltimore County
Karl J. Nelson, Esquire
Richard A. Jones

Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND
Interoffice Correspondence

DATE: May 2, 2006

TO: Donald T. Rascoe, Development Manager
Department of Permits and Development Management

FROM: Tower Review Committee

SUBJECT: New Tower – Cingular Wireless – 4424 Painters Mill Road

The Tower Review Committee met first on November 29, 2005 and then on April 24, 2006 and is making the following advisory comments to the Development Review Committee (DRC) in accordance with section 426.4 of the Baltimore County Zoning Regulations in reference to the proposed construction of a new 125-foot disguised monopole (flagpole) to be located on the property of the American Legion, 4424 Painters Mill Road, Randallstown, MD 21133.

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- *Located and designed to minimize its visibility from residential and transitional zone.*

Findings: Based on the pictures and simulations presented by Cingular Wireless and an on-site visit, we find that the visual impact will be minimal at the height proposed. The

monopole will be disguised as a flagpole and located close to the roadway on an elevated spot and probably not visible by drivers on the roadway. The site is adjacent to a wooded area and will be visible from a limited radius. An attempt has been made to minimize the visual impact to the area by disguising the pole as a flagpole.

Conclusion

By a unanimous decision of the Tower Review Committee, it was agreed that the advisory comments provided above be forwarded to the Development Review Committee for further processing. It is the recommendation of the committee, that the 125-foot monopole would meet all the requirements of Section 426, while allowing much needed emergency and non-emergency communications for the citizens of the area. A reduction in the height will only reduce the coverage, eliminate the possibility of other wireless carrier co-location and delay new technology wanted and needed throughout this area of the County.

Additional Information

This site was reviewed on November 29, 2005 and additional information was requested. The additional information was provided on March 24, 2006 and a final review was made on April 25, 2006. The additional requested information was related to investigation of location of antennas in a church steeple and this was investigated and pronounced as not possible. Other information requested was related to FCC licensing and regulations to provide services to the public.

Tower Review Committee

Richard A. Bohn, Tower Coordinator
Curtis Murray , Office of Planning
Harry Wujek, Community Member TRC
Richard Sterba, OIT Representative

CC: Jeffrey Barmach, Baltimore County Office of Law
Jack Barber, Site Acquisition Manager, Velocitel, Inc.
Robert Stradling, Director, Baltimore County Office of Information Technology

RECEIVED BY
MAY 15 2008
for Baltimore County

County Board of Appeals of Baltimore County
Attn: Kathleen C. Bianco, Administrator
Jefferson Building
2nd. Floor, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204

May 9, 2008
Re: Case No. 06-637-SPHXA

Dear Ms. Bianco:

We have received the Order of the Board dated April 22, 2008, whereby the Board approved the Variance, Special Hearing, and Special Exception.

The Board incorrectly stated on page 6, paragraph 1 of their opinion "...the Protestants provided no evidence to support their allegations"... "that the hardship is self-imposed because the Legion sold off 3 acres of their property, creating the narrow width with which we now have to contend."

We are asking the Board to Reconsider their Order, since we did submit certified evidence in Exhibit 9 of our presentation, demonstrating that the Legion had sold their 3 acres and were subject to the Zoning Law setback restrictions.

I would like to cite in support of this fact, from page 5, paragraph 3 of Ms. Demilio, Deputy People's Counsel's memorandum, "In the instant case, the American Legion's sale of part of its property in 2000 resulting in a narrower lot is also a self-created hardship. It is comparable to the facts in Randolph Hills, Inc. v. Montgomery County, 264 Md. 78, 83 (1972) referred to by the Chesley court, where the property owner's '*subdivision that created unbuildable lot was self-inflicted condition creating variance request.*' Id."

In addition, the Board made no mention anywhere in their opinion, that we had submitted evidence of an alternative site on a 12 story commercial building on Mt. Wilson Lane, which would not require a Variance to construct the proposed cell tower in a residential neighborhood. The Cingular Wireless Engineer testified at the Hearing that this site would serve their purpose.

I would like to cite in support of this fact, from page 2, paragraph 4 of Ms. Demilio, Deputy People's Counsel's memorandum, where she states "...but Barber apparently did not explore locating an antennae on a near-by assisted living high-rise facility where other cellular antennae are located."

Very Truly Yours,

Richard A. Jones

Cc: Ms. Carole S. Demilio, Deputy People's Counsel
Mr. Karl Nelson, Esquire

SAUL EWING
Attorneys at Law
A Delaware LLP

Celebrating 85 years of service.

Karl J. Nelson
Phone: (410) 332-8663
Fax: (410) 332-8184
knelson@saul.com
www.saul.com

July 5, 2006

VIA FACSIMILE

Kristin Matthews
Department of Permits and
Development Management
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 06-367-SPHXA
4424 Painters Mill Road
and
Case No. 06-620-SPHX
13713 Pleasantville Road

Dear Kristin:

It was a pleasure speaking with you the other day. As I indicated, I am counsel to Cingular Wireless for both of the above-referenced matters. Per our discussion, I will be out of Maryland on a pre-scheduled vacation during the week of August 7. Accordingly, I respectfully request that the two cases referenced above be rescheduled.

I thank you for your attention to this matter. Please do not hesitate to contact me if you require any additional information.

Very truly yours,

Karl J. Nelson

KJN/slm

SAUL EWING
Attorneys at Law
A Delaware LLP

RECEIVED BY
JUN 04 2008
for Baltimore County

Jason M. St. John
Phone: (410) 332-8663
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June 3, 2008

VIA FACSIMILE & U.S. MAIL

Kathleen C. Bianco, Administrator
Baltimore County Board of Appeals
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, Maryland 21204

RE: *In the Matter of American Legion Liberty Post 122 And New Cingular PCS, LLC*
Case No. 06-637-SPHXA

Dear Ms. Bianco:

I write in response to the May 9, 2008 letter from Richard A. Jones asking the Board to "reconsider" its recent decision in the above-referenced matter. My clients oppose this request for the reasons set forth below.

Mr. Jones' letter raises no basis for reconsideration of the Board's decision. The whole issue of whether the American Legion created a hardship sufficient to defeat a variance request was discussed extensively in the Board's decision and rejected. There is nothing in the May 9, 2008 letter that was not before the Board at the time it made its original decision and, accordingly, there is no basis for further consideration of this issue.

Mr. Jones' final assertion that he demonstrated existence of an alternative site that AT&T agreed would "serve [its] purpose" is demonstrably inaccurate. First, with respect to the assertion that the Board failed to specifically mention Mr. Jones' assertion that there existed an undiscovered co-location opportunity, the Board was under no obligation to literally recite every fact or piece of evidence provided in the case. Accordingly, the Board's omission of this particular fact from its decision is legally irrelevant. Moreover, the assertion that AT&T somehow agreed that the Jones' proposed site "would serve their purpose" is plainly wrong. No such statement was made. Rather, and to the contrary, the testimony was undisputed that the structure in question was outside the relevant search area and would have made no impact on the

coverage objective satisfied by the American Legion site. The record speaks for itself with respect to this issue.

Because Mr. Jones' May 9, 2008 letter is factually inaccurate, I respectfully request that you disregard the letter in its entirety and allow your original decision to stand.

Very truly yours,

Jason M. St. John

JMS:lh

cc: Richard A. Jones
Carole S. Demilio, Deputy People's Counsel
For Baltimore County
Jennifer Van Riper

Mr. Peter Max Zimmerman, Esq.
People's Counsel for Baltimore County
Old Court House
400 Washington Ave., Room 47
Towson, MD 21204

Re: Proposed Cell Tower
4424 Painters Mills Rd.
Case # 06-637-SPHXA

Dear Mr. Zimmerman;

Following up our phone conversation, I have enclosed a draft of my letter regarding the subject, addressed to Mr. John V. Murphy, Deputy Zoning Commissioner. I have also enclosed the original zoning hearing notice of August 17, 2006 with attachments, the Tower Review Committee Interoffice Correspondence of May 2, 2006, and a Cingular Site Plan.

I appreciate your help in this matter. Once you have had the opportunity to review my letter, I would appreciate hearing from you on how I should proceed.

Very Truly Yours,

Richard A. Jones
PO Box 792
Owings Mills, MD 21117
(410) 363-0942

PMZ
CAO



To: Mr. John V. Murphy
Deputy Zoning Commissioner
Zoning Commissioner's Office
401 Bosley Avenue
Suite 405
Towson, Maryland 21204

September 25, 2006

Re: Proposed Cell Tower
Case No. 06-637-SPHXA
American Legion Post
4424 Painters Mill Road
Owings Mills, MD

Dear Mr. Murphy:

We are submitting the following in opposition to the request by the referenced subject for a Special Exception (to permit a wireless telecommunications facility to be located at the referenced address), a Special Hearing (to continue use of the property as an American Legion Post in combination with a wireless telecommunication facility and to confirm that there is no conflict with prior Zoning), and a Variance (to allow a tower with a 47 foot side yard setback and a 59.6 foot front yard setback to any other residential property in lieu of the minimum required 200 feet for both).

The referenced property is Residential DR16, and is being used by the American Legion in a non-conforming manner. (The property must revert to DR16 Residential use when the American Legion no longer uses the property.) If this cell tower is constructed, the property owner will have permanently altered the residential nature of their property, and this goes beyond the spirit and rules of non-conforming use, and the zoning laws of Baltimore County. They should leave the property as it was intended by the County.

The neighborhood surrounding the American Legion is composed of expensive single family homes, townhomes, and upscale apartments with garages. (Homes within a ½ mile radius of this property are in the price range of $350,000 to $750,000) There are no other obtrusive structures anywhere in the neighborhood. The construction of the tower would create an adverse impact on the neighborhood and would be visually incompatible with the neighborhood. The out of town and out of state consultants that Cingular has employed have totally disregarded this character of the neighborhood. There focus is strictly on the construction of the cell tower without consideration of the neighboring residences.

We believe the Tower Review Committee has performed a perfunctory analysis of the Cingular cell tower request. For example, Mr. Rick Bohn, the Tower Committee Coordinator, in discussions with me said he is "flying blind" and has very little information or resources to evaluate the request. Mr. Bohn did not know where other towers in the area are located that Cingular might have been able to use, and it appears that neither he nor his committee performed any independent analysis. Mr. Harry Wujek, Community member of the TRC, told me that he thought the property was already zoned for the tower.

I also could not find anyone who addressed the FCC radiation limits (Radio Frequency Energy) for cell tower construction in residential areas. (See Appendix B)

As you can see, there is evidence that there has been a very superficial review, in light of the Special Exceptions and Variances that are being requested. In as much as the Tower Review Committee of Baltimore County lacks "time and resources" and motivation, (At one point in my discussion with Mr. Bohn he said "I don't care if they build it or not."), to properly address the impact on the citizens of Baltimore County of cell towers, they should employ an outside consultant to review cell tower requests on an impartial basis, and pass on the cost to the applicant, as Carroll County does.

Finally it is important to note that Cingular did not seek the referenced site for the construction of their tower. Mr. Leon McGee, Commander of the American Legion Post voluntarily told me at the August 17, 2006 Zoning Hearing that he sought out the leasing of the Post's land to Cingular because the Post needs the income, or the Post will have to close. He told me that he only had $16,000 in the Post's checking account, and this is after receiving hundreds of thousands of dollars from the sale a few years ago of 3 acres or ½ of their property for use by Owings Parks Apartments. Also Mr. McGee told me he is 70 years old, is the youngest member of the Post and they are not getting new members. The American Legion Post's financial condition is no justification for this Variance and has no relevance. Again this is further evidence that the site was accepted by Cingular without thorough searching on their part for alternative locations. In addition, if the American Legion Post is fiscally unsound they should not be permitted to construct an antenna and then abandon the property.

As Regards the Special Exception

The American Legion Post owns a 3.105 acre property which is zoned Residential DR16. They are currently operating in a non-conforming use. If they close the Post and/or sell the property, it must revert to DR16 Residential Zoning.

Baltimore County Zoning Regulation 502, Special Exceptions states that in granting any Special Exception, the Zoning Commissioner shall be governed by the following principles and conditions. ...Before any Special Exceptions may be granted, it must appear that the use for which the Special Exception is requested will not be inconsistent with the purposes of the property's Zoning Classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations.

If the American Legion Post is allowed to have a commercial use on part of their 3.105 acre parcel, the nature of the residential property would then be permanently altered.

Analysis of Tower Review Committee Report dated May 2, 2006

According to Section 426.2 of Baltimore County Zoning Regulations there are 4 points to consider when locating a cell tower antenna:

1. *Antennas should be place on an existing towers, buildings, and structures,... where feasible.*
We personally found that Verizon cell phones have a signal within the entire 1 mile radius of the site. In addition, we visited the T Mobile and Cingular Owings Mills offices, and were told that they have a good signal along McDonogh Road and 795. Cingular should add their antenna to whatever tower Verizon or T Mobile are using for their coverage

2. *If a tower must be built, the tower should be: Constructed to accommodate at least three providers.*
N/A. Cingular has said they will comply with this point.

3. *Antenna should be erected in a medium or high density commercial zone when available.*
Owings Mills has a number of commercial zones. There are also industrial parks on Painters Mill Road and along Red Run Boulevard. In addition, the Food Lion Shopping Center is approximately 2000' away from the proposed site at the southwest corner of Samuel Owings Drive and Lakeside Blvd. and is zoned Business Local (BL). At 4401 Painters Mill Road on the corner of McDonogh Road there is a parcel of land listed in the Baltimore County Property Tax Data Base as Commercial use and on the Baltimore County Zoning Maps as OR2. The tower could be located at either of these two sites, or in the current commercial or industrial areas, rather than in the middle of a Residential DR 16 site.

4. *Antenna should be located and designed to minimize its visibility from residential and transitional zone.*
The plan shows a 125 foot monopole flagpole tower. According to Cingular's own drawings and construction plans (see Appendix A), this "flagpole" is a euphemism for a structure which is approximately 5 to 6 *feet in diameter*, and would look more like a water tower than a flagpole. Most people's perception of a flagpole is something 6 to 8 inches in diameter, and maybe 40 feet high.

The Tower Review Committee's statement on their interoffice correspondence dated May 2, 2006, states that the tower would "probably not be visible by drivers on the roadway". This observation on their part is blatantly wrong, since the tower would be clearly visible from both the north and the south on Painters Mill Road.

As Regards the Special Hearing

The American Legion Post has requested a Special Hearing to continue use of the property as an American Legion Post in combination with a wireless telecommunication facility and to confirm that there is no conflict with prior Zoning.

The 1953 Zoning Approval for using the property as an American Legion Post was based on their ownership of 6+ acres. The American Legion should have obtained proper Zoning Approval, before altering the configuration of their property through the sale of 3+ acres. The American Legion's action of selling the property without proper Zoning Approval puts them in conflict with the Zoning Approval of 1953, and jeopardizes their Zoning Approval. The American Legion's arbitrary actions are an indication of their total lack of compliance with the Zoning Laws of Baltimore County. After receiving the land sale profit, they want to be granted a Special Exception.

The use of the DR16 Residential property in a non-conforming basis is in itself enough of an exception to the letter and spirit of the zoning laws. Adding a commercial use to the residential property, such as a cell phone tower, would be unreasonable and unconscionable.

As Regards the Variance

Summary

The American Legion Post, owners of 4424 Painters Mill Road, have petitioned the Baltimore County Zoning Commissioner for a Variance from Section(s) 426.4 (A) (2) to allow a tower with a 47 foot side yard setback and a 59.6 foot front yard setback to any other residential property line, in lieu of the minimum required 200 feet (for both).

Baltimore County Zoning Regulation Section 307.1 states that the Zoning Commissioner has the power to grant Variances *only* in cases where special circumstances or conditions exist that are peculiar to the property under consideration, and where strict compliance to Zoning Regulations would result in unreasonable hardship. Any such variance shall be granted *only* if in strict harmony with the spirit and intent of the Regulations. There is nothing intrinsic to the American Legion Property that is causing them a hardship.

To allow this variance would be to disregard the precedent that has already been set by the Maryland Court of Appeals. The Maryland Court of Special Appeals held that:

1. No variance was appropriate where property was not shown to be unusual or unique from surrounding properties before variance based on practical difficulty, or unreasonable hardship was sought.
2. Landowner's self-created hardship...was not grounds for grant.

The referenced property is only "unique" (that is too narrow for normal setbacks) because of the actions of the property owners. Approximately 4 years ago, the owners split their 6 acre parcel in half, and sold 3 acres, leaving them with a parcel 212.78 feet wide by 626.25 feet long, instead of the original dimensions of 425.56 feet wide by 626.25 feet long, a parcel of sufficient size to accommodate a cell tower, without the need for a Variance.

Specifics

Citing *Sprint PCS, et al v. Baltimore County, Maryland, COSA 8-3-05, 0047/04*, before the Court of Special Appeals of Maryland.

On p. 1, **"Sprint...petitioned Baltimore County zoning authorities for setback variances...[to] build a wireless telecommunications tower. [The Zoning Commissioner] granted the variances on the grounds that the...property is "unique". [T]he...Board of Zoning Appeals denied the variances...[as] not unique. The Boards decision was affirmed by the Circuit Court for Baltimore County. The Court of Special Appeals of Maryland took the case."**

On p. 14 of Judge Adkins written decision he references *Cromwell v Ward, 102 APP, at 719*, **"In many cases...the petitioner did not satisfy its burden of proof because the unique circumstances were caused by the plight of the property owner rather than a characteristic of the land itself."**

On p. 32, the Courts Conclusion states **"[W]e affirm the judgment of the circuit court affirming the Board's denial of the variance petition."**

Citing *Cromwell v. Ward 102 MD APP 691 (1994).*

In Judge Dale Cathell's written decision for the Maryland Court of Appeals, he writes on p. 694, **"Section 307.1 [of the Baltimore County Zoning Regulations] requires that variances only be granted in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request...".**

On p. 712-13, Judge Cathell, citing *Shafer v. Zoning Bd. of Appeals, 24 Mass.App. 966, 511 N.E.2d 635 (1987),* goes on to say **"The board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court.** The Appellate Court stated further**"...The argument that the insufficient width...constitutes a special circumstance...is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the...width requirement pertained."**

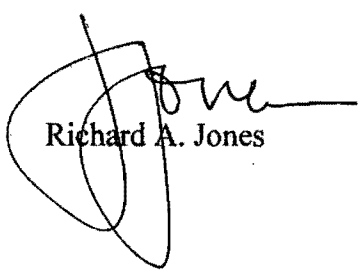
On p. 717, Judge Cathell, citing *Sibley v. Inhabitants of the Town of Wells, 462 A.2d 27, 30-31 (1983)* further states **"[T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner."**

On p. 722, citing *Pollard v. Zoning Bd. of Appeals, 186 Conn. 32, 438 A.2d 1186, 1190 (1982),* further states **"[S]elf-inflicted or self-created hardship...is never considered proper grounds for a variance."..."[W]here the applicant creates a nonconformity, the board lacks power to grant a variance."**

On p. 726, In his Resolution of *Cromwell v. Ward*, Judge Cathell states, **"When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policymakers. That is improper. We shall reverse."**

Respectfully Submitted.

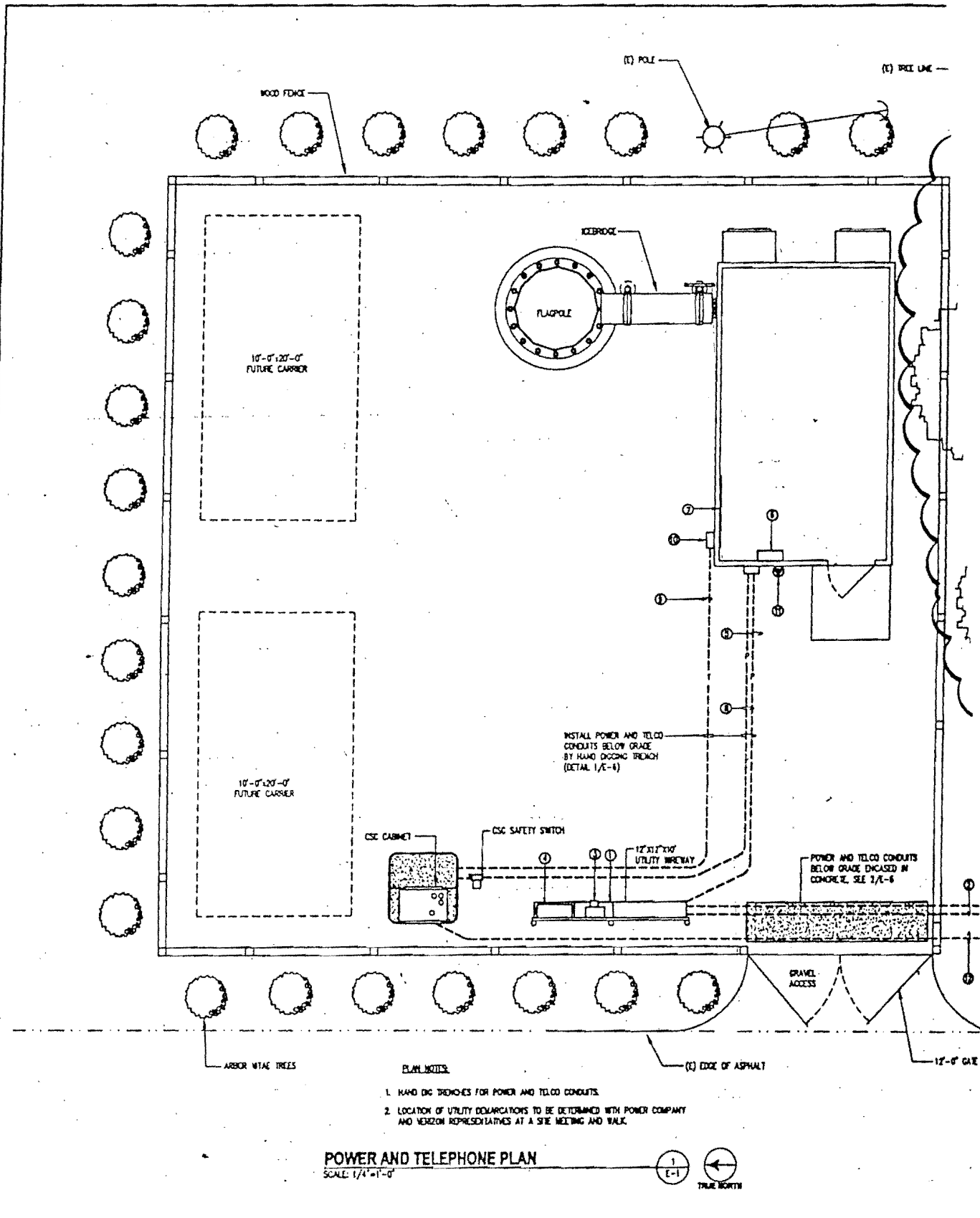
Very Truly Yours,



Richard A. Jones

cc: Peter Max Zimmerman, Esq.
Karl J. Nelson, Esq.

Appendix A


(E) POLE
(E) TREE LINE
WOOD FENCE
ICEBRIDGE
FLAGPOLE
10'-0"x20'-0"
FUTURE CARRIER
10'-0"x20'-0"
FUTURE CARRIER
INSTALL POWER AND TELCO
CONDUITS BELOW GRADE
BY HAND DIGGING TRENCH
(DETAIL 1/E-6)
CSC CABINET
CSC SAFETY SWITCH
12"X12"X10"
UTILITY WAREWAY
POWER AND TELCO CONDUITS
BELOW GRADE ENCASED IN
CONCRETE, SEE 2/E-6
GRAVEL
ACCESS
ARBOR VITAE TREES
(E) EDGE OF ASPHALT
12'-0" GATE
PLAN NOTES:
1. HAND DIG TRENCHES FOR POWER AND TELCO CONDUITS.
2. LOCATION OF UTILITY DEMARCATIONS TO BE DETERMINED WITH POWER COMPANY AND VERIZON REPRESENTATIVES AT A SITE MEETING AND WALK.
POWER AND TELEPHONE PLAN
SCALE: 1/4"=1'-0"
1
E-1
TRUE NORTH
0 1' 4' 10'
(IN FEET)
NOTE:
ALL ITEMS ARE PROPOSED (NEW) UNLESS NOTED "EXISTING."

Appendix B

From the Mount Shasta Bioregional Ecology Center web site,
www.mountshastaecology.org

Health Effects from Cell Phone Tower Radiation

by Karen J. Rogers

The safety of cell phone towers is the subject of extensive scientific debate. There is a growing body of scientific evidence that the electromagnetic radiation they emit, even at low levels, is dangerous to human health.

The cell phone industry is expanding quickly, with over 100,000 cell phone towers now up across the U.S., which is expected to increase ten-fold over the next five years. The industry has set what they say are " safe levels" of radiation exposure, but there are a growing number of doctors, physicists, and health officials who strongly disagree, and foresee a public health crisis.

Many towers have been built recently in Siskiyou Co., with dozens more planned, as telecommunications companies rush to corner markets in this fast-growing industry. These towers emit radio frequencies (RF), a form of electromagnetic radiation (EMR), for a distance of up to 2 1/2 miles. They are essentially the same frequency radiation as microwaves in a microwave oven.

Studies have shown that even at low levels of this radiation, there is evidence of damage to cell tissue and DNA, and it has been linked to brain tumors, cancer, suppressed immune function, depression, miscarriage, Alzheimer's disease, and numerous other serious illnesses. 1

Children are at the greatest risk, due to their thinner skulls, and rapid rate of growth. Also at greater risk are the elderly, the frail, and pregnant women. Doctors from the United Kingdom have issued warnings urging children under 16 not to use cell phones, to reduce their exposure to radio frequency (RF) radiation. 2

Over 100 physicians and scientists at Harvard and Boston University Schools of Public Health have called cellular towers a radiation hazard. Over 100 physicians and scientists at Harvard and Boston University Schools of Public Health have called cellular towers a radiation hazard. And, 33 delegate physicians from 7 countries have declared cell phone towers a "public health emergency".

The U.S. Federal Communications Commission (FCC) is in charge of setting the standards of exposure for the public, and claims that, based on scientific studies, the current levels are safe. But it is not a public health agency, and has been criticized as being "an arm of the industry". Many who work for the FCC are either past, present or future employees of the very industries they are supposed to regulate. With an explosively emergent $40 billion dollar a year industry at stake, critics have stated "you can bet that their studies are going to show whatever they want them to show."

Our federal government also once told us that asbestos, cigarettes, thalidomide, and the blood supply were "safe", but which were later found to be harmful.

With a $40 billion dollar a year industry at stake, " you can bet that their studies are going to show whatever they want them to show."

Cathy Bergman-Veniza, at Vermont Law School Environmental Law Center Conference, 1996

The current U.S. standard for radiation exposure from cell phone towers is 580-1,000 microwatts per sq. cm. (mW/cm2), among the least protective in the world. More progressive European countries have set standards 100 to 1,000 times lower than the U.S. Compare Australia at 200 microwatts, Russia, Italy, and Toronto, Canada at 10, China at 6, and Switzerland, at 4. In Salzburg, Austria the level is .1 mircowatts (pulsed), 10,000 times less than the U.S. New Zealand has proposed yet more stringent levels, at .02 microwatts, 50,000 times more protective than the U.S. standard. 3, 4

Contrary to what the communications industry tells us, there is vast scientific, epidemiological and medical evidence that confirms that exposure to the RF and microwave radiation emitted from cell towers, even at low levels, can have profound adverse effects on biological systems. 5, 6, 7, 8

There is vast scientific and medical evidence that exposure to cell tower radiation, even at low levels, can have profound adverse effects on biological systems.

Scientists and advocacy groups say that the current FCC "safe" standards are based on 1985 research, and fail to consider more recent research that found brain cancer, memory impairment, DNA breakdown, and neurological problems with RF at much lower levels. The earlier studies considered only the "thermal", or heating effects of the radiation□in other words, the level at which the radiation would heat tissue, or " cook" a person, in the same exact manner that a microwave oven works. The FCC levels may ensure our tissues are not "cooked", but they fail to address long-term chronic exposure at low levels, or what is called "non-thermal" effects.

Doctors say that RF radiation is wreaking havoc with normal biological cell functions. "RF alters tissue physiology", says Dr. George Carlo, an epidemiologist who found genetic damage in a $28 million research program, paid for by the industry. He now fights to have safety levels lowered. 9

In 1998 the Vienna Resolution, signed by 16 of the world's leading bioelectromagnetic researchers, provided a consensus statement that there is scientific agreement that biological effects from low intensity RF exposure are established. It says existing scientific knowledge is inadequate to set reliable exposure standards. No safe exposure level can be established at this time.

The world's leading electromagnetic researchers say existing scientific knowledge is inadequate to set reliable exposure standards. □ The Vienna Resolution, 1998

The Salzburg Resolution, adopted in 2000 at the International Conference on Cell Tower Siting, would prohibit any cell site from emanating more than .1 mW/cm2□ 10,000 times more strict than the current U.S. standard. This limit takes into account the growing evidence for non-thermal RF bioeffects. 10

Cell phone towers expose the public to involuntary, chronic, cumulative Radio Frequency Radiation. Low levels of RFR have been shown to be associated with changes in cell proliferation and DNA damage. Some scientific studies show adverse health effects reported in the .01 to 100 mW/cm2 range□ at levels hundreds, indeed, thousands, of times lower than the U.S. standards. These harmful low levels of radiation can reach as far as a mile away from the cell tower location. Reported health problems include headache, sleep disorders, memory impairment, nosebleeds, an increase in seizures, blood brain barrier leakage problems, increased heart rates, lower sperm counts, and impaired nervous systems. 11

Long term and cumulative exposure to cell tower radiation has no precedent in history. There are no conclusive studies on the safety of such exposures, and the growing body of scientific evidence reports such bioeffects and adverse health effects are possible, if not probable.

Dr. Neil Cherry, Ph.D. biophysicist from New Zealand, reports that "there is no safe level of ER radiation." Dr. Cherry wrote a 120-page review of 188 scientific studies. He said the standards are based on thermal effects, but important non-thermal effects also take place, such as cell death and DNA breakdown. "The electromagnetic radiation causes cells to change in a way that makes them cancer forming." It can increase the risk of cancer two to five times, he said. "To claim there is no adverse effect from phone towers flies in the face of a large body of evidence."

"To claim there is no adverse effect from phone towers flies in the face of a large body of evidence." Dr. Neil Cherry, biophysicist

Public health officials caution that we err on the side of conservatism, given the massive public health risk that is possible.

Other federal health agencies disagree that safe levels of exposure have been identified, much less built into the FCC standard. The Environmental Protection Agency (EPA) does not agree with the FCC standards, and analysts have recommended that EMR be classified as a "probable human carcinogen". 12

Deputy Director of the Dept. of Health and Human Services, Elizabeth Jacobsen, has stated that the safety of RF "has not been established nor has the necessary research been conducted to test it", and cites risk of brain cancer, tumors and DNA breakdown. The California Public Utility Commission has urged the cell phone industry to not locate towers near schools or hospitals. And the World Health Organization reports "many epidemiological studies have addressed possible links between exposure to RF fields and excess risk of cancer. These studies do not provide enough information to allow a proper evaluation of human cancer risk from RF exposure because the results of these studies are inconsistent."

"The safety of RF has not been established, nor has the necessary research been conducted to test it." □ Elizabeth Jacobsen, Director, US Dept. of Health

"Our bodies are exquisitely sensitive to subtle electromagnetic harmonics, and we depend upon tiny electrical impulses to conduct complex life processes," says Dr. Robert Becker, author of The Body Electric, and Cross Currents, The Perils of Electropollution. 13, 14

He says "at the present the greatest polluting element in the earth's environment is the proliferation of (these) electromagnetic fields." Radiation once considered safe, he says, is now correlated with increases in birth defects, depression, Alzheimer's disease, learning disabilities, Chronic Fatigue Syndrome, and cancer.

The incidence of brain cancer is up 25% since 1973, and this year 185,000 Americans will be diagnosed with brain cancer. Brain tumors are the second leading cause of cancer death for children and young adults.

Yet, the United States has a de facto policy of "post sales surveillance" with respect to RF radiation. Only after years of exposure, will there be studies to characterize the health consequences.

It can take 3 to 10 years for health effects to show up. Citizens shouldn't be forced to act as guinea pigs in a radiation bioeffects experiment.

Some adverse health effects show up immediately, but it can often take 3 to 10 years for the longer term effects of RF illness to appear, such as cancer. Many researchers, public health officials and citizens believe that consumers shouldn't be forced to act as guinea pigs in a bioeffects experiment for the next 20 years. In short, "we are the experiment", for health effects.

Dr. Gerard Hyland, physicist, says existing safety guidelines for cell phone towers are completely inadequate, since they focus only on the thermal effects of exposure.15 Hyland, twice nominated for the Nobel Prize in Medicine, says existing safety guidelines "afford no protection" against the non-thermal influences. "Quite justifiably, the public remains skeptical of attempts by governments and industry to reassure them that all is well, particularly given the unethical way in which they often operate symbiotically so as to promote their own vested interests."

"Existing safety guidelines for cell phone towers are completely inadequate." □Dr. Gerard Hyland, Physicist two-time nominee, Nobel Prize in Medicine

The industry lobbied Congress with $39 million in 1996 to ensure passage of a law which essentially gives them the right to place these towers in our neighborhoods, and makes it next to impossible to oppose them based on health reasons. It is no coincidence that EPA funding was also cut in 1996 for electromagnetic radiation health studies. Citizens and communities across the country are angered, and are protesting this imposition of involuntary, 24-hour-a-day microwave exposure, without proven safety levels. As one citizen stated, "There's no place left to escape."

The industry lobbied Congress with $39 million in 1996 to pass a law that took away citizen's rights to oppose cell towers based on health reasons.

Also, once a cell tower is erected, it has proved very difficult to verify the radiation is within legal limits. There are no safety measures in place to ensure that the towers are not emitting higher radiation levels than legally allowed. One frustrated resident finally spent $7,000 purchasing his own equipment to test a cell phone tower near his home, and found it emitting radiation at levels 250% over the legal limit. 16

Property values have also been known to drop once a cell tower is erected, due to the perceived risk of negative health effects. Cellular phone frequencies have also seriously disrupted local emergency and law enforcement radio communications.

Massachusetts lawyer Mark Berthiaume, opposing placement of a cell phone tower, said "Municipalities .... are being bullied every day by providers of wireless telephone service who use their financial clout and the federal (law) to intimidate the communities into allowing them to place large towers in inappropriate locations." 17

Some Questions and Answers

But don't we need and depend on cell phones?

Of course. No one is saying not to have cell phones and towers, but to make them safer. If Austria can have levels 10,000 times more protective, then so can we. It is just more expensive to the companies. Also, we don't have to let these cell towers go anywhere and everywhere the industry wants them. We can require that they erect the minimum number required to provide adequate coverage, and be put in the safest places possible.

Why don't we just oppose the construction of cell towers in our county?

In a strategic move, the cell phone industry has tried to make it illegal for citizens to oppose the towers based on health concerns. In the Telecommunications Act of 1996, state and local rights were seriously limited with regard to opposing towers based on health concerns. The constitutionality of this Act has been challenged in the Supreme Court, and a long legal battle is sure to follow. But it will take years, while the public continues to be exposed to chronic, cumulative radiation with each new cell tower.

So what CAN we do?

The Telecommunications Act prevents citizens from opposing the towers based on concerns about RF emissions, but we can oppose them on numerous other valid grounds. There are still rights we and our local elected officials maintain, that allow us local control of the number, size and placement of cell towers, while still providing for adequate cell phone coverage. Numerous communities have called for moratoriums on tower construction, allowing them needed time to study the issue, and enact strict ordinances that require the industry to respect community desires, such as building the minimum towers necessary, in appropriate locations. During these moratoriums, communities are preparing non-industry biased studies of cell phone tower need, and creating cell tower Master Plans, to help protect the rights and health of citizens, while complying with the law. 18, 19, 20

Siting of cellular towers is an important function of our elected officials. Protection of citizens' health and property rights should be foremost in the responsibilities of local government. We urge our elected officials to protect the health and welfare

of the citizens who live here, rather than big-money interests with profit as their bottom line.

For further information, these websites offer a good starting point: www.emrnetwork.org, www.microwavesnews.com, www.ccwti.org, www.wave-guide.org, www.planwireless.com, www. rfsafe.com , Sageasoociates.net

2002, Karen J. Rogers, B.S.

Endnotes

1 Microwave and Radio Frequency Radiation Exposure, San Francisco Medicine , Vol. 74, No 3, March 2001

2 Mobiles Risk to children, Daily Mail (U.K.), May 11, 2000

3 Radiofrequency Radiation Health Studies, Wireless Antenna Site Consumer Information Package, Sage Associates, Montecito, CA, 2000, www. sageassocciates.net

4 Tower concerns should be health, not aesthetics, Burlington Free Press, January 12, 2001

5 Selected and Extensive Bibliographies on Electromagnetic Fields and Health, Bridlewood Electromagnetic Fields (EMFs) Information Service, compiled by: Richard W. Woodley, revised 1999,
www.wave-guide.org/archives/bridlewood/biblio.html

6 Reported Biological Effects From Radiofrequency Non-Ionizing Radiation, www.wave-guide.org/library/studies.html

7 Some Reported Biological Effects from Radiofrequency Radiation, Sage Associates, 2000 at www.sageassociates.net/rfchartreportbio-sample.pdf , and Reference List for Some Reported Biological Effects from Radiofrequency Radiation (RFR), Sage Associates, August 2000, at www.sageassociates.net/Bibliography-sample.pdf

8 A Cellular Phone Tower on Ossining High School?, includes extensive reference to scientific papers and government documents citing adverse health effects from cell tower radiation, www.cyburban.com/~lplachta/safeweb2.htm

9 Cell Phones: Invisible Hazards in the Wireless Age: An Insider's Alarming Discoveries About Cancer and Genetic Damage, Dr. George Carlo and Martin Schram, Carroll & Graf, ©2001

10 International Conference on Cell Tower Siting, by Monica Kauppi, No Place to Hide, September 2000, Resolution presented June 2000 and signed by 19 of 23 speakers, including Dr. Carl Blackman of the U.S. Environmental Protection Agency.

11 Ibid, endnote 5.

12 United States Environmental Protection Agency, Evaluation of the Potential Carcinogenicity of Electromagnetic Fields, External Review Draft, No. EPA/600/6-90/005B, October 1990.

13 Becker, Robert O., & Gary Seldon, The Body Electric: Electromagnetism and the Foundation of Life, William Morrow and Company, Inc., New York, NY, 1985

14 Becker, Robert O., Cross Currents: The Perils of Electropollution, The Promise of Electromedicine, Jeremy P. Tarcher Inc., Los Angeles, CA, 336 pp., 1990.

15 The Physiological and Environmental Effects of Non-ionising Electromagnetic Radiation, Dr. Gerard Hyland, presented to European Parliament's Industry, Trade, Research and Energy Committee, July 11, 2001.

16 FCC takes look at 'antenna farm', Denver Post, October 30, 1998

17 Town May Order Company to Remove Cellular Tower, Massachusetts Lawyers Weekly, March 20, 2000

18 Cellular Tower Zoning, Siting, Leasing and Franchising: Federal Developments and Municipal Interests, by Varnum, Riddering, Schmidt, Howlett Attorneys at Law, presented to International Municipal Lawyers Association, September 2001,

19 Plan Wireless Newsletter, Kreines & Kreines, Inc., at www.planwireless.com/index.htm

20 U.S. 2nd Circuit Court of Appeals, SPRINT SPECTRUM v WILLOTH , (Corrected Opinion, August Term 1998) , Docket No. 98-7442, at http://laws.findlaw.com/2nd/987442v2.html

To: Mr. John V. Murphy
Deputy Zoning Commissioner
Zoning Commissioner's Office
401 Bosley Avenue
Suite 405
Towson, Maryland 21204

Re: Proposed Cell Tower
Case No. 06-637-SPHXA
American Legion Post
4424 Painters Mill Road
Owings Mills, MD

Dear Mr. Murphy:

We are submitting the following in opposition to the request by the referenced subject for a Special Exemption (to permit a wireless telecommunications facility to be located at the referenced address), a Special Hearing (to continue use of the property as an American Legion Post in combination with a wireless telecommunication facility), and a Variance (to allow a tower with a 47 foot side yard setback and a 59.6 foot front yard setback to any other residential property in lieu of the minimum required 200 feet for both).

The referenced property is Residential DR16, and is wholly surrounded by Residential properties, and is being used by the American Legion in a non-conforming manner. (The property must revert to DR16 Residential use when the American Legion no longer uses the property.) If this cell tower is constructed, the property owner will have permanently altered the residential nature of the property, and this goes beyond the spirit and rules of non-conforming use, and the zoning laws of Baltimore County. They should leave the property as it was intended by the County.

The character of the area is residential home owners and residential apartments. The out of town and out of state consultants that Cingular has employed have totally disregarded the character of the neighborhood. There focus is strictly on the construction of the cell tower without consideration of the neighboring residences.

We believe the Tower Review Committee has performed a perfunctory analysis of the Cingular cell tower request. For example, Mr. Rick Bohn, the Tower Committee Coordinator, in discussions with me said he is "flying blind" and has very little information or resources to evaluate the request. Mr. Bohn did not know where other towers in the area are located that Cingular might have been able to use, and it appears that neither he nor his committee performed any independent analysis. Mr. Harry Wujek, Community member of the TRC, told me that he thought the property was already zoned for the tower.

Jan. 18th memo

332-8663 American Legion - Cengular - Painters Mill Road
DR 16

SE - flagpole
125' height
Variances
47 + 59.6 in lieu of 200'

Am. Legion is nonconforming use?
Zaren - sales price when? 4 yrs ago?
May 2000 $240,000
describe pole + top

no community complaints

see Shawan + Falls?
DR 16
426.5 - Chart 426.2 - policy 426.6 - setback 300'
426.9 - SE towers
502.1 - SE
307 - variance

Schultz
adverse effect over + above if use proposed located anywhere in the zone
flag pole 125' 502.1 - neighboring properties adversely affected
variance

Sprint case - similar but no S.E.

① location - real estate
② technical engineer

Jack Barber
7150 Standard Dr.
Hanover MD 21076 - regional Affairs

Consultant - site acquisition manager
works for AT&T

specialized real estate - find viable
sites for towers

prefer co-locations

site is on hill - 3.09 acres zoned DR -
"Conservancy Except"

Site:
meeting hall -
Cookouts
picnic area
parking lot

used for Church services on Sunday
"Long + narrow"

Pet. 1
Site Plan

now AT&T - formerly Cingular

Proposing:
- 125' stealth flagpole - w/ flag
pole is 2'12A in diameter at base

50 x 50' compound
11/2

Difference from monopole

* monopole - has antennae - to pole the same

how many co-locators on this?

- pix ?

Others are interested

Cap - like flag pole

AT+T has others like them on any

on property ? S.E. corner

price -

main bldg / sheds / storage sheds

wooded area to South -

then high density residential

farthest away from existing dwelling

this is wooded area to west

~~balloon test~~
not visible from townhouses to south

area of lot being used for

"compound" 50'x50' board on board
* fenced fence -

room for CO-locator's equipment in the compound -

13'x20'x8' high - equipment - how many boxes
fence is 10ft

AT+T is largest box equipment

Pct. 2 pix → 3'-4" diameter of pole in pix (BGE in photo)

Acres -

O.T - T Rowe Price Office Technology -

Pct 3 Vertical w/ alternate markings

Visual Impact -
"balloon test" - 125' 5-10' balloon

took pix of balloon from different areas
has pix of flagpole & does photosimulation

neighbors ?

Pet. 4
Key where photos of ballon test were taken

photos from areas where balloon is visible
- see Exh. 3

Pet 5 - Key - flag simulation also sam allocation
Pet 5A-F Flagpole simulations

Pet.
4A - on ~~Sabot~~ Annapolis Key 5A -

4B - ~~Annapolis~~ Ct + Winfield 5B -

4C Annapolis Ct + Winfield -

4D McDonough + Stone Ridge 5C

4E T Rowe Price - entrance 5D
PMR + LMA

4F Dobson Ct + Sam. Owings 5E

Tower Review Committee
Mr Bobone w/ TRC.

Pet 6
TRC-
correspondence

-

"poor coverage" - not his job

Engineers give general search area -
he looks for sites. AT&T instructs
where to look

preference - co-location

AT&T - money loses to build
tower for AT&T
- Cost to build - sent to Am. Leg.
- Cost to co-locate -

* 1/3rd mile radius from McDonough + Powder Mills

outside of search area

on roof tops - is plausible

100'-130'-

any structures 780ft in area

Nothing in neighborhood

① co-location

w/i 1 mile WBAL AM tower - SE/S intersection - might put cell tower on their equipment

Uptown buildings - 60'
McDonough School <60'

② Community + underlying Zones -

T Rowe Price Campus - not interested
McDonough School - " "

Pet. 7 Email from McDonough Steve Simmons

BL, BLR

High density - small lot -
no other 3 acre parcels -

Am legion was different from other properties in the way it worked

* cold call

Minimum acreage for Med. Inst'l + Religious Inst'l

This site is large - unique -

Size - only 3 are DR "unique"
Character - no one lever there "unique"

flag pole here is more appropriate

209 ft wide - Other uses -

Structures themselves - Club use,
parking lot
multiple buildings on site
storage
pavilion

Open + intent of area - 1
flagpole fits in -

Stahl
Average size of lots in area -

Remove the flag → Am. Legion will raise +
lower flag

* * service pegs

Cross

- first thing you do to locate a site - determine search radius - use for the site

driving - what are high + medium intensity commercial zones in Balto Co.

aerial photo

tax - zoning map -

SDAT - addresses - how did you arrive at Am Leg - cold call -

- Co-locate - cost
- new tower - cost
- rental - cost
- money received from colocators -
- email from McDonough School
- ~~Size of property -~~
- service pole - from top - pep? cone
- photo's distances - prior to 2006
  Jones' property - distance -
- equipment - how many boxes " " " for co-locators
  OT ?
- "poor coverage" - exact words - What does that mean

"improve coverage" fix whole

Other towers + antennas - for AT&T
Baltimore City - Loch Raven

- how do antennas work -

- ideal + satisfactory -

200 ft setbacks →

1/3 mile -

* didn't know medium intensity or high intensity zoning in Balto. Co. —

existing pole w/ flag - Hunt Valley

Shoffstall

Mr. Lesa R.F engineer

Company provides engineering services to others - works on AT&T

designs & maintains network -
designed
60-80 sites

Master of Engineering - U of Texas

where system works well or doesn't -
- Computer propogation tools -
- predict & estimate coverage in field -

he creates
plank rings - physical location

engineer makes decision whether
site is viable

Pat → Exhibit 8 - Computer wireless coverage
Computer print-out from
propogation tool

existing AT&T sites
"Chatsworth" is proposed site

light green → system coverage

solid green - acceptable level of coverage

Complaints - T Rowe Price apartments

white - no coverage or poor coverage needs strong signal

dbm - decimal level
drop call or static

* T Rowe Price - office workers -

other ones aren't that high -

no coverage for residents
Lyons Mill } Commuter routes

electric towers - need reasonable spacing from electric towers -

Chimes - monopole
House Builder - antennae on roof
10ft

Pet

No other Utility tall structures were found by Barber

Used Computer Propagation - needs 150' but since on hill 125' ft would work

propagation at 100' wasn't sufficient for south of site

Pet. 8A - Mylar -
proposed coverage is orange

never considered WBAL -

Rouse Building sites →
not giving good coverage South of PMR & Mc. Rd

Pet. 8B Mylar - Rte 1 & Commercial site -
would not provide coverage on PMR + MC Rd

not good spacing

8C Mylar - Laberdale Property - would not work

Energy Emissions Ltd by Fed Gov't

Leon McGee, Jr. –

Am Legion Post 122 534

maintaining flag

interest in facility –
approached by AT&T

flag
fence
sold property – 3 acres

defray cost –
send $ to Warzone
Warren Joe E. Cemetery
501 c (19)

buffer – legion owns 6 ft
20 ft is ~~flat~~ used as
retaining wall

used money to pay off Mtg – +
improve Dental Hall –
septic system update

dues are collected –

debit know of impediments to
residential development

9109 Lyons Mill Rd -

Mt Wilson Location — 560 ft -
132'
692' ft on roof

695' ft at proposed
Site

memo
*
antennas permitted by right -

6 acres - permit for 6 acres

Permit -

3 area - not unique -

could other 3 area panels in area -

200 ft from residential prop line

describe neighborhood -
11 A = SDAT map -
11 b - June 18, 2007

Cell tower

not
Unique -
11 A - prop
12 - SDAT

all properties in area are 300'

Hardship → DZC not self-imposed

#15 - 1953 deed to Am. Legion -

self imposed hardship -

Sprint
Cromwell

everything in area is 300 ft.

Mr Jones -

Continued pending - not appropriate

Photo simulations - Brandywine Farms

flagpole -

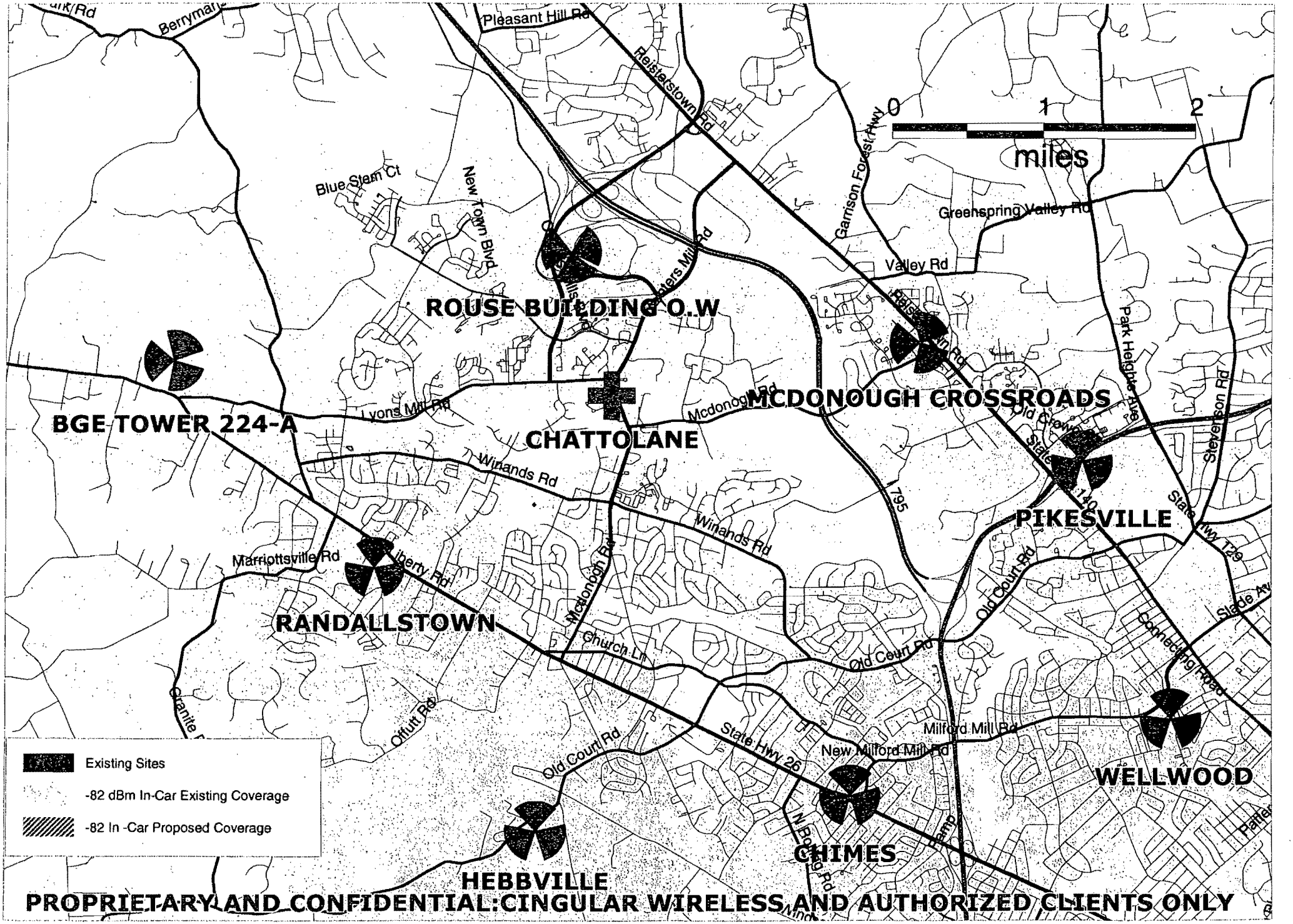
Petitioner's

ZC

Exhibits

EXHIBIT 1 (PETITIONER)

CINGULAR WIRELESS EXISTING COVERAGE WITHOUT CHATTOLANE SITE



PROPRIETARY AND CONFIDENTIAL: CINGULAR WIRELESS AND AUTHORIZED CLIENTS ONLY

EXHIBIT 2 (PETITIONER)

Large scale neighborhood Map

IETYPES

BOUNDARY LINE – PARENT PARCEL

UNSURVEYED LINE – BOUNDARY OF ADJOINERS

RIGHT OF WAY BOUNDARY

INTERIOR LOT LINES

EDGE OF ASPHALT

EDGE OF CONCRETE

EDGE OF GRAVEL

CURB

FENCE LINE

OVERHEAD UTILITY LINE

TREE OR VEGETATION LINE



ONED

OR-2

7150 Standard Dr.
Hanover, MD 21076

PROJECT NO:	1087.022
DESIGNER:	TMF
ENGINEER:	C.G.

SCALE:

0 1/2 1

GRAPHIC SCALE IN INCHES

CHATTOLANE
1964
4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

TITLE:

PLAN TO ACCOMPANY ZONING HEARING FOR CINGULAR/ CHATTOLANE

SHEET NUMBER:

Z-1

Pit #4

Site Plan

Jack Barber

From: Steve Simmers [SSimmers@mcdonogh.org]
Sent: Monday, August 21, 2006 9:15 AM
To: Jack Barber
Subject: Re: Cellular facilities on the McDonogh Campus

Dear Mr. Barber:

McDonogh School is not interested in placing any type of structure on our campus.

Thank you,
Stephan Simmers
Superintendent of Buildings and Grounds

Pet #5

Pet #6

Click here for a plain text ADA compliant screen.

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
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Ground Rent

Account Identifier: **District - 02 Account Number - 2200025452**

Owner Information

Owner Name: TRP SUBURBAN SECOND INC
Use: COMMERCIAL
Principal Residence: NO
Mailing Address: ATTN FIN RPT-13
PO BOX 89000
BALTIMORE MD 21289-0001
Deed Reference: 1) /12290/ 259
2)

Location & Structure Information

Premises Address
MCDONOGH RD

Legal Description
1.322 AC
NS MCDONOGH RD
OWINGS MILLS CORPORATE

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:	A
67	15	426					3E	1	Plat Ref:	68/ 31

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		1.32 AC	06

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2006	As Of 07/01/2007
Land:	1,300	1,300		
Improvements:	0	0		
Total:	1,300	1,300	1,300	NOT AVAIL
Preferential Land:	0	0	0	NOT AVAIL

Transfer Information

Seller: MCDONOGH SCHOOL INC	**Date:** 07/22/1997	**Price:** $4,500,000
Type: MULT ACCTS ARMS-LENGTH	**Deed1:** /12290/ 259	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Protestants'

ZC

Exhibits

Image Not to Scale

GIS Aerial

Pro #1



Protestants
2A

RECEIVED

SEP 2 6 2006

ZONING COMMISSIONER

To: Mr. John V. Murphy
Deputy Zoning Commissioner
Zoning Commissioner's Office
401 Bosley Avenue
Suite 405
Towson, Maryland 21204

September 25, 2006

Re: Proposed Cell Tower
Case No. 06-637-SPHXA
American Legion Post
4424 Painters Mill Road
Owings Mills, MD

Dear Mr. Murphy:

We are submitting the following in opposition to the request by the referenced subject for a Special Exception (to permit a wireless telecommunications facility to be located at the referenced address), a Special Hearing (to continue use of the property as an American Legion Post in combination with a wireless telecommunication facility and to confirm that there is no conflict with prior Zoning), and a Variance (to allow a tower with a 47 foot side yard setback and a 59.6 foot front yard setback to any other residential property in lieu of the minimum required 200 feet for both).

The referenced property is Residential DR16, and is being used by the American Legion in a non-conforming manner. (The property must revert to DR16 Residential use when the American Legion no longer uses the property.) If this cell tower is constructed, the property owner will have permanently altered the residential nature of their property, and this goes beyond the spirit and rules of non-conforming use, and the zoning laws of Baltimore County. They should leave the property as it was intended by the County.

The neighborhood surrounding the American Legion is composed of expensive single family homes, townhomes, and upscale apartments with garages. (Homes within a ½ mile radius of this property are in the price range of $350,000 to $750,000) There are no other obtrusive structures anywhere in the neighborhood. The construction of the tower would create an adverse impact on the neighborhood and would be visually incompatible with the neighborhood. The out of town and out of state consultants that Cingular has employed have totally disregarded this character of the neighborhood. There focus is strictly on the construction of the cell tower without consideration of the neighboring residences.

P no #3

Q. Do you have a job?

A. Yes.

Q. Where do you work?

A. McDonald's.

Q. Okay. *Did you ever tell anybody* associated with this case *that you didn't go to work one day because someone carjacked you?*

MS. ANDERSON–SCOTT: Objection.

THE COURT: Sustained.

(Emphasis supplied).

Quite aside from the fact that Koree's credibility was not that critical an issue in the case, as we have already discussed, the question that was not permitted was so far afield and tangential that it did not even approach the outer limits of relevance. It was collateral in the extreme. As *Ebb v. State*, 341 Md. at 588, 671 A.2d 974, pointed out:

> The judge must balance the probative value of the proposed evidence against . . . the possibility of undue delay or confusion of the issues.

It was precisely the sort of collateral matter referred to by *Pantazes v. State*, 376 Md. at 681, 831 A.2d 432:

> *The scope of cross-examination lies within the sound discretion of the trial court.* This discretion is exercised by balancing "the probative value of an inquiry against the unfair prejudice that might inure to the witness. *Otherwise, the inquiry can reduce itself to a discussion of collateral matters which will obscure the issue and lead to the fact finder's confusion.*"

(Emphasis supplied).

Once again, Judge McKee's ruling was not an abuse of discretion.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

933 A.2d 475

William F. CHESLEY, et ux.

v.

CITY OF ANNAPOLIS, Maryland.

No. 1104, Sept. Term, 2006.

Court of Special Appeals of Maryland.

Sept. 27, 2007.

Background: Homeowners sought review of Board of Appeals decision denying zoning variance for construction of a garage. The Circuit Court, Anne Arundel County, Nancy Davis–Loomis, J., affirmed. Homeowners appealed.

Holdings: The Court of Special Appeals, Adkins, J., held that:

(1) substantial evidence supported Board's decision that denial of variance did not impose a hardship on homeowners;

(2) homeowners' hardship regarding garage construction was self-created and not the result from mere compliance with applicable zoning and development laws;

(3) substantial evidence supported finding that variance would have impaired property values in neighborhood; and

(4) city was not judicially estopped from opposing the variance.

Affirmed.

1. Zoning and Planning ⇐481

A "variance" authorizes the property owner to use his property in a manner forbidden by applicable zoning restrictions.

2. Zoning and Planning ⇐482

In contrast to "special exceptions," which contemplate a permitted use once the prescribed conditions are met, a "variance" contemplates a departure from the terms of the zoning ordinance in order to preclude confiscation of the property.

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1104

September Term, 2006

WILLIAM F. CHESLEY, ET UX.

v.

CITY OF ANNAPOLIS, MARYLAND

Davis,
Eyler, James R.,
Adkins,

JJ.

Opinion by Adkins, J.

Filed: September 27, 2007

William and Robin Chesley, appellants, challenge the denial of a front yard setback variance that would enable them to build a one car garage within three feet of the street along their Chesapeake Bay waterfront property in Annapolis. They present two questions for our review:

> I. Did the Board of Appeals err in denying the Chesleys' zoning variance because the Board's conclusions are not supported by substantial evidence and because the Board failed to apply the law correctly?
>
> II. When the City appears as a party at a public hearing before the Board of Appeals through officials who work for the City's Planning Department, and when those City officials testify in favor of a variance application, is it improper for the City in a subsequent petition for judicial review of the Board's decision to oppose the variance by taking positions contrary to the positions City officials took before the Board?

Finding no error, substantial evidence in the administrative record to support the Board's denial of this variance, and no impropriety in the City's advocacy, we shall affirm the judgment.

City Regulations

The Annapolis City Code sets minimum setbacks of six feet for side yards and 30 feet for front yards for accessory structures in an R2 zone, such as the Chesleys' proposed garage. *See* Annapolis City Code § 21.18.040(C)(hereafter cited as "Code"). The Chesley property is subject to other building restrictions, however, due to its location at 15 Eastern Avenue in the Eastport section of Annapolis, on the Chesapeake Bay.

First, the approximately one-third acre lot is in the Chesapeake Bay Critical Area, and

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Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 02 **Account Number** - 0201500001

Owner Information

Owner Name:	AMERICAN LEGION LIBERTY POST 122 MD	**Use:**	EXEMPT COMMERCIAL
		Principal Residence:	NO
Mailing Address:	P O BX 112 RANDALLSTOWN MD 21133	**Deed Reference:**	1) 2)

Location & Structure Information

Premises Address
4424 PAINTERS MILL RD

Legal Description
3.0957 AC WS
PAINTERS MILL RD
1320 W MCDONOUGH RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
67	14	30						1	Plat Ref:

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1958	1,387 SF	3.09 AC	01

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2006	As Of 07/01/2007
Land:	386,900	386,900		
Improvements:	31,800	31,800		
Total:	418,700	418,700	418,700	NOT AVAIL
Preferential Land:	0	0	0	NOT AVAIL

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	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: COUNTY AND STATE
Exempt Class:

Special Tax Recapture:

* NONE *

not used

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Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 02 **Account Number** - 0201500001

Owner Information

Owner Name: AMERICAN LEGION LIBERTY POST 122
MD

Use: EXEMPT COMMERCIAL

Principal Residence: NO

Mailing Address: P O BX 112
RANDALLSTOWN MD 21133

Deed Reference: 1)
2)

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4424 PAINTERS MILL RD

Legal Description
3.0957 AC WS
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1320 W MCDONOUGH RD

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Ad Valorem
Tax Class

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Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: COUNTY AND STATE
Exempt Class:

Special Tax Recapture:

* NONE *

W.+
JSC

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Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District -** 02 **Account Number -** 0201500001

Owner Information

Owner Name: AMERICAN LEGION LIBERTY POST 122
MD

Use: EXEMPT COMMERCIAL

Principal Residence: NO

Mailing Address: P O BX 112
RANDALLSTOWN MD 21133

Deed Reference: 1)
2)

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Town
Ad Valorem
Tax Class

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Seller:		**Date:**	**Price:**
Type:		**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: COUNTY AND STATE
Exempt Class:

Special Tax Recapture:

* NONE *

not used

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw4.3)

Go Back
View Map
New Search

Account Identifier: **District** - 02 **Account Number** - 0201500001

Owner Information

Owner Name:	AMERICAN LEGION LIBERTY POST 122 MD	**Use:**	EXEMPT COMMERCIAL
		Principal Residence:	NO
Mailing Address:	P O BX 112 RANDALLSTOWN MD 21133	**Deed Reference:**	1) 2)

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Premises Address
4424 PAINTERS MILL RD

Legal Description
3.0957 AC WS
PAINTERS MILL RD
1320 W MCDONOUGH RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
67	14	30						1	Plat Ref:

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1958	1,387 SF	3.09 AC	01

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2007	Phase-in Assessments As Of 07/01/2007	As Of 07/01/2008
Land	386,900	928,700		
Improvements:	31,800	25,800		
Total:	418,700	954,500	597,300	775,900
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	07/01/2007	07/01/2008
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: COUNTY AND STATE
Exempt Class: VETERANS ORGANIZATIONS

Special Tax Recapture:
* NONE *

PC 2

Click here for a plain text ADA compliant screen.

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search
Ground Rent

*** * DELETED 08/08/2001 * ***

Account Identifier: **District - 02 Account Number -** 0201500000

Owner Information

Owner Name:	OWINGS PARK LLC	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	SUITE 450 10705 CHARTER DR COLUMBIA MD 21044-4726	**Deed Reference:**	1) /15306/ 417 2)

Location & Structure Information

Premises Address
PAINTERS MILL RD

Legal Description
3 AC WS
PAINTERS MILL RD
1320 W MCDONOUGH RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
67	14	29						1	Plat Ref:

Special Tax Areas **Town**
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		3.00 AC	04

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/1998	Phase-in Assessments As Of 07/01/2000	As Of 07/01/2001
Land:	90,000	90,000		
Improvements:	0	0		
Total:	90,000	90,000	36,000	NOT AVAIL
Preferential Land:	0	0	0	NOT AVAIL

Transfer Information

Seller:	ROTHBLUM SAMUEL R	**Date:**	06/18/2001	**Price:**	$2,250,000
Type:	MULT ACCTS ARMS-LENGTH	**Deed1:**	/15306/ 417	**Deed2:**	
Seller:	AMERICAN LEGION LIBERTY POST 122	**Date:**	06/05/2000	**Price:**	$240,000
Type:	UNIMPROVED ARMS-LENGTH	**Deed1:**	/14503/ 628	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2000	07/01/2001
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

PC #3

RETURN TO:
HAMMOND & HAMMOND, LLC
P.O. BOX 569, 465 MAIN STREET
REISTERSTOWN, MD. 21136
410-833-7576
FILE NO. 6064

THIS DEED, made this 23rd day of May, 2000, by and between **THE AMERICAN LEGION, DEPARTMENT OF MARYLAND, LIBERTY POST 122, INC., a Maryland Corporation**, Grantor, party of the first part, and **SAMUEL R. ROTHBLUM AND CHRISTOPHER S. HOWELL**, parties of the second part, Grantees.

WITNESSETH, that in consideration of sum of TWO HUNDRED FORTY THOUSAND and no/100ths Dollars ($240,000.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said party of the first part does grant and convey unto the said parties of the second part, as tenants in common, their personal representatives, heirs and assigns, in fee simple, all that lot of ground situate in the Second (2nd) Election District, Baltimore County, State of Maryland, and described as follows, that is to say:

FOR LEGAL DESCRIPTION SEE ATTACHED EXHIBIT "A"

BEING THE SECONDLY DESCRIBED PARCEL OF LAND in a Deed dated December 30, 1953 and recorded among the Land Records of Baltimore County in Liber GLB No.2414, Folio 296, was granted and conveyed by Earl B. Jones, et al unto The American Legion, Department of Maryland, Liberty Post 122, Inc, the Grantor herein.

SUBJECT to covenants and restrictions of record.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises to the said parties of the second part, as tenants in common, their personal representatives, heirs and assigns, in fee simple forever in the following shares and proportion:

As to Samuel R. Rothblum a 50% undivided interest;

As to Christopher S. Howell a 50% undivided interest.

REVIEWED SDAT
LF 6/5/00
BY DATE

BA CIRCUIT COURT (Land Records) [MSA CE 62-14358] SM 14503, p. 0628. Printed 09/19/2006. Online 08/08/2005

PC 4

THIS DEED, made this 18th day of June, 2001, by and between SAMUEL R. ROTHBLUM and CHRISTOPHER S. HOWELL, parties of the first part and SENECA HARBOR DEVELOPMENT CORPORATION, a Maryland corporation, party of the second part, and OWINGS PARK L.L.C., a New York limited liability company, party of the third part.

WITNESSETH, that in consideration of the sum of Two Million Two Hundred Fifty Thousand Dollars ($2,250,000.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said parties of the first and second parts do hereby grant and convey unto the said party of the third part, its successors and assigns, in fee simple, all that parcel of ground located, lying and being situate in Baltimore County, State of Maryland and being more particularly described in Exhibit "A" attached hereto and made a part hereof.

BEING all that parcel of ground containing 2.9985 acres of land, more or less, as more particularly described in a Deed dated May 23, 2000 and recorded among the Land Records of Baltimore County in Liber S.M. No. 14503, folio 628 from The American Legion, Department of Maryland, Liberty Post 122, Inc. to Samuel R. Rothblum and Christopher S. Howell, the within parties of the first part.

BEING ALSO all that parcel of ground containing 4.22 acres of land, more or less, as more particularly described in a Deed dated January 20, 1998 and recorded among the Land Records of Baltimore County in Liber S.M. No. 12664, folio 173 from Laura J. Melody by Richard P. Melody, her Attorney-In-Fact, to Seneca Harbor Development Corporation, the within named party of the second part. SAVING AND EXCEPTING ALL THAT LAND DESCRIBED IN DEED DATED DECEMBER 1 ST, 1987 AND RECORDED 7744 /415, CONTAINING 0-1104 AC MORE OR LESS.

BEING ALSO all that parcel of ground described in a Deed dated September 21, 1999 and recorded among the Land Records of Baltimore County in Liber S.M. No. 14054, folio 472 from John James Lucas to Samuel R. Rothblum and Chistopher S. Howell, the within named parties of the first part.

BEING ALSO all that parcel of ground containing 2.8561 acres of land, more or less, as more particularly described in a Deed dated January 15, 1999 and recorded among the Land Records of Baltimore County in Liber S.M. No. 13524, folio 501 from Lisa G. Lockwood to Samuel R. Rothblum and Christopher S. Howell, the within named parties of the first part.

BEING and intended to be all that parcel of ground as shown on a Plat entitled "Plat 1 of 2, Owings Park Apartments", which Plat is recorded among the Land Records of Baltimore County in Plat Book S.M. No. 73, folio 135.

SENECA HARBOR DEVELOPMENT CORPORATION by the execution hereof hereby certifies that the within conveyance is not part of a transaction in which there is a sale, lease or exchange of all, or substantially all, of the property and assets of the grantor corporation.

REVIEWED SDAT
BY 6/18/01
DATE

BA CIRCUIT COURT (Land Records) [MSA CE 62-15161] SM 15306, p. 0417. Printed 09/19/2006. Online 08/07/2005.

PCS

#2812-S

MAP #2-B "S" PRIVATE CLUB 11/25/53

PETITION FOR SPECIAL PERMIT

IN THE MATTER OF : BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

LOUIS I. PLACK, Sr. et al :

:

:

For a Special Permit

To The Zoning Commissioner of Baltimore County

Louis I. Plack, Sr. and Nellie C. Plack, his wife
Earl B. Jones and Frances Jones, his wife
Legal Owners

The American Legion Department of Maryland, Liberty Post No. 122, Inc.
Contract Purchaser

hereby petition for a Special Permit, Under the Zoning Regulations and Restrictions passed by the County Commissioners of Baltimore County, agreeable to Chapter 377 of the Acts of the General Assembly of Maryland of 1943, for a certain permit and use, as provided under said Regulations and Act, as follows:

A Special Permit to use the land (and improvements now or be erected thereon) hereinafter described for a private club - BEGINNING for the same in the center of Lyons Mill Road, approximately 197 feet South from the right angle turn in Lyons Mill Road at Painters Lane, said beginning being also at the end of the first line in a deed dated Dec 31, 1942 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1272, folio 192, from Richard T. Jones and wife to Nellie C. Plack etal, running thence North 83 degrees 43 minutes West 626.25 feet, South 5 degrees 11 minutes West 421.53 feet, South 85 degrees, 50 minutes East 109.54 feet, South 83 degrees, 43 minutes East 569.51 feet and North 21 degrees 26 minutes East 49.20 to the center of Lyons Mill Road and thence binding thereon, North 28 degrees 49 minutes West 89.10 feet, North 6 degrees, 34 minutes West 82.5 feet and North 5 degrees, 11 minutes East 216.33 feet to the place of beginning.

The American Legion Department of Md.
Contract Purchaser
Liberty Post No. 122, Inc.

By Charles Weidman
President

Randallstown, Maryland
Address

Earl B. Jones
Legal Owner

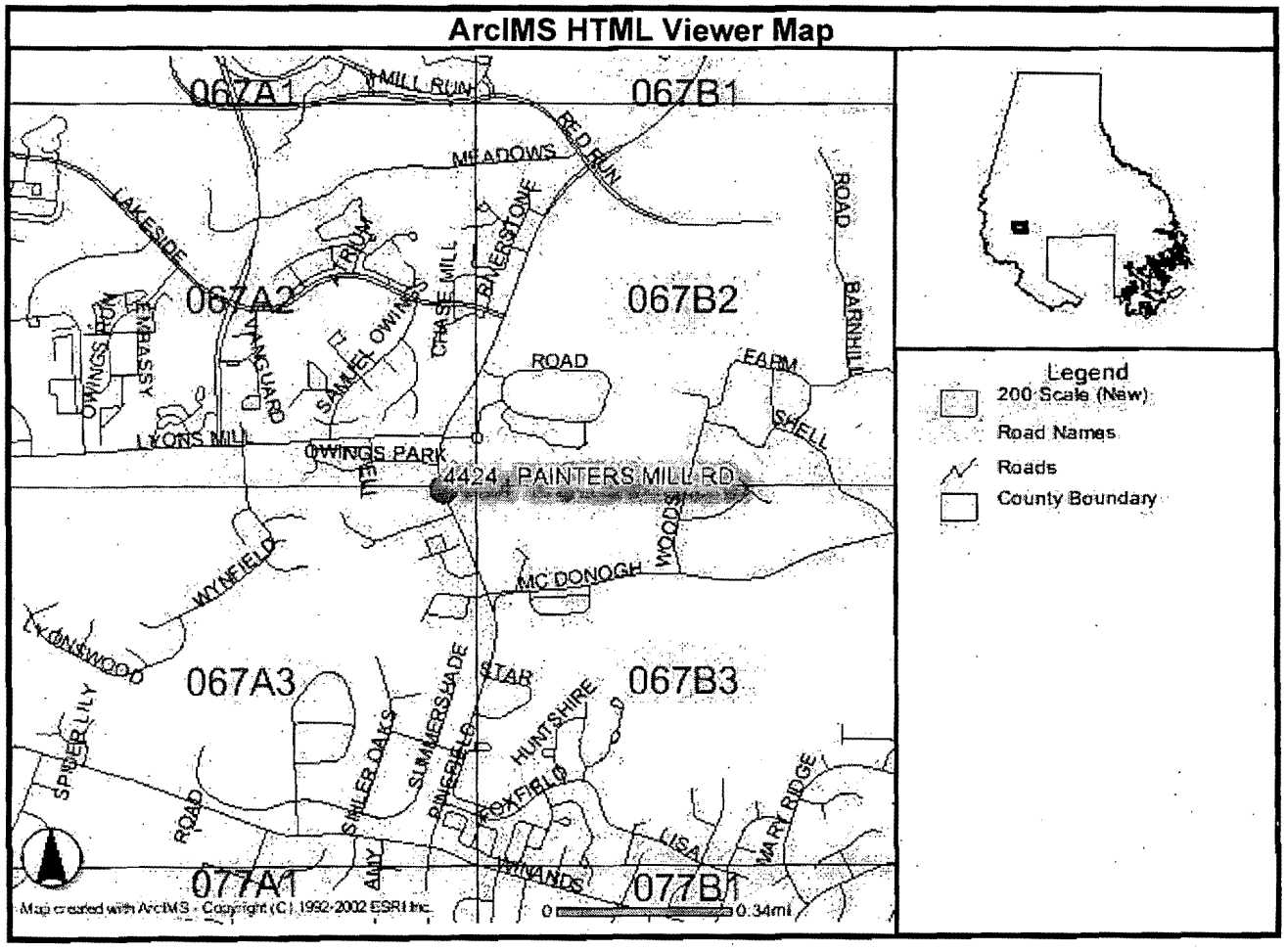
Frances Jones
3129 Kenyon Avenue,
Baltimore 13, Md.
Address

Louis I. Plack Sr.
Legal Owner

Nellie C. Plack
913 Lyndhurst Street,
Baltimore 29, Md.
Address

Notify

12/7 AM


ArcIMS HTML Viewer Map
067A1
MILL RUN
067B1
MEADOWS
RED RUN
LAKESIDE
067A2
067B2
ROAD
BARNHILL
FARM
SHELL
LYONS MILL
OWINGS PARK
4424 PAINTERS MILL RD
WOODS
MC DONOGH
WYNFIELD
LYONSWOOD
067A3
067B3
STAR
HUNTSHIRE
FOXFIELD
SUMMERSHADE
RINGFIELD
SPIDER LILY
ROAD
AMY
LISA
MARY RIDGE
077A1
077B1
Map created with ArcIMS - Copyright (C) 1992-2002 ESRI Inc.
0
0.34mi
Legend
200 Scale (New)
Road Names
Roads
County Boundary

cingular
WIRELESS

SITE NAME: CHATTOLANE
SITE NUMBER: 1964

4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

Ltr - comments sh
9/6/05

8/30/05

CINGULAR WIRELESS CONSTRUCTION APPROVAL

PRINT NAME

SIGNATURE

DATE 9/7/05

CINGULAR WIRELESS RF APPROVAL

SYED. S. HAIDER
PRINT NAME

SIGNATURE

DATE 9/01/2005

OWNER APPROVAL

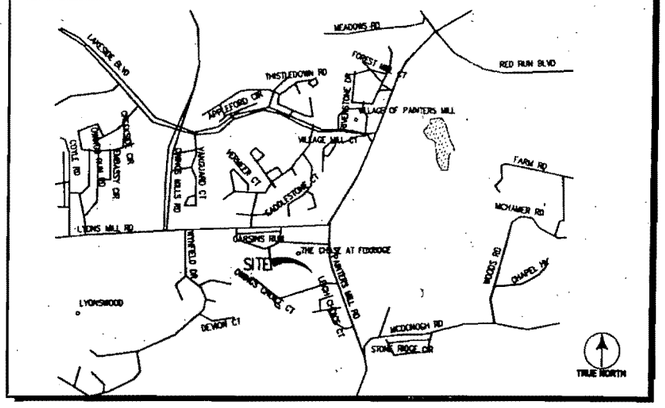
~~LEON~~ LEON McGEE
PRINT NAME

SIGNATURE

DATE 9-16-05

VICINITY MAP
(SCALE 1:1000)

DIRECTIONS:
FROM HANOVER/GREENBELT: GO SOUTHWEST ON STANDARD DR TOWARD PARKWAY DR. TURN LEFT ONTO PARKWAY DR. TURN RIGHT ONTO PARK CIRCLE DR. PARK CIRCLE BECOMES COCA COLA DR. MERGE ONTO MD-100 W. MERGE ONTO I-95 N VIA EXIT 3A-B TOWARD BALTIMORE. MERGE ONTO I-695 N/BALTIMORE BELTWAY INNER LOOP VIA EXIT 49B ON THE LEFT TOWARD I-70/I-83/TOWSON. MERGE ONTO MD-26 W VIA EXIST 18B TOWARD RANDALLSTOWN. PROCEED APPROXIMATELY 3/4 MI. AND TURN RIGHT ON BRENBROOK DR. THIS ROAD BECOMES MCDONOGH RD. PROCEED STRAIGHT AT THE INTERSECTION OF MCDONOGH ROAD AND PAINTERS MILL RD. ENTRANCE TO AMERICAN LEGION ON LEFT APPROXIMATELY 1/3 MILE PAST INTERSECTION.



SHEET INDEX

T-1	TITLE SHEET	E-1	POWER AND TELEPHONE PLAN
C-1	SITE SURVEY	E-2	GROUNDING PLAN
C-2	GRADING AND EROSION CONTROL PLAN	E-3	UTILITY AND GROUNDING DIAGRAMS
C-3	CIVIL DETAILS	E-4	GROUNDING ELEVATIONS AND SECTIONS
C-4	CIVIL DETAILS CONTINUED	E-5	GROUNDING DETAILS AND SECTION
A-1	COMPOUND LAYOUT PLAN AND GENERAL NOTES	E-6	ELECTRICAL DETAIL AND SPECIFICATIONS
A-2	FLAGPOLE ELEVATION	E-7	RET RACK AND DIPLEXER DETAILS
S-1	GENERAL AND STRUCTURAL NOTES	E-8	PLUMBING DIAGRAM
S-2	RF SCHEDULE AND DETAILS		
S-3	STRUCTURAL DETAIL		
S-4	SHELTER FOUNDATION DETAILS		
S-5	STRUCTURAL DETAILS - 2		
LS-1	LANDSCAPING PLAN		

PROJECT DESCRIPTION

1. INSTALL 3 PANEL ANTENNAS ON PROPOSED 125' FLAGPOLE.
2. INSTALL 11'-8"x20' EQUIPMENT SHELTER INSIDE PROPOSED COMPOUND AREA.
3. PROVIDE NEW ELECTRICAL SERVICE FROM EXISTING DEMARCATION POINT.
4. PROVIDE TELCO SERVICE FROM EXISTING DEMARCATION POINT.
5. RUN ANTENNA SIGNAL AND GROUNDING CABLES.

SITE OWNER:	AMERICAN LEGION LIBERT POST 122 MD P.O. BOX 112 RANDALLSTOWN, MD 21133	APPLICANT:	CINGULAR WIRELESS 7150 STANDARD DR. HANOVER, MD 21076
LATITUDE:	N 39° 23' 33.9"	ZONING:	RESIDENTIAL
LONGITUDE:	W 76° 47' 20.3"	DEED:	BOOK: 1479, PAGE: 153
GROUND ELEVATION:	533' AMSL	SITE INFO:	TAX MAP: 67, PARCEL: 30
JURISDICTION:	BALTIMORE COUNTY	ACCOUNT ID#:	02-0201500001
ZONING:	DR-16 (EXEMPT COMMERCIAL)		

PROJECT CONTACTS

1. CINGULAR REPRESENTATIVE: - CONSTRUCTION MANAGER -	4. OWNER CONTACT JERRY CAMPBELL/JACK SCHMIDT AMERICAN LEGION POST COMMANDERS (410) 363-1696
2. ENTREX PROJECT MANAGER	5. ELECTRIC COMPANY

entrex
communication services, Inc
1575 Eye Street, N.W. Suite 350
WASHINGTON, D.C. 20005
PHONE: (202)408-0969
FAX: (202)408-8661
VelociTel®

SUBMITTALS		
DATE	DESCRIPTION	REV.
07-01-05	85% CONSTRUCTION	
07-11-05	90% CONSTRUCTION	
07-29-05	95% CONSTRUCTION	
08-22-05	100% CONSTRUCTION	

SEAL:

cingular
WIRELESS
7150 Standard Dr.
Hanover, MD 21076

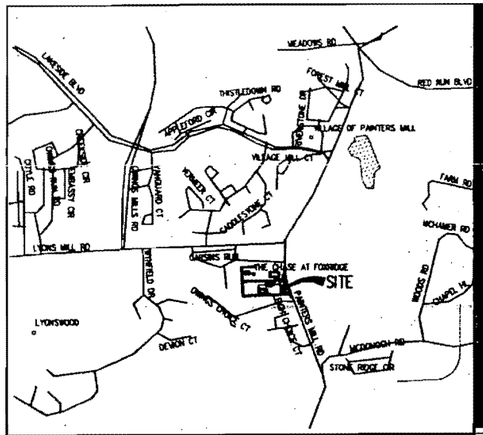
PROJECT NO:	1087.022
DESIGNER:	TMF
ENGINEER:	H.M.

SCALE:
0 1/2 1
GRAPHIC SCALE IN INCHES

CHATTOLANE
1964
4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

TITLE:

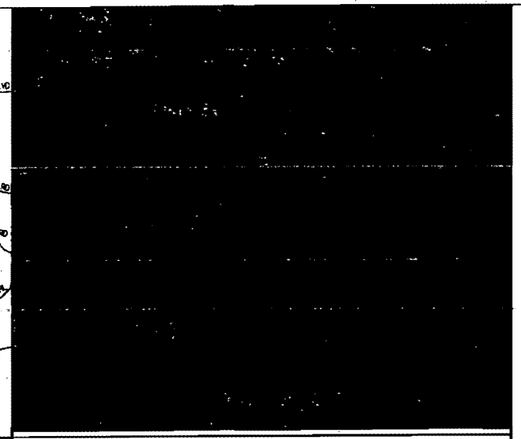
TITLE SHEET



VICINITY MAP

SCALE: 1"=1000'-0"

TRUE NORTH



ZONING MAP

SCALE: 1"=200'-0"

TRUE NORTH

ZONING INFORMATION FOR DR-16

ZONE DESCRIPTION: DENSITY RESIDENTIAL 16 UNITS/ACRE

INTENT: TO FOSTER A GREATER VARIETY OF HOUSING TYPES MEETING THE NEEDS OF DIFFERENT HOUSING MARKET REQUIREMENTS; TO ALLOW MORE PRESERVATION OF NATURAL FEATURES AND INDUCE THE RESERVATION OF BETTER OPEN SPACE; TO PROVIDE GREATER CERTAINLY ABOUT DWELLING TYPES AND DENSITIES WITHIN EXISTING COMMUNITIES WITH THE GOAL OF CONSERVING AND MAINTAINING THESE AREAS.

TYPICAL USES PERMITTED BY RIGHT: SINGLE FAMILY, SEMI-DETACHED, DUPLEX, SINGLE FAMILY ATTACHED, MULTIFAMILY DWELLINGS.

TYPICAL USES PERMITTED SPACE EXCEPTION: CONVALESCENT HOMES, COMMUNITY BUILDING, CALSS B (UP TO 40 CHILDREN) GROUP CHILD CARE, ASSISSTED LIVING FACILITIES (CLASS B, NEW OR MODIFIED BUILDING), PROFESSIONAL OFFICES IN THE HOME (MAX. 25% OF FLOOR AREA).

TAX INFORMATION

(1) PARCEL 30
TAX MAP 67
ACCOUNT NO. 02-0201500001
N/F
AMERICAN LEGION LIBERTY POST 112 MD
PREMISES ADDRESS: 4424 PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 112
RANDALLSTOWN, MD 21133
DEED LIBER 1470, FOLIO 153
ZONING: DR-16 USE: COMMERCIAL

(2) PARCEL 29
TAX MAP 67
ACCOUNT NO. 02-2300011948
N/F
OWINGS PARK LLC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 490
JOPPATOWNE, MD 21085-0490
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: APARTMENTS

(3) PARCEL 511
TAX MAP 67
ACCOUNT NO. 02-2300006065
N/F
TRP SUBURBAN SECOND INC
PREMISES ADDRESS: 4401 PAINTERS MILL RD
MAILING ADDRESS: ATTN FIN RPT-13
P.O. BOX 89000
BALTIMORE, MD 21289-0001
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: COMMERCIAL

(4) PARCEL 426
TAX MAP 67
ACCOUNT NO. 02-2200025451
N/F
TRP SUBURBAN SECOND INC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: ATTN FIN RPT-13
P.O. BOX 89000
BALTIMORE, MD 21289-0001
DEED LIBER 12296, FOLIO 256
ZONING: N/A USE: COMMERCIAL

(5) PARCEL 425
TAX MAP 67
ACCOUNT NO. 02-2200018213
N/F
OWINGS CHOICE HOMEOWNERS ASSOC. INC
PREMISES ADDRESS: OWINGS CHOICE CT
MAILING ADDRESS: 139 N MAIN ST, STE 302
BEL AIR, MD 21014
DEED LIBER 10562, FOLIO 689
ZONING: N/A USE: RESIDENTIAL

(6) PARCEL 29
TAX MAP 67
ACCOUNT NO. 02-2300011947
N/F
OWINGS PARK LLC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 490
JOPPATOWNE, MD 21085-0490
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: APARTMENTS

LEGEND

- FOUND PROPERTY CORNER
- SET PROPERTY CORNER
- BENCH MARK
- UTILITY POLE
- GUY ANCHOR
- SIGN
- LIGHT POLE
- TP TELEPHONE PEDESTAL
- INDIVIDUAL TREE - DECIDUOUS
- TRANSFORMER
- VAULT - HAND HOLE FOR UTILITIES
- WATER SHUT OFF
- FIRE HYDRANT
- CONCRETE SURFACE
- ASPHALT SURFACE
- GRAVEL SURFACE

LINETYPES

- BOUNDARY LINE - PARENT PARCEL
- UNSURVEYED LINE - BOUNDARY OF ADJOINERS
- RIGHT OF WAY BOUNDARY
- INTERIOR LOT LINES
- EDGE OF ASPHALT
- EDGE OF CONCRETE
- EDGE OF GRAVEL
- CURB
- FENCE LINE
- 1' CONTOUR LINE
- 5' CONTOUR LINE
- OVERHEAD UTILITY LINE (OHUL)
- TREE OR VEGETATION LINE

SITE INFORMATION

1.) SITE NAME: CHATTOLANE
SITE NUMBER: 1964

2.) THIS IS NOT A BOUNDARY SURVEY AND IS NOT TO BE USED FOR THE TRANSFER OF PROPERTY.

3.) THE PARENT PARCEL INFORMATION:
OWNER:AMERICAN LEGION LIBERTY POST 122 MD
ADDRESS: 4424 PAINTERS MILLD RD
RANDALLSVTOWN, MD 21133

COUNTY: BALTIMORE COUNTY
TAX MAP: 67 PARCEL: 30
DISTRICT NUMBER: 02 ACCOUNT NUMBER: 0201500001
ADC MAP: N/A GRID N/A
ZONING: DR-16 USE: EXEMPT COMMERCIAL

4.) THE RECORDED REFERENCES FOR THE PARENT PARCEL ARE AS FOLLOWS:
DEED: LIBER 2414 , FOLIO 296-298
PLAT: N/A

5.) THE DATUM'S ARE NAD 83 AND NAVD 88, AND THE BEARING BASE IS STATE GRID.

6.) NO UNDERGROUND UTILITIES HAVE BEEN LOCATED. THE PRESENCE OF ANY SUCH UTILITIES MUST BE CONFIRMED BY THE CONTRACTOR BEFORE CONSTRUCTION.

7.) NO WETLANDS HAVE BEEN DEFINED AND ANY AREAS SHOWN AS MARSH, PONDS OR DITCHES ARE DONE SO FROM VISIBLE SURFACE FEATURES AND IN NO WAY CONSTITUTE A DEFINED WETLAND.

8.) THE FLOOD ZONE OF THE PROPOSED TOWER IS AS FOLLOWS: FLOOD ZONE C, AREA OF MINIMAL FLOODING. SOURCE: FEMA FLOOD MAP FOR TALBOT COUNTY, MD.
COMMUNITY PANEL NUMBER 240010 0220 C.
REVISED: SEPTEMBER 3, 1992.

9.) NO TITLE REPORT WAS FURNISHED FOR THIS SURVEY.

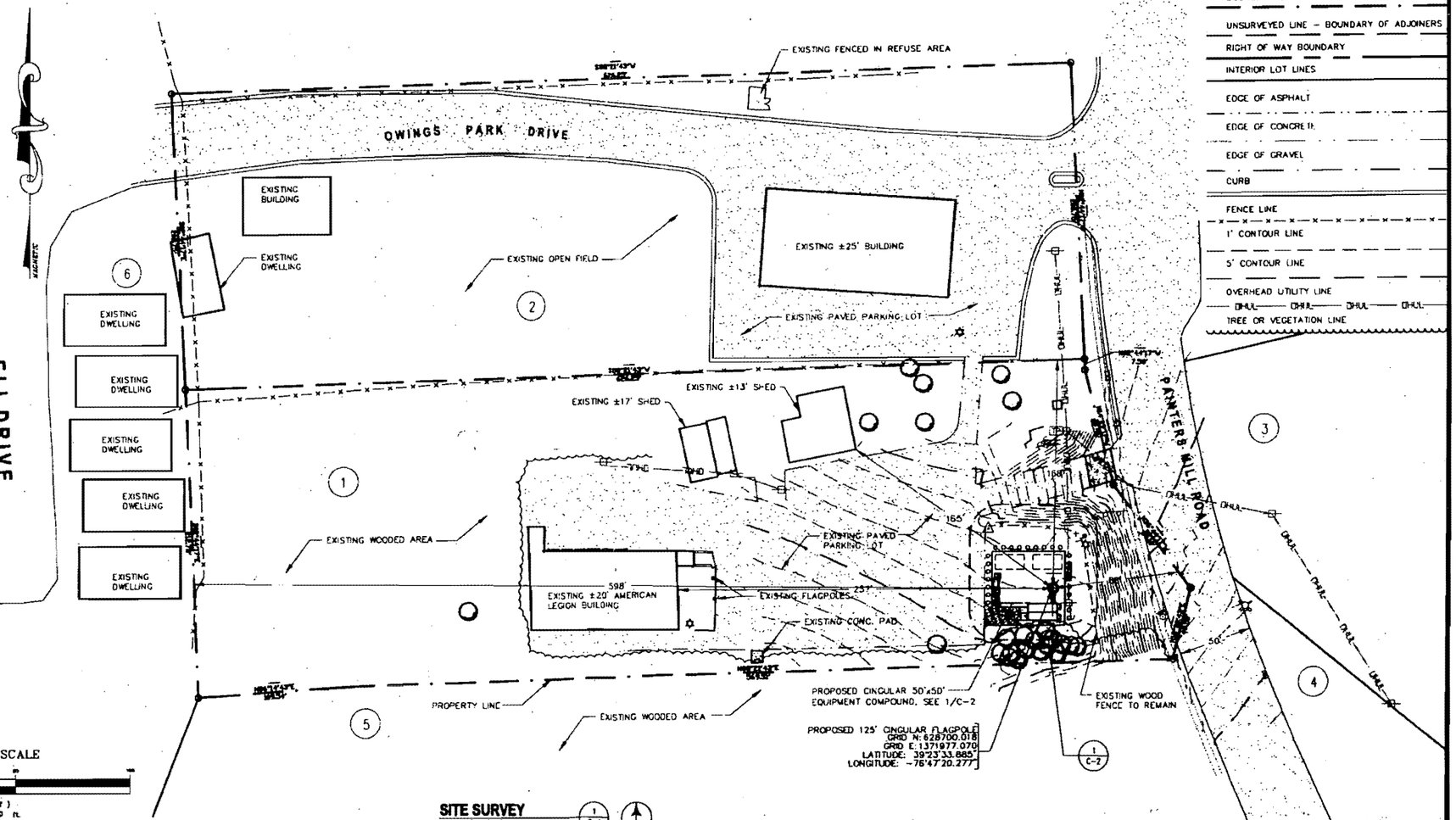
10.) THE DATA COLLECTED AND SHOWN ON THIS DRAWING ARE FOR THE PURPOSES OF CONSTRUCTION OF A CELLULAR TOWER, ANY NECESSARY ANCILLARY EQUIPMENT AND ALL APPROPRIATE EASEMENTS.

11.) NO UNRECORDED EASEMENTS ARE SHOWN ON THIS SURVEY AND IT IS POSSIBLE THAT SUCH EASEMENTS IMPACT THE SITE.

12.) THIS PROPERTY IS SUBJECT TO ALL MATTERS OF PUBLIC RECORD.

13.) THE LOCATION OF THE PROPOSED TOWER IS AS FOLLOWS; THE VALUES LISTED BELOW ARE WITHIN ±50' HORIZONTAL AND ±20' VERTICAL.
LATITUDE: N 39° 23' 33.9"
LONGITUDE: W 76° 47' 20.3"
ELEVATION: ±533' AMSL
AREA: 26,8200 SF (6.16 AC)

Rob Vedford



GRAPHIC SCALE

(IN FEET)
1 inch = 40 ft.

SITE SURVEY

SCALE: 1"=40'-0"

1/C-1

entrex
communication services, inc
1575 Eye Street, N.W. Suite 350
WASHINGTON, D.C. 20006
PHONE: (202)408-0980
FAX: (202)408-0981
VelociTel®

SUBMITTALS

DATE	DESCRIPTION	REV.
07-01-05	85% CONSTRUCTION	
07-11-05	90% CONSTRUCTION	
07-29-05	95% CONSTRUCTION	
08-22-05	100% CONSTRUCTION	

SEAL:

cingular WIRELESS
7150 Standard Dr.
Hanover, MD 21076

PROJECT NO:	1087.022
DESIGNER:	TMF
ENGINEER:	H.M.

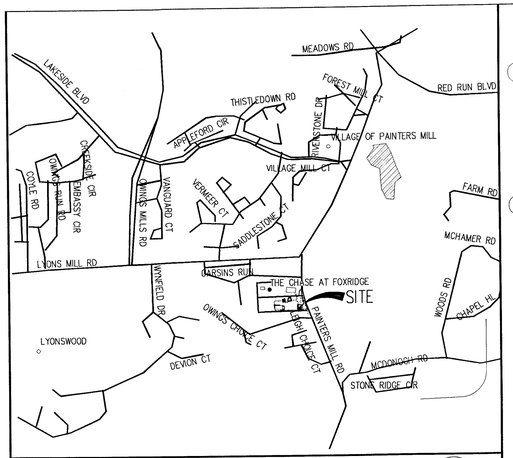
SCALE:
0 1/2 1
GRAPHIC SCALE IN INCHES

CHATTOLANE
1964
4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

TITLE:

SITE SURVEY

SHEET NUMBER:



VICINITY MAP

SCALE: 1"=1000'-0"

TRUE NORTH

SITE INFORMATION

1.) SITE NAME: CHATTOLANE
SITE NUMBER: 1964

2.) THIS IS NOT A BOUNDARY SURVEY AND IS NOT TO BE USED FOR THE TRANSFER OF PROPERTY.

3.) THE PARENT PARCEL INFORMATION:
OWNER: AMERICAN LEGION LIBERTY POST 122 MD
ADDRESS: 4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

COUNTY: BALTIMORE COUNTY
TAX MAP: 67 PARCEL: 30
DISTRICT NUMBER: 02 ACCOUNT NUMBER: 0201500001
ADC MAP: N/A GRID N/A
ZONING: DR-16 (SEE BALTIMORE CO. ZONING MAPS 067A3 AND 067A2
USE: EXEMPT COMMERCIAL

4.) ELECTION DISTRICT: 11
COUNCILMANIC DISTRICT: 72 PRECINCT: 2-15

5.) THE RECORDED REFERENCES FOR THE PARENT PARCEL ARE AS FOLLOWS:
DEED: LIBER 2414 , FOLIO 296-298
PLAT: N/A
AREA: 134,600 SF (3.09 AC)

6.) THE DATUM'S ARE NAD 83 AND NAVD 88, AND THE BEARING BASE IS STATE GRID.

7.) NO UNDERGROUND UTILITIES HAVE BEEN LOCATED, THE PRESENCE OF ANY SUCH UTILITIES MUST BE CONFIRMED BY THE CONTRACTOR BEFORE CONSTRUCTION.

8.) NO WETLANDS HAVE BEEN DEFINED AND ANY AREAS SHOWN AS MARSH, PONDS OR DITCHES ARE DONE SO FROM VISIBLE SURFACE FEATURES AND IN NO WAY CONSTITUTE A DEFINED WETLAND.

9.) THE FLOOD ZONE OF THE PROPOSED TOWER IS AS FOLLOWS; FLOOD ZONE C, AREA OF MINIMAL FLOODING. SOURCE, FEMA FLOOD MAP FOR TALBOT COUNTY, MD.
COMMUNITY PANEL NUMBER 240010 0220 C.
REVISED, SEPTEMBER 3, 1992.

10.) NO TITLE REPORT WAS FURNISHED FOR THIS SURVEY.

11.) THE DATA COLLECTED AND SHOWN ON THIS DRAWING ARE FOR THE PURPOSES OF CONSTRUCTION OF A CELLULAR TOWER, ANY NECESSARY ANCILLARY EQUIPMENT AND ALL APPROPRIATE EASEMENTS.

12.) NO UNRECORDED EASEMENTS ARE SHOWN ON THIS SURVEY AND IT IS POSSIBLE THAT SUCH EASEMENTS IMPACT THE SITE.

13.) THIS PROPERTY IS SUBJECT TO ALL MATTERS OF PUBLIC RECORD.

14.) THE LOCATION OF THE PROPOSED TOWER IS AS FOLLOWS; THE VALUES LISTED BELOW ARE WITHIN ±50' HORIZONTAL AND ±20' VERTICAL.
LATITUDE: N 39° 23' 33.9"
LONGITUDE: W 76° 47' 20.3"
ELEVATION: ±573' AMSL

15.) AMERICAN LEGION PARKING WILL NOT BE ADVERSELY AFFECTED BY TOWER OR EQUIPMENT.

TAX INFORMATION

1 — PARCEL 30
TAX MAP 67
ACCOUNT NO. 02-0201500001
N/F
AMERICAN LEGION LIBERTY POST 112 MD
PREMISES ADDRESS: 4424 PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 112
RANDALLSTOWN, MD 21133
DEED LIBER 1479, FOLIO 153
ZONING: DR-16 USE: COMMERCIAL

2 — PARCEL 29
TAX MAP 67
ACCOUNT NO. 02-2300011948
N/F
OWINGS PARK LLC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 490
JOPPATOWNE, MD 21085-0490
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: APARTMENTS

3 — PARCEL 511
TAX MAP 67
ACCOUNT NO. 02-2300006065
N/F
TRP SUBURBAN SECOND INC
PREMISES ADDRESS: 4401 PAINTERS MILL RD
MAILING ADDRESS: ATTN FIN RPT-13
P.O. BOX 89000
BALTIMORE, MD 21289-0001
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: COMMERCIAL

4 — PARCEL 426
TAX MAP 67
ACCOUNT NO. 02-2200025451
N/F
TRP SUBURBAN SECOND INC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: ATTN FIN RPT-13
P.O. BOX 89000
BALTIMORE, MD 21289-0001
DEED LIBER 12290, FOLIO 259
ZONING: N/A USE: COMMERCIAL

5 — PARCEL 425
TAX MAP 67
ACCOUNT NO. 02-2200018213
N/F
OWINGS CHOICE HOMEOWNERS ASSOC. INC
PREMISES ADDRESS: OWINGS CHOICE CT
MAILING ADDRESS: 139 N MAIN ST, STE 302
BEL AIR, MD 21014
DEED LIBER 10562, FOLIO 669
ZONING: N/A USE: RESIDENTIAL

6 — PARCEL 29
TAX MAP 67
ACCOUNT NO. 02-2300011947
N/F
OWINGS PARK LLC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 490
JOPPATOWNE, MD 21085-0490
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: APARTMENTS

ZONING INFORMATION FOR DR-16

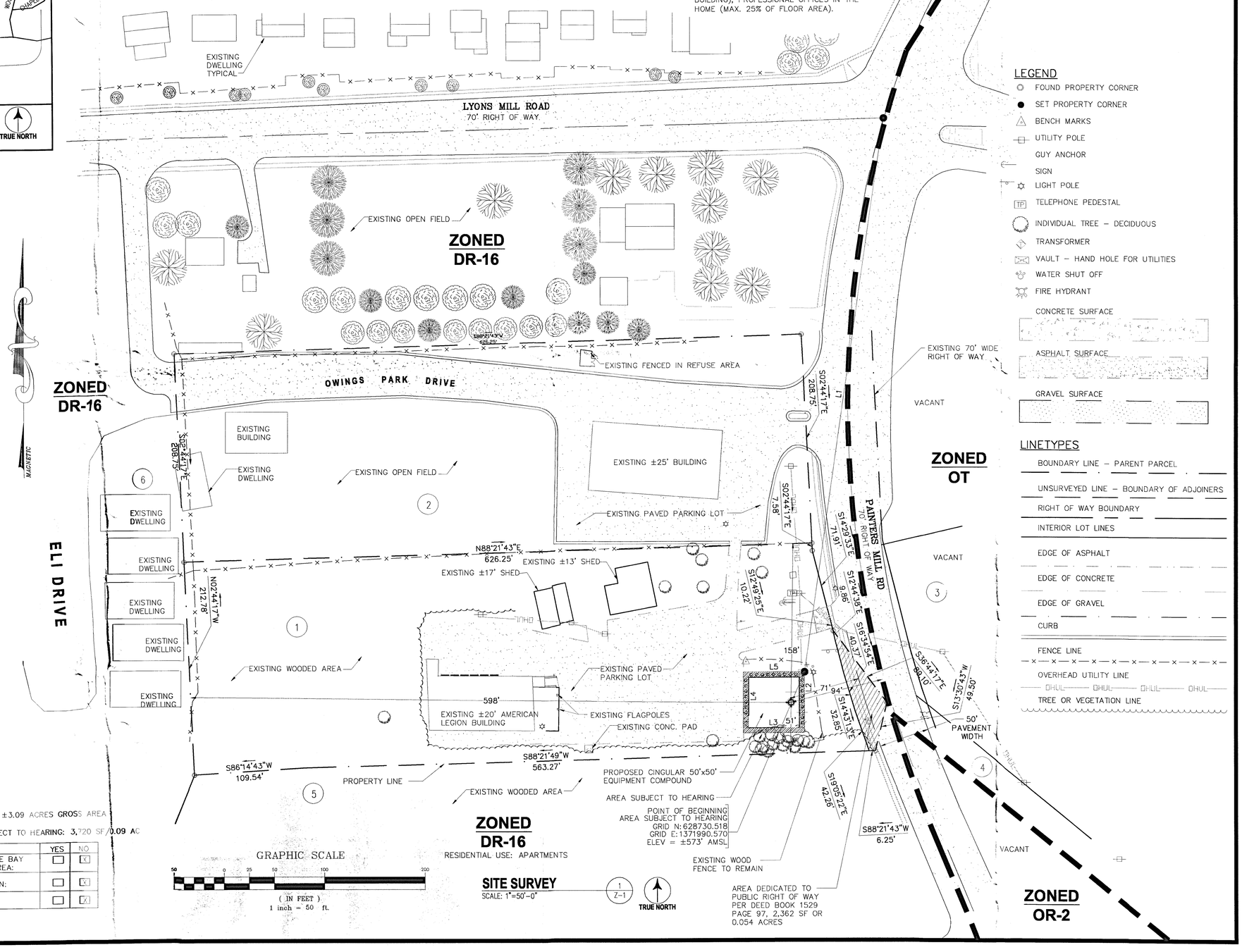
ZONE DESCIPTION: DENSITY RESIDENTIAL; 16 UNITS/ACRE

INTENT: TO FOSTER A GREATER VARIETY OF HOUSING TYPES MEETING THE NEEDS OF DIFFERENT HOUSING MARKET REQUIREMENTS; TO ALLOW MORE PRESERVATION OF NATURAL FEATURES AND INDUCE THE RESERVATION OF BETTER OPEN SPACE; TO PROVIDE GREATER CERTAINLY ABOUT DWELLING TYPES AND DENSITIES WITHIN EXISTING COMMUNITIES WITH THE GOAL OF CONSERVING AND MAINTAINING THESE AREAS.

TYPICAL USES PERMITTED BY RIGHT: SINGLE FAMILY, SEMI-DETACHED, DUPLEX, SINGLE FAMILY ATTACHED, MULTIFAMILY DWELLINGS.

TYPICAL USES PERMITTED SPACE EXCEPTION: CONVALESCENT HOMES, COMMUNITY BUILDING, CALSS B (UP TO 40 CHILDREN) GROUP CHILD CARE, ASSISSTED LIVING FACILITIES (CLASS B, NEW OR MODIFIED BUILDING), PROFESSIONAL OFFICES IN THE HOME (MAX. 25% OF FLOOR AREA).

LINE TABLE		
LINE	LENGTH	BEARING
L1	557.08	S08°13'20"W
L2	61.00	S00°00'00"E
L3	61.00	N90°00'00"W
L4	61.00	N00°00'00"E
L5	61.00	S90°00'00"E



LEGEND

- FOUND PROPERTY CORNER
- SET PROPERTY CORNER
- BENCH MARKS
- UTILITY POLE
- GUY ANCHOR
- SIGN
- LIGHT POLE
- TP TELEPHONE PEDESTAL
- INDIVIDUAL TREE – DECIDUOUS
- TRANSFORMER
- VAULT – HAND HOLE FOR UTILITIES
- WATER SHUT OFF
- FIRE HYDRANT
- CONCRETE SURFACE
- ASPHALT SURFACE
- GRAVEL SURFACE

LINETYPES

- BOUNDARY LINE – PARENT PARCEL
- UNSURVEYED LINE – BOUNDARY OF ADJOINERS
- RIGHT OF WAY BOUNDARY
- INTERIOR LOT LINES
- EDGE OF ASPHALT
- EDGE OF CONCRETE
- EDGE OF GRAVEL
- CURB
- FENCE LINE
- OVERHEAD UTILITY LINE (OHUL)
- TREE OR VEGETATION LINE

PROPERTY: ±3.09 ACRES GROSS AREA

AREA SUBJECT TO HEARING: 3,720 SF/0.09 AC

	YES	NO
CHESAPEAKE BAY CRITICAL AREA:	☐	X
FLOOD PLAIN:	☐	X
HISTORIC:	☐	X

GRAPHIC SCALE
50 0 25 50 100 200
(IN FEET)
1 inch = 50 ft.

SITE SURVEY

SCALE: 1"=50'-0"

1 / Z-1

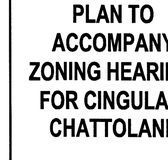
TRUE NORTH

entrex
communication services, inc.
1575 Eye Street, N.W. Suite 350
WASHINGTON, D.C. 20005
PHONE: (202)408-0960
FAX: (202)408-0961
VelociTel®

SUBMITTALS

DATE	DESCRIPTION	REV.
05-10-06	ZONING REVIEW	
05-30-06	ZONING	
06-07-06	ZONING	

SEAL:



cingular WIRELESS
7150 Standard Dr.
Hanover, MD 21076

PROJECT NO:	1087.022
DESIGNER:	TMF
ENGINEER:	C.G.

SCALE:
0 1/2 1
GRAPHIC SCALE IN INCHES

CHATTOLANE
1964
4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

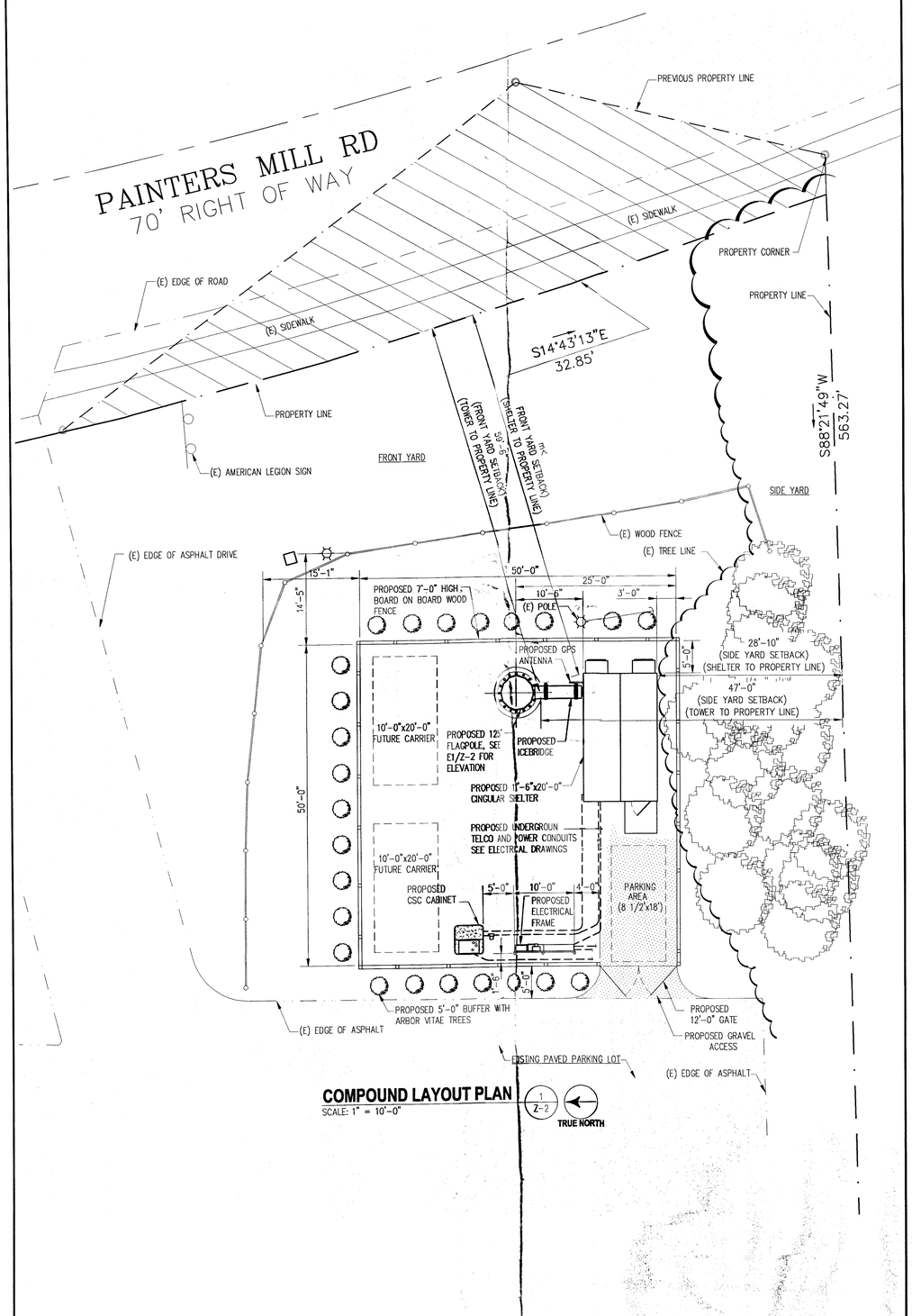
TITLE:

PLAN TO ACCOMPANY ZONING HEARING FOR CINGULAR/ CHATTOLANE

SHEET NUMBER:

Z-1

06-637-SPHXA

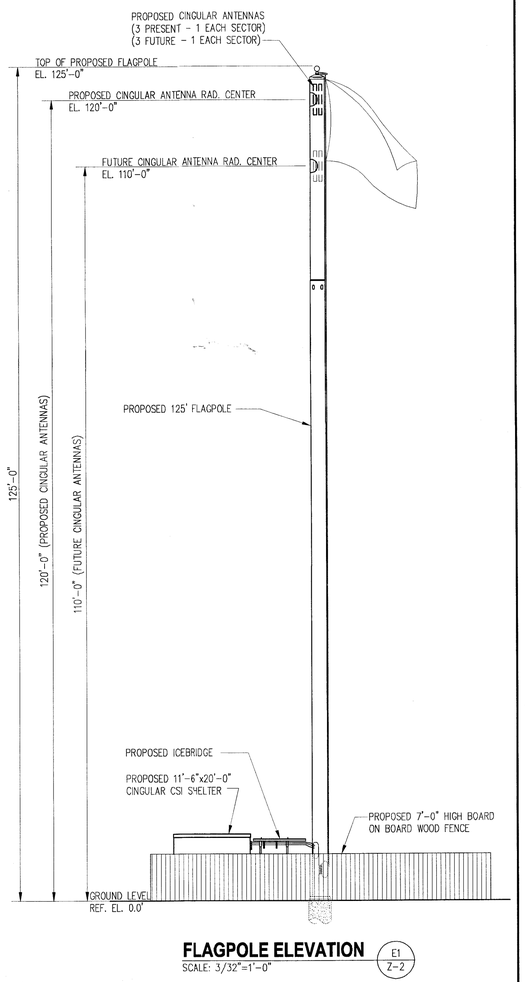


COMPOUND LAYOUT PLAN

SCALE: 1" = 10'-0"

1 / Z-2

TRUE NORTH



FLAGPOLE ELEVATION

SCALE: 3/32"=1'-0"

E1 / Z-2

SECTION 426.2

LEGISLATIVE POLICY FOR SITING OF WIRELESS TELECOMMUNICATIONS ANTENNAS AND TOWERS. IT IS THE INTENT OF BALTIMORE COUNTY THAT: **[BILL NO. 121-2001]**

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.

SECTION 426.5

LOCATION AND HEIGHT RESTRICTIONS FOR WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS. IN THIS SECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:

A. "R" MEANS BY RIGHT.

B. "SE" MEANS BY SPECIAL EXCEPTION.

C. THE COLUMN FOR ANTENNAS REFERS TO ANTENNAS LOCATED ON A TOWER, BUILDING OR STRUCTURE LEGALLY EXISTING PRIOR TO THE INSTALLATION OF THE ANTENNA EVEN IF THE TOWER, BUILDING OR STRUCTURE WAS APPROVED BY SPECIAL EXCEPTION.

D. THE HEIGHT OF A TOWER IS MEASURED FROM THE BASE OF THE TOWER TO THE TIP OF THE TOWER OR THE TIP OF THE HIGHEST ANTENNA ON THE TOWER, WHICHEVER DISTANCE IS GREATER.

		ANTENNAS	TOWERS	
	HOW PERMITTED	MAXIMUM ANTENNA HEIGHT AND ANTENNA DIAMETER	<200 FT. HIGH	>=200 FT. HIGH
RESIDENTIAL ZONES R.C., R.C.C., C.R. DISTRICT, D.R., R-O-A	R	15 FEET HIGH, DIAMETER 3 FEET	SE R IF IN AN R.C. ZONE WITHIN THE RIGHTS-OF-WAY OF PUBLIC UTILITY OVERHEAD ELECTRICAL TRANSMISSION LINES CARRYING MORE THAN 69,000 VOLTS, PROVIDED THAT THE HEIGHT OF THE TOWER DOES NOT EXCEED 250 FEET	SE
TRANSITIONAL ZONES S-E, R-O, OR-1, B.M.M., B.M.Y.C, B.M.B., C.B.	R	15 FEET HIGH, DIAMETER 3 FEET	SE	SE
MEDIUM INTENSITY COMMERCIAL OR-2, B.L.R., B.L., B.M., B.R., M.R., M.L., M.L.R.	R	NOT REGULATED	SE	SE
HIGH INTENSITY COMMERCIAL O-3, O.T., M.H.	R	NOT REGULATED	SE	SE

SECTION 426.6

SETBACK REQUIREMENTS FOR WIRELESS TELECOMMUNICATIONS TOWERS.

A. SETBACKS. **[BILL NO. 17-2002]**

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.

3. NOTWITHSTANDING THE PROVISIONS OF SECTION 101.2 OF THESE REGULATIONS, IF MULTIPLE STRUCTURES HOUSING EQUIPMENT FOR A TOWER ARE LOCATED ON THE SAME OWNER'S PROPERTY, A YARD OR SETBACK IS NOT REQUIRED BETWEEN THE STRUCTURES.

B. EXCEPT AS REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION:

1. STROBOSCOPIC LIGHTS ARE NOT PERMITTED ON A TOWER.

2. THE TOWER, ANTENNA AND SUPPORTING LINES SHALL BE NEUTRAL IN COLOR.

C. IF A TOWER IS LOCATED IN A RESIDENTIAL OR TRANSITIONAL ZONE, ANY STRUCTURE HOUSING EQUIPMENT FOR THE TOWER SHALL BE:

1. SCREENED IN ACCORDANCE WITH THE LANDSCAPE MANUAL, CLASS "A" SCREENING REQUIREMENTS.

2. FACED WITH A MATERIAL COMPATIBLE WITH BUILDINGS OR STRUCTURES SURROUNDING THE TOWER.

D. UPON COMPLETION OF A TOWER AND EVERY FIVE YEARS AFTER THE DATE OF COMPLETION, THE OWNER OF THE TOWER SHALL SUBMIT TO THE CODE OFFICIAL WRITTEN CERTIFICATION FROM A PROFESSIONAL ENGINEER VERIFYING THAT THE TOWER AND ANY STRUCTURE HOUSING EQUIPMENT FOR THE TOWER MEETS ALL APPLICABLE BUILDING CODE AND SAFETY REQUIREMENTS.

E. THE OWNER OF A TOWER SHALL SUBMIT ANNUALLY TO THE TOWER COORDINATOR WRITTEN CERTIFICATION OF THE NUMBER OF PROVIDERS AND ANTENNAS ON THE TOWER.

SECTION 426.9

ADDITIONAL CONDITIONS FOR TOWERS PERMITTED BY EXCEPTION. TOWERS PERMITTED BY SPECIAL EXCEPTION SHALL MEET THE REQUIREMENTS OF THIS SECTION.

A. A PETITIONER SHALL HAVE THE BURDEN OF DEMONSTRATING THAT:

1. THE PETITIONER HAS MADE A DILIGENT ATTEMPT TO LOCATE THE ANTENNA ON AN EXISTING TOWER OR NONRESIDENTIAL BUILDING OR STRUCTURE;

2. DUE TO THE LOCATION, ELVATION, ENGINEERING, TECHNICAL FEASIBILITY OR INABILITY TO OBTAIN A LEASE OR OWNERSHIP PF A LOCATION ELSEWHERE, THE CONSTRUCTION OF A TOWER AT THE PROPOSED LOCATION IS WARRENTED;

3. TO THE EXTENT TECHNICALLY FEASIBLE, THE TOWER HAS BEEN DESIGNED TO ACCOMMODATE ANTENNAS OF AT LEAST TWO OTHER PROVIDERS; AND

4. THE HEIGHT OF THE TOWER IS NO HIGHER THAN WHAT IS REQUIRED TO ENABLE PRESENT AND FUTURE CO-LOCATION OF OTHER PROVIDERS.

B. THE ZONING COMMISSIONER SHALL REVIEW THE PETITIONER'S SUBMITTAL WITH REGARD TO THE LEGISLATIVE POLICY UNDER SECTION 426.2.

C. IN A RESIDENTIAL OR TRANSITIONAL ZONE, A TOWER SHALL MEET THE FOLLOWING ADDITIONAL REQUIREMENTS:

1. A PETITIONER SHALL HAVE THE BURDEN OF DEMONSTRATING THAT:

A. THERE IS NO AVAILABLE, SUITABLE SITE FOR THIS TOWER IN A MEDIUM OR HIGH INTENSITY COMMERCIAL ZONE, IDENTIFYING WITH PARTICULARITY ANY SITES CONSIDERED; OR

B. DUE TO TOPOGRAPHICAL OR OTHER UNIQUE FEATURES, THE PROPOSED SITE IS MORE CONSISTENT WITH THE LEGISLATIVE POLICY UNDER SECTION 426.2 THAN A SITE IN AN AVAILABLE MEDIUM OR HIGH INTENSITY COMMERCIAL ZONE.

2. A TOWER IN AN R.C. ZONE SHALL BE LOCATED ON A LOT OF AT LEAST FIVE ACRES. IN ALL OTHER RESIDENTIAL OR TRANSITIONAL ZONES, A TOWER SHALL BE LOCATED ON A LOT OF AT LEAST THREE ACRES.

3. IN GRANTING A SPECIAL EXCEPTION, THE ZONING COMMISSIONER, OR BOARD OF APPEALS UPON APPEAL, SHALL IMPOSE CONDITIONS OR RESTRICTIONS AS PROVIDED IN SECTION 502.2. IN ADDITION, THE COMMISSIONER SHALL REQUIRE THAT THE TOWER BE DISGUISED AS A STRUCTURE OR NATURAL FORMATION, SUCH AS A FLAGPOLE, STEEPLE OR TREE, WHICH IS FOUND, OR LIKELY TO BE FOUND, IN THE AREA OF THE TOWER UNLESS THE COMMISSIONER FINDS THAT THE REQUIREMENT IS NOT REASONABLE OR ADVISABLE FOR THE PROTECTION OF PROPERTIES SURROUNDING THE TOWER.

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communication services, inc.
1575 Eye Street, N.W. Suite 350
WASHINGTON, D.C. 20005
PHONE: (202)408-0960
FAX: (202)408-0961
VelociTel®

SUBMITTALS

DATE	DESCRIPTION	REV.
05-10-06	ZONING REVIEW	
05-30-06	ZONING	
06-07-06	ZONING	

SEAL:



cingular WIRELESS
7150 Standard Dr.
Hanover, MD 21076

PROJECT NO:	1087.022
DESIGNER:	TMF
ENGINEER:	H.M.

SCALE:

0 1/2 1

GRAPHIC SCALE IN INCHES

CHATTOLANE
1964
4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

TITLE:

COMPOUND LAYOUT PLAN, MONOPOLE ELEVATION AND ZONING NOTES

SHEET NUMBER:

Z-2

B of A

PETITIONER'S

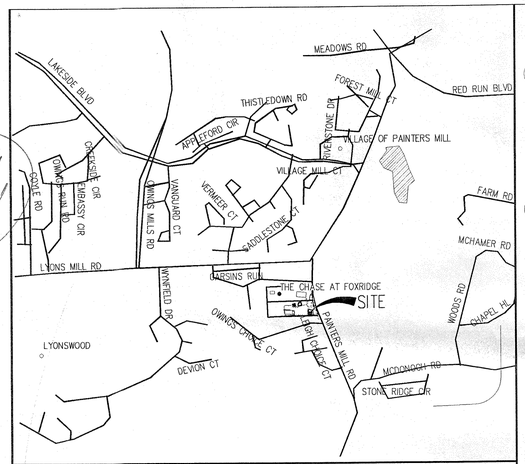
EXHIBITS

CASE NO. 06-637-SPHXA

PETITIONER'S EXHIBITS

Verified 11-15-07

✓	1.	Site Plan in support of the petition.
✓	2.	Picture of the standard shelter.
✓	3.	Aerial Photo of the location
✓	4.	Cingular Key Site #
✓	4A.	Picture of the saloon showing and toward the road
✓	4B.	Picture of the saloon
✓	4C.	Picture " " "
✓	4D.	Picture " " "
✓	4E.	Picture - Entrance to the T. Rowe Price Entrance.
✓	4F.	Picture - Can't see the saloon
✓	5.	Simulations of the flag - Photo
	5A.	" " " " - Photo
	5B.	" " " " "
	5C.	" " " " "
	5D.	" " " " "
	5E.	" " " " "
✓	6.	Town Committee Report.
✓	7.	E-Mail from Mr. Hrouda School.
Change exhibit # Rolled 2nd	8.	Cingular Wireless Existing Coverage Sites in the Area.
	8A.	Overlay For Exhibit 8 - Color Orange
	8B.	Overlay For Exhibit 8 - Site Cuid Site
	8C.	Overlay For Exhibit 8 - Lakeside Property



VICINITY MAP

SCALE: 1"=1000'-0"

TRUE NORTH

SITE INFORMATION

1.) SITE NAME: CHATTOLANE
SITE NUMBER: 1964

2.) THIS IS NOT A BOUNDARY SURVEY AND IS NOT TO BE USED FOR THE TRANSFER OF PROPERTY.

3.) THE PARENT PARCEL INFORMATION;
OWNER: AMERICAN LEGION LIBERTY POST 122 MD
ADDRESS: 4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

COUNTY: BALTIMORE COUNTY
TAX MAP: 67 PARCEL: 30
DISTRICT NUMBER: 02 ACCOUNT NUMBER: 0201500001
ADC MAP: N/A GRID N/A
ZONING: DR-16 (SEE BALTIMORE CO. ZONING MAPS 067A3 AND 067A2
USE: EXEMPT COMMERCIAL

4.) ELECTION DISTRICT: 11
COUNCILMANIC DISTRICT: 72 PRECINCT: 2-15

5.) THE RECORDED REFERENCES FOR THE PARENT PARCEL ARE AS FOLLOWS:
DEED: LIBER 2414 , FOLIO 296-298
PLAT: N/A
AREA: 134,600 SF (3.09 AC)

6.) THE DATUM'S ARE NAD 83 AND NAVD 88, AND THE BEARING BASE IS STATE GRID.

7.) NO UNDERGROUND UTILITIES HAVE BEEN LOCATED, THE PRESENCE OF ANY SUCH UTILITIES MUST BE CONFIRMED BY THE CONTRACTOR BEFORE CONSTRUCTION.

8.) NO WETLANDS HAVE BEEN DEFINED AND ANY AREAS SHOWN AS MARSH, PONDS OR DITCHES ARE DONE SO FROM VISIBLE SURFACE FEATURES AND IN NO WAY CONSTITUTE A DEFINED WETLAND.

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LONGITUDE: W 76° 47' 20.3"
ELEVATION: ±573' AMSL

15.) AMERICAN LEGION PARKING WILL NOT BE ADVERSELY AFFECTED BY TOWER OR EQUIPMENT.

PROPERTY: ±3.09 ACRES GROSS AREA

AREA SUBJECT TO HEARING: 3,720 SF/0.09 AC

	YES	NO
CHESAPEAKE BAY CRITICAL AREA:	☐	☒
FLOOD PLAIN:	☐	☒
HISTORIC:	☐	☒

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TAX MAP 67
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TAX MAP 67
ACCOUNT NO. 02-2300011948
N/F
OWINGS PARK LLC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 490
JOPPATOWNE, MD 21085-0490
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: APARTMENTS

3. PARCEL 511
TAX MAP 67
ACCOUNT NO. 02-2300006065
N/F
TRP SUBURBAN SECOND INC
PREMISES ADDRESS: 4401 PAINTERS MILL RD
MAILING ADDRESS: ATTN FIN RPT-13
P.O. BOX 89000
BALTIMORE, MD 21289-0001
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: COMMERCIAL

4. PARCEL 426
TAX MAP 67
ACCOUNT NO. 02-2200025451
N/F
TRP SUBURBAN SECOND INC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: ATTN FIN RPT-13
P.O. BOX 89000
BALTIMORE, MD 21289-0001
DEED LIBER 12290, FOLIO 259
ZONING: N/A USE: COMMERCIAL

5. PARCEL 425
TAX MAP 67
ACCOUNT NO. 02-2200018213
N/F
OWINGS CHOICE HOMEOWNERS ASSOC. INC
PREMISES ADDRESS: OWINGS CHOICE CT
MAILING ADDRESS: 139 N MAIN ST, STE 302
BEL AIR, MD 21014
DEED LIBER 10562, FOLIO 669
ZONING: N/A USE: RESIDENTIAL

6. PARCEL 29
TAX MAP 67
ACCOUNT NO. 02-2300011947
N/F
OWINGS PARK LLC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 490
JOPPATOWNE, MD 21085-0490
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: APARTMENTS

ZONING INFORMATION FOR DR-16

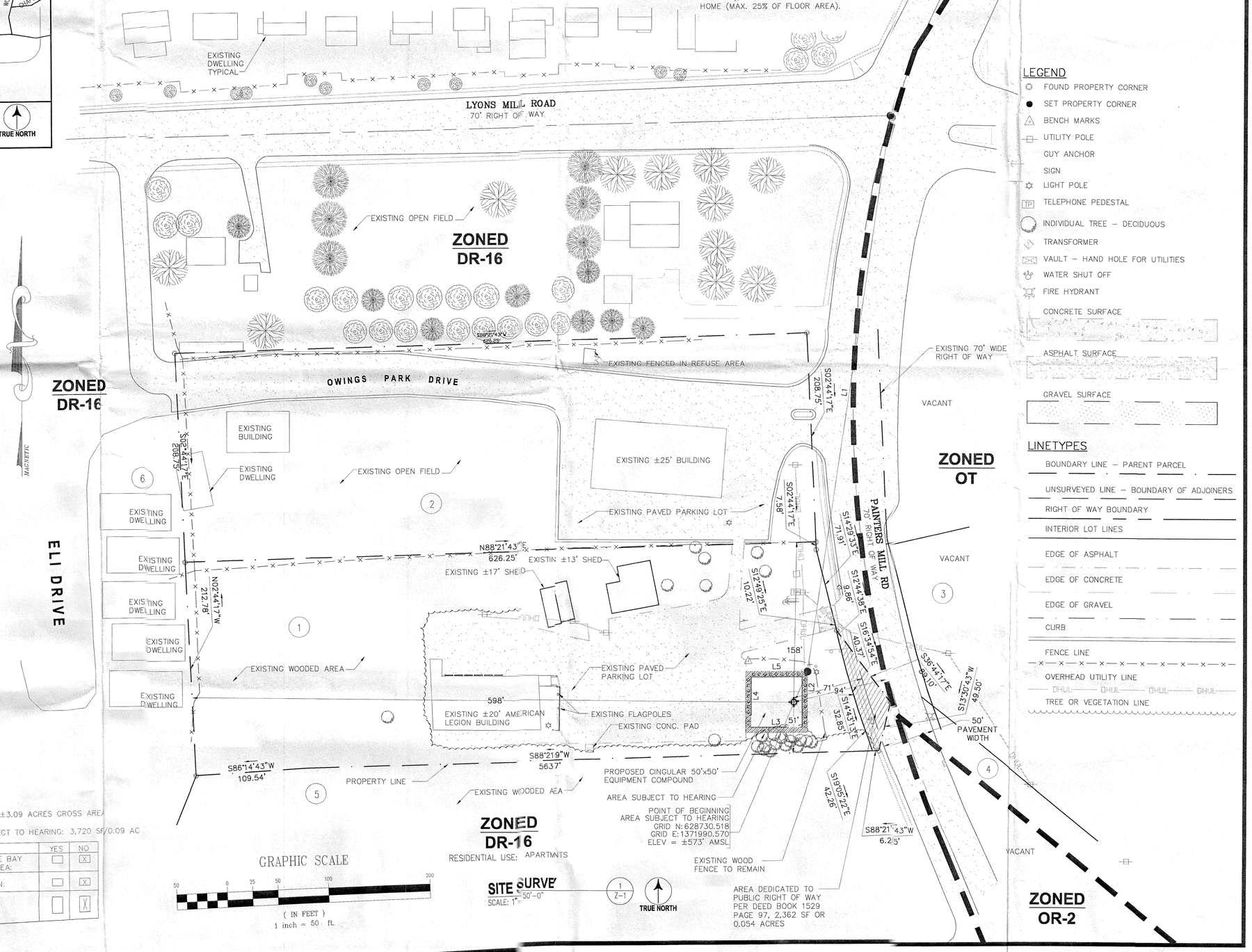
ZONE DESCIPTION: DENSITY RESIDENTIAL; 16 UNITS/ACRE

INTENT: TO FOSTER A GREATER VARIETY OF HOUSING TYPES MEETING THE NEEDS OF DIFFERENT HOUSING MARKET REQUIREMENTS; TO ALLOW MORE PRESERVATION OF NATURAL FEATURES AND INDUCE THE RESERVATION OF BETTER OPEN SPACE; TO PROVIDE GREATER CERTAINLY ABOUT DWELLING TYPES AND DENSITIES WITHIN EXISTING COMMUNITIES WITH THE GOAL OF CONSERVING AND MAINTAINING THESE AREAS.

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L3	61.00	N90°00'00"W
L4	61.00	N00°00'00"E
L5	61.00	S90°00'00"E



GRAPHIC SCALE

50 0 25 50 100 200

(IN FEET)
1 inch = 50 ft.

SITE SURVEY
SCALE: 1"=50'-0"

TRUE NORTH

LEGEND

- FOUND PROPERTY CORNER
- SET PROPERTY CORNER
- BENCH MARKS
- UTILITY POLE
- GUY ANCHOR
- SIGN
- LIGHT POLE
- TP TELEPHONE PEDESTAL
- INDIVIDUAL TREE – DECIDUOUS
- TRANSFORMER
- VAULT – HAND HOLE FOR UTILITIES
- WATER SHUT OFF
- FIRE HYDRANT
- CONCRETE SURFACE
- ASPHALT SURFACE
- GRAVEL SURFACE

LINETYPES

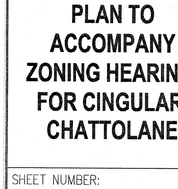
- BOUNDARY LINE – PARENT PARCEL
- UNSURVEYED LINE – BOUNDARY OF ADJOINERS
- RIGHT OF WAY BOUNDARY
- INTERIOR LOT LINES
- EDGE OF ASPHALT
- EDGE OF CONCRETE
- EDGE OF GRAVEL
- CURB
- FENCE LINE
- OVERHEAD UTILITY LINE
- TREE OR VEGETATION LINE

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1575 Eye Street, N.W. Suite 350
WASHINGTON, D.C. 20005
PHONE: (202)408-0960
FAX: (202)408-0961
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SUBMITTALS

DATE	DESCRIPTION	REV.
05-10-06	ZONING REVIEW	
05-30-06	ZONING	
06-07-06	ZONING	

SEAL:



cingular WIRELESS
7150 Standard Dr.
Hanover, MD 21076

PROJECT NO:	1087.022
DESIGNER:	TMF
ENGINEER:	C.G.

SCALE:
0 1/2 1
GRAPHIC SCALE IN INCHES

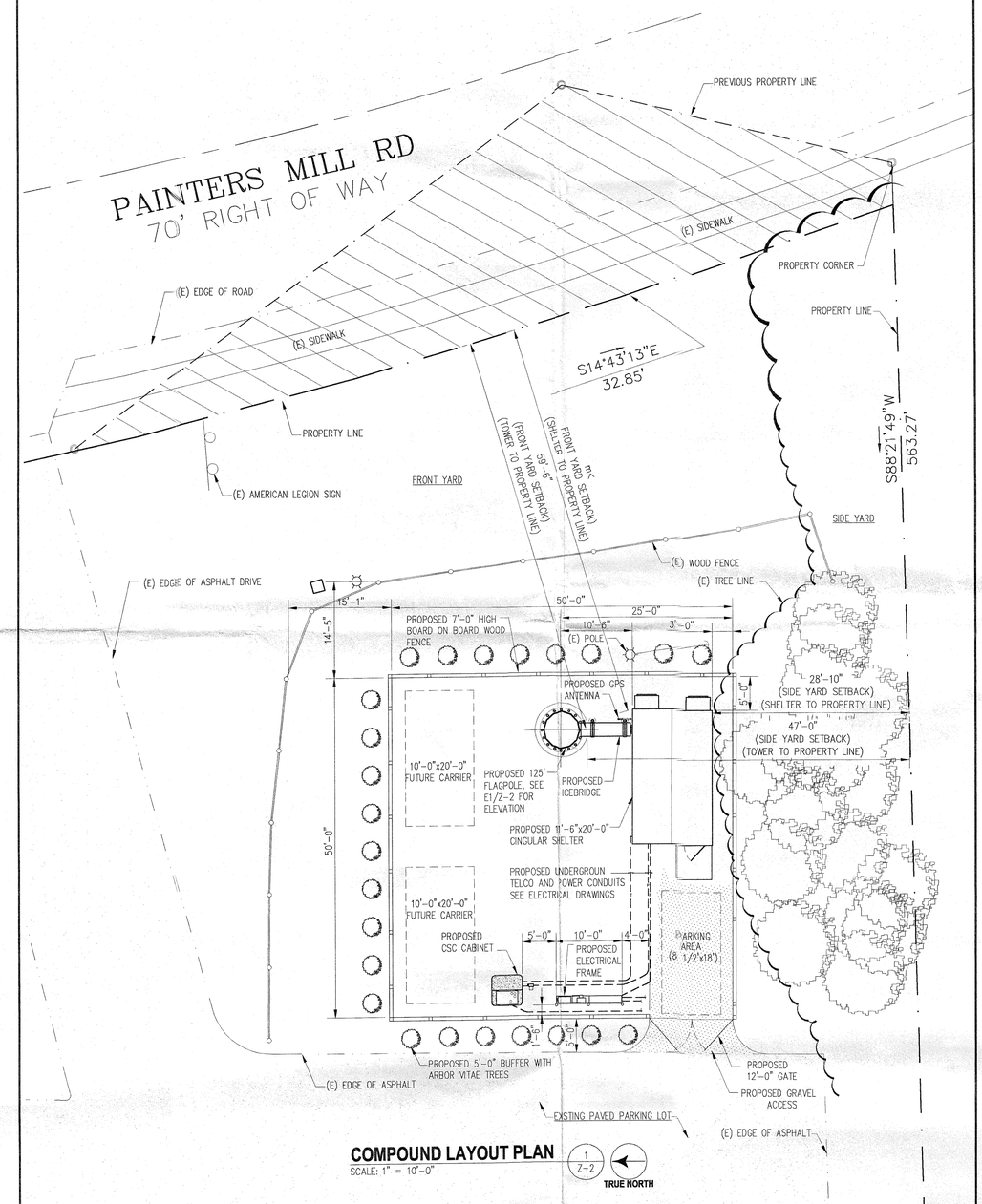
CHATTOLANE
1964
4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

TITLE:

PLAN TO ACCOMPANY ZONING HEARING FOR CINGULAR/ CHATTOLANE

SHEET NUMBER:

Z-1

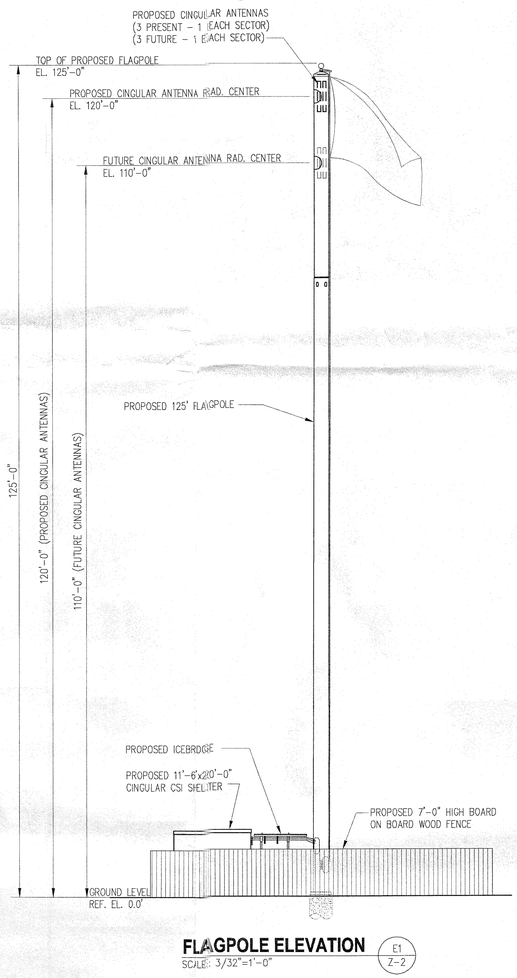


COMPOUND LAYOUT PLAN

SCALE: 1" = 10'-0"

1 / Z-2

TRUE NORTH



FLAGPOLE ELEVATION

SCALE: 3/32"=1'-0"

E1 / Z-2

SECTION 426.2

LEGISLATIVE POLICY FOR SITING OF WIRELESS TELECOMMUNICATIONS ANTENNAS AND TOWERS. IT IS THE INTENT OF BALTIMORE COUNTY THAT: [BILL NO. 121-2001]

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.

SECTION 426.5

LOCATION AND HEIGHT RESTRICTIONS FOR WIRELESS TELECOMMUNICATIONS TOWERS AND ANTENNAS. IN THIS SECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:

A. "R" MEANS BY RIGHT.

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C. THE COLUMN FOR ANTENNAS REFERS TO ANTENNAS LOCATED ON A TOWER, BUILDING OR STRUCTURE LEGALLY EXISTING PRIOR TO THE INSTALLATION OF THE ANTENNA EVEN IF THE TOWER, BUILDING OR STRUCTURE WAS APPROVED BY SPECIAL EXCEPTION.

D. THE HEIGHT OF A TOWER IS MEASURED FROM THE BASE OF THE TOWER TO THE TIP OF THE TOWER OR THE TIP OF THE HIGHEST ANTENNA ON THE TOWER, WHICHEVER DISTANCE IS GREATER.

		ANTENNAS	TOWERS	
	HOW PERMITTED	MAXIMUM ANTENNA HEIGHT AND ANTENNA DIAMETER	<200 FT. HIGH	>=200 FT. HIGH
RESIDENTIAL ZONES R.C., R.C.C., C.R. DISTRICT, D.R., R-O-A	R	15 FEET HIGH, DIAMETER 3 FEET	SE	SE R IF IN AN R.C. ZONE WITHIN THE RIGHTS-OF-WAY OF PUBLIC UTILITY OVERHEAD ELECTRICAL TRANSMISSION LINES CARRYING MORE THAN 69,000 VOLTS, PROVIDED THAT THE HEIGHT OF THE TOWER DOES NOT EXCEEED 250 FEET
TRANSITIONAL ZONES S-E, R-O, OR-1, B.M.M., B.M.Y.C., B.M.B., C.B.	R	15 FEET HIGH, DIAMETER 3 FEET	SE	SE
MEDIUM INTENSITY COMMERCIAL OR-2, B.L.R., B.L., B.M., B.R., M.R., M.L., M.L.R.	R	NOT REGULATED	SE	SE
HIGH INTENSITY COMMERCIAL O-3, O.T., M.H.	R	NOT REGULATED	SE	SE

SECTION 426.6

SETBACK REQUIREMENTS FOR WIRELESS TELECOMMUNICATIONS TOWERS.

A. SETBACKS. [BILL NO. 17-2002]

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.

3. NOTWITHSTANDING THE PROVISIONS OF SECTION 102.2 OF THESE REGULATIONS, IF MULTIPLE STRUCTURES HOUSING EQUIPMENT FOR A TOWER ARE LOCATED ON THE SAME OWNER'S PROPERTY, A YARD OR SETBACK IS NOT REQUIRED BETWEEN THE STRUCTURES.

B. EXCEPT AS REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION:

1. STROBOSCOPIC LIGHTS ARE NOT PERMITTED ON A TOWER.

2. THE TOWER, ANTENNA AND SUPPORTING LINES SHALL BE NEUTRAL IN COLOR.

C. IF A TOWER IS LOCATED IN A RESIDENTIAL OR TRANSITIONAL ZONE, ANY STRUCTURE HOUSING EQUIPMENT FOR THE TOWER SHALL BE:

1. SCREENED IN ACCORDANCE WITH THE LANDSCAPE MANUAL, CLASS "A" SCREENING REQUIREMENTS.

2. FACED WITH A MATERIAL COMPATIBLE WITH BUILDINGS OR STRUCTURES SURROUNDING THE TOWER.

D. UPON COMPLETION OF A TOWER AND EVERY FIVE YEARS AFTER THE DATE OF COMPLETION, THE OWNER OF THE TOWER SHALL SUBMIT TO THE CODE OFFICIAL WRITTEN CERTIFICATION FROM A PROFESSIONAL ENGINEER VERIFYING THAT THE TOWER AND ANY STRUCTURE HOUSING EQUIPMENT FOR THE TOWER MEETS ALL APPLICABLE BUILDING CODE AND SAFETY REQUIREMENTS.

E. THE OWNER OF A TOWER SHALL SUBMIT ANNUALLY TO THE TOWER COORDINATOR WRITTEN CERTIFICATION OF THE NUMBER OF PROVIDERS AND ANTENNAS ON THE TOWER.

SECTION 426.9

ADDITIONAL CONDITIONS FOR TOWERS PERMITTED BY EXCEPTION. TOWERS PERMITTED BY SPECIAL EXCEPTION SHALL MEET THE REQUIREMENTS OF THIS SECTION.

A. A PETITIONER SHALL HAVE THE BURDEN OF DEMONSTRATING THAT:

1. THE PETITIONER HAS MADE A DILIGENT ATTEMPT TO LOCATE THE ANTENNA ON AN EXISTING TOWER OR NONRESIDENTIAL BUILDING OR STRUCTURE;

2. DUE TO THE LOCATION, ELVATION, ENGINEERING, TECHNICAL FEASIBILITY OR INABILITY TO OBTAIN A LEASE OR OWNERSHIP PF A LOCATION ELSEWHERE, THE CONSTRUCTION OF A TOWER AT THE PROPOSED LOCATION IS WARRENTED;

3. TO THE EXTENT TECHNICALLY FEASIBLE, THE TOWER HAS BEEN DESIGNED TO ACCOMMODATE ANTENNAS OF AT LEAST TWO OTHER PROVIDERS; AND

4. THE HEIGHT OF THE TOWER IS NO HIGHER THAN WHAT IS REQUIRED TO ENABLE PRESENT AND FUTURE CO-LOCATION OF OTHER PROVIDERS.

B. THE ZONING COMMISSIONER SHALL REVIEW THE PETITIONER'S SUBMITTAL WITH REGARD TO THE LEGISLATIVE POLICY UNDER SECTION 426.2.

C. IN A RESIDENTIAL OR TRANSITIONAL ZONE, A TOWER SHALL MEET THE FOLLOWING ADDITIONAL REQUIREMENTS:

1. A PETITIONER SHALL HAVE THE BURDEN OF DEMONSTRATING THAT:

A. THERE IS NO AVAILABLE, SUITABLE SITE FOR THE TOWER IN A MEDIUM OR HIGH INTENSITY COMMERCIAL ZONE, IDENTIFYING WITH PARTICULARITY ANY SITES CONSIDERED; OR

B. DUE TO TOPOGRAPHICAL OR OTHER UNIQUE FEATURES, THE PROPOSED SITE IS MORE CONSISTENT WITH THE LEGISLATIVE POLICY UNDER SECTION 426.2 THAN A SITE IN AN AVAILABLE MEDIUM OR HIGH INTENSITY COMMERCIAL ZONE.

2. A TOWER IN AN R.C. ZONE SHALL BE LOCATED ON A LOT OF AT LEAST FIVE ACRES. IN ALL OTHER RESIDENTIAL OR TRANSITIONAL ZONES, A TOWER SHALL BE LOCATED ON A LOT OF AT LEAST THREE ACRES.

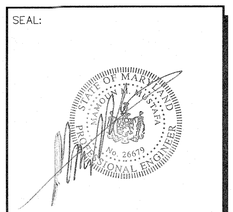
3. IN GRANTING A SPECIAL EXCEPTION, THE ZONING COMMISSIONER, OR BOARD OF APPEALS UPON APPEAL, SHALL IMPOSE CONDITIONS OR RESTRICTIONS AS PROVIDED IN SECTION 502.2. IN ADDITION, THE COMMISSIONER SHALL REQUIRE THAT THE TOWER BE DISGUISED AS A STRUCTURE OR NATURAL FORMATION, SUCH AS A FLAGPOLE, STEEPLE OR TREE, WHICH IS FOUND, OR LIKELY TO BE FOUND, IN THE AREA OF THE TOWER UNLESS THE COMMISSIONER FINDS THAT THE REQUIREMENT IS NOT REASONABLE OR ADVISABLE FOR THE PROTECTION OF PROPERTIES SURROUNDING THE TOWER.

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SUBMITTALS

DATE	DESCRIPTION	REV.
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cingular WIRELESS
7150 Standard Dr.
Hanover, MD 21076

PROJECT NO:	1087.022
DESIGNER:	TMF
ENGINEER:	H.M.

SCALE:

0 1/2 1

GRAPHIC SCALE IN INCHES

CHATTOLANE
1964
4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

TITLE:

COMPOUND LAYOUT PLAN, MONOPOLE ELEVATION AND ZONING NOTES

SHEET NUMBER:

Z-2

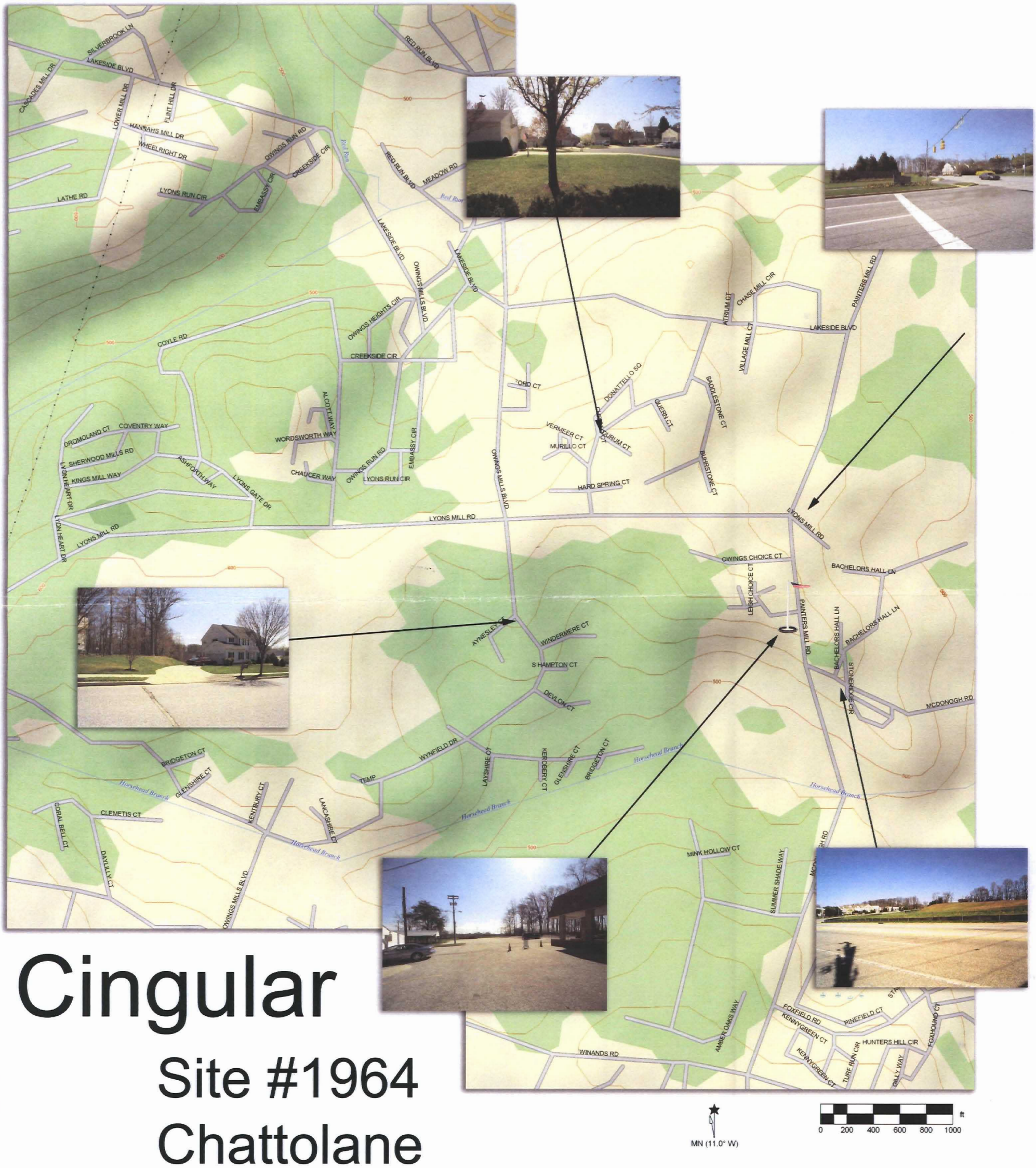
Ex. 2



CBA
PET. EXH.
No. 2

IBIT 2 (PETITIONER)

RAE 2
BLR
BL
LAKESIDE
CHASE MILL
LAKESIDE
PAINTERS MILL
RAE 1
VILLAGE MILL
MEADOW MILLS
VANGUARD
MURILLO
VERMEER
CHRISTOPHER SAMUEL OWINGS COURT
DURHAM
SADDLESTONE
BURRSTONE
HARD SPRING
OT
DR 16
LYONS MILL
DR
WINDERMERE
OWINGS GROVE
OR 2
DEVLON
DR 5.5



Cingular

Site #1964

Chattolane

CBA
PET. EXH.
NO. 4



CBA
PET. EXH
NO. 4A

4A

Cingular Site #1964, Chattolane,



Cingular Site #1964, Chattolane,View from Aynesly Ct. & Wynfield
39° 23.373 N, 76° 47.970 W, Before proposed installation.

CASE
PET. EXH
NO. 4B

4B



CBA
PET. EXH
4C

4C

Cingular Site #1964, Chattolane,View from Aynesly Ct. & Wynfield
39° 23.373 N, 76° 47.970 W, Before proposed installation.



CBA
PET. EXH
NO. 41.

4D

Cingular Site #1964, Chattolane, View from Mc Donogh Rd near Stone Ridge Lane
39° 23.230 N, 76° 47.397 W, before proposed installation.



CBA
Pet. Exh
No. 4E

4E

Cingular Site #1964, Chattolane, View from Painters Mill & Lyons Mill, @ T. Rowe Price
39° 23.509 N, 76° 47.523 W, Before proposed installation.



CBA
PET. EXH.
NO. 47

47

Cingular Site #1964, Chattolane, View from Durum Ct & Samuel Owings
39° 23.611 N, 76° 47.723 W, Before proposed installation.

BofA #5

3A













Cingular
Site #1964
Chattolane

MN (11.0° W)

0 200 400 600 800 1000 ft

OBA
PET. EXH
NO. 5

3F



B of A
SA

CBA
PET. EXH.
NO. 5A

Cingular Site #1964, Chattolane, View from American Legion Parking Lot.

3E

BOA
58

CBA
Pet. Exh
No. 5B

Cingular Site #1964, Chattolane, View from Aynesly Ct. & Wynfield
39° 23.373 N, 76° 47.970 W, With proposed stealth flagpole.

3C

BOCHA
SC
YBK

CBA
PET. EXH
NO. 5C

Cingular Site #1964, Chattolane, View from Mc Donogh Rd near Stone Ridge Lane
39° 23.230 N, 76° 47.397 W, with proposed stealth flagpole.



3B

BOA

5D

CBA PET. EXH No. 51

Cingular Site #1964, Chattolane, View from Painters Mill & Lyons Mill, @ T. Rowe Price
39° 23.509 N, 76° 47.523 W, With proposed stealth flagpole.

30



Cingular Site #1964, Chattolane, View from Durum Ct & Samuel Owings
39° 23.611 N, 76° 47.723 W, With proposed stealth flagpole.

S.E.

BALTIMORE COUNTY, MARYLAND
Interoffice Correspondence

B of A
#6

DATE: May 2, 2006

TO: Donald T. Rascoe, Development Manager
Department of Permits and Development Management

FROM: Tower Review Committee

SUBJECT: New Tower – Cingular Wireless – 4424 Painters Mill Road

The Tower Review Committee met first on November 29, 2005 and then on April 24, 2006 and is making the following advisory comments to the Development Review Committee (DRC) in accordance with section 426.4 of the Baltimore County Zoning Regulations in reference to the proposed construction of a new 125-foot disguised monopole (flagpole) to be located on the property of the American Legion, 4424 Painters Mill Road, Randallstown, MD 21133.

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

Findings: Cingular Wireless has provided all requested information to the Tower Review Committee (TRC) to successfully demonstrate that no other co-location opportunities exist at or near this location that would suffice in providing their requested coverage of the intended area. The TRC agrees with this finding. As such, Cingular Wireless has proposed to install a new 125-foot monopole.

- *If a tower must be built, the tower should be: Constructed to accommodate at least three providers.*

Findings: Cingular Wireless has stated, in the application to the TRC, that the new pole will be constructed so as to support 2 additional wireless service providers in addition to Cingular Wireless.

- *Erected in a medium or high intensity commercial zone when available.*

Findings: This area is located in a DR16 Zone. This tower will require a special exception hearing. No medium or high intensity commercial zones exist in this area.

- *Located and designed to minimize its visibility from residential and transitional zone.*

Findings: Based on the pictures and simulations presented by Cingular Wireless and an on-site visit, we find that the visual impact will be minimal at the height proposed. The

CBA
PET. EX A
NO. 6

Jack Barber

From: Steve Simmers [SSimmers@mcdonogh.org]
Sent: Monday, August 21, 2006 9:15 AM
To: Jack Barber
Subject: Re: Cellular facilities on the McDonogh Campus

B of A #7

Dear Mr. Barber:

McDonogh School is not interested in placing any type of structure on our campus.

Thank you,
Stephan Simmers
Superintendent of Buildings and Grounds

CBA PET. EXH NO. 7

B of A

APPELLANT'S

PROTESTANT'S

EXHIBITS

06-637-SPHXA

Amer. Leg. Post 122 - PROTESTANTS' EXHIBITS

Verified 11-15-07

New Cingular

1 1A. Site Plan

B. Appeal letter dated 11/13/06

2. Richard Jones letter dated 9/25/06 to John Murphy.

3A. Pictures of Monopole and Flagpole 1, 2, 3, 4.

B. Compound Layout Plan, Monopole Elevation and Zoning Notes.

4. Zoning Commission Order 10/30/06

5. Section 502 Special Exception.
Section 426.1 Wireless Telecommunication Facilities.

6. Pictures 12/06. Scale Model of proposed tower.

A1 Aerial View - Proposed site

A2 " " - Acheson Rd. site

B1 Pictures of Tall Bldgs. (3)

B2 " of Bldg. & ~~Pictometry~~ Site Plan.

B3 Baltimore County Aerial Map. Topo.

C Application For Wireless Communication Site Placement

8. Petition For Special Permit

9. Sale of the Three acres. Deed dated 5/23/00.

10. Section 307

11 A. MD of A and T data search

~~B. Appeal Board Order of the Jones Property pertaining to property value.~~

12. MD of A and T data search of American Legion Property.

PROTESTANTS' EXHIBITS

13. Plan to Accompany Zoning Hearing,

14. Schnabel, Cross + Etzel, Ltd.

45. Deed 12/30/53 Original Purchase of the Property

46. Bill No. 30-98 2/17/98

47. Court of Appeals 8/3/05

18. Cromwell Vs Ward.

APPELLANTS' EXHIBITS
1 - 18

FOR

BALTIMORE COUNTY
BOARD OF APPEALS

Case No. 06-637-SPHXA

Property: 4424 Painters Mill Road

P. 180
Richard A. & Mary D. Jones
9109 Lyons Mill Road
Owings Mills, MD 21117
3992/533
Residential
2-0210450620

P. 468
Summit Investment Company
37 Tenby Court
Timonium, MD 21093
8896/841
Vacant
2-2200010195

P. 487
Richard A. & Mary D. Jones
9109 Lyons Mill Road
Owings Mills, MD 21117
10226/347
Vacant
2-2000018395

P. 168
Albert D. Jones
9203 Lyons Mill Road
Owings Mills, MD 21117
10226/341
Residential
2-2200018396

D.R. 16

EX. DRIVE
EX. S.F.D.
EX. SRA (APPROX. LOCATION)
EX. SHED
EX. GAR.
EX. GRAVEL DRIVE
EX. WIRE FENCE
EX. LAWN
EX. UTILITY POLE (ABANDONED)
EX. MAC. DRIVE
EX. SIDEWALK
EX. CONC. BLOCK STANDS
EX. PICNIC PAVILLION
EX. BLDG.
EX. PARKING LOT
EX. WOODS
EX. SEPTIC TANK, EX. 16'x 18' LEECHING WELL (APPROXIMATE LOCATION)
EX. BLDG.
EX. REVERTIBLE SLOPE ESMNT. 7529/497
EX. ANTI-AIRCRAFT GUN
EX. SIGN
EX. C&P ESMNT. 8430/737
EX. R/W (VARIES)
EX. PAV. VARIES
EX. 6" GAS DWG. 96-12-6
EX. 20" WATER DWG. 62-895
EX. 20" WATER DWG. 96126
EX. 6" GAS
EX. 20" WATER
EX. UTILITY ESMNT. 7504/214
#068
#014
286686
#286688
#015
CcB2
McD2
CcC2
McC2
CcB2
McC2

N88°17'25"E
626.25'

N03°08'07"W
212.57'

S03°08'07"E
208.75'

570.75'

p. 30
THE AMERICAN LEGION
LIBERTY POST No. 122, MD.
G.L.B. 2414/296
P.O.Box 112
Randallstown, Md. 21133
Private Club
2-0201500001

Painters Mill Road
R/W 80-217-I
85-310-37 & 38
7529/497

Owings Mills Town Center
Lyons Mill Rd
McDonogh
Woodholme Park
Woodholme Country Club
Mt Wilson
Winands Rd
Oakland Park
Belle Farm Estates
Scotts Level Park
Old Court Rd
Scotts Level
Randallstown
Liberty Rd
Green Ln
Owings Mills Blvd
Painters Mill Rd
Northwest Expy
Reisterstown
Garrison Forest Rd
Brentwood Dr
Gwynns Falls Pkwy
140
26
125

IB

November 13, 2006

Zoning Review Office
Attn: Kristen Matthews - 410-887-3391
111 W. Chesapeake Ave.
Towson, MD 21204

Re: Case No.06-637-SPHXA

Dear Ms. Matthews:

This letter is to formally appeal the decision and order by the Deputy Zoning Commissioner in the above referenced case. As you instructed today, I have enclosed checks totaling $400, representing the fee to appeal the referenced case.

I have listed below the names and addresses of all parties that should be kept notified of all times, dates, and places of the appeal process.

Very Truly Yours,

Richard A. Jones

Richard Jones, PO Box 792, Owings Mills, MD 21117

Phyllis Brotman, McDonogh Field Assn., 8105 McDonogh Rd., Pikesville, MD 21208

Towanda Maddox, 4315 Wynfield Dr., Owings Mills, MD 21117

Camille Givens-Patterson, 6 Kentbury Ct., Owings Mills, MD 21117

Joanna & Sylvester Kearney, 8 Lancashire Ct., Owings Mills, MD 21117

Lynn Ketara, 9202 Owings Park Dr., Owings Mills, MD 21117

RECEIVED
NOV 16 2006
Per...

Andrea

Prot Ex 2

To: Mr. John V. Murphy
Deputy Zoning Commissioner
Zoning Commissioner's Office
401 Bosley Avenue
Suite 405
Towson, Maryland 21204

September 25, 2006

Re: Proposed Cell Tower
Case No. 06-637-SPHXA
American Legion Post
4424 Painters Mill Road
Owings Mills, MD

Dear Mr. Murphy:

We are submitting the following in opposition to the request by the referenced subject for a Special Exception (to permit a wireless telecommunications facility to be located at the referenced address), a Special Hearing (to continue use of the property as an American Legion Post in combination with a wireless telecommunication facility and to confirm that there is no conflict with prior Zoning), and a Variance (to allow a tower with a 47 foot side yard setback and a 59.6 foot front yard setback to any other residential property in lieu of the minimum required 200 feet for both).

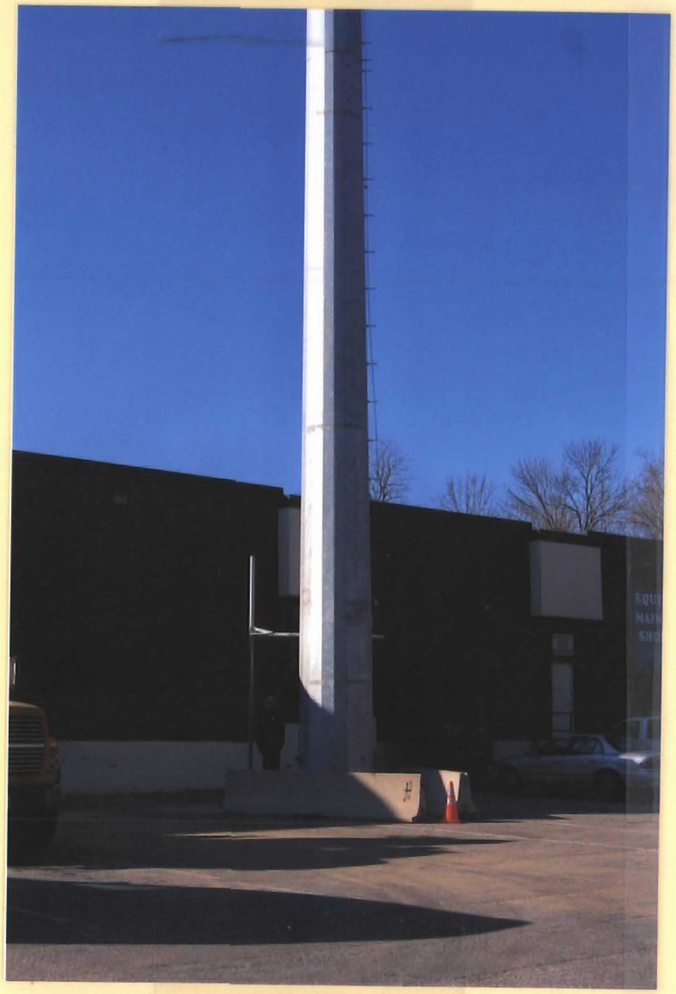
The referenced property is Residential DR16, and is being used by the American Legion in a non-conforming manner. (The property must revert to DR16 Residential use when the American Legion no longer uses the property.) If this cell tower is constructed, the property owner will have permanently altered the residential nature of their property, and this goes beyond the spirit and rules of non-conforming use, and the zoning laws of Baltimore County. They should leave the property as it was intended by the County.

The neighborhood surrounding the American Legion is composed of expensive single family homes, townhomes, and upscale apartments with garages. (Homes within a ½ mile radius of this property are in the price range of $350,000 to $750,000) There are no other obtrusive structures anywhere in the neighborhood. The construction of the tower would create an adverse impact on the neighborhood and would be visually incompatible with the neighborhood. The out of town and out of state consultants that Cingular has employed have totally disregarded this character of the neighborhood. There focus is strictly on the construction of the cell tower without consideration of the neighboring residences.

3A



1



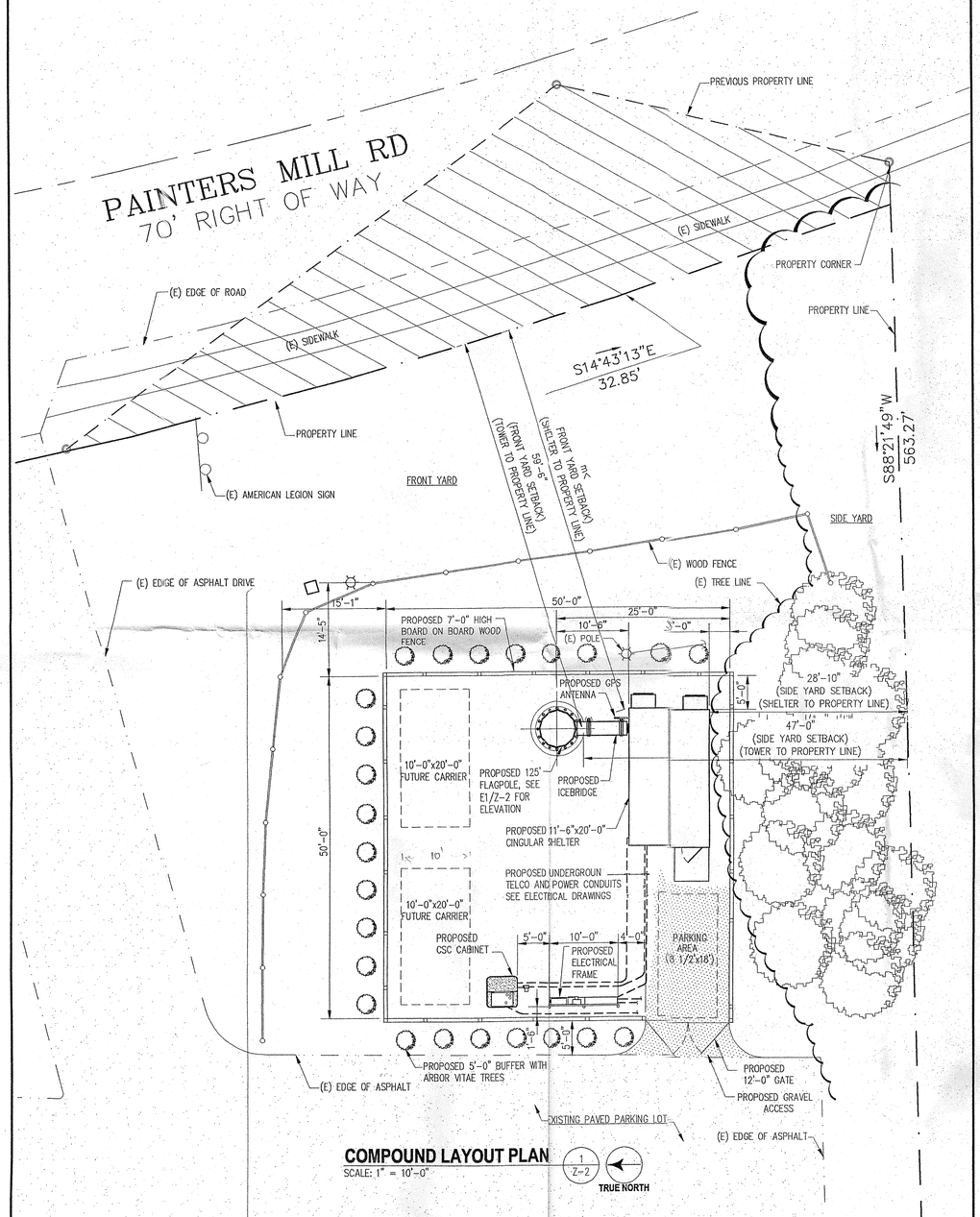
2



3



4

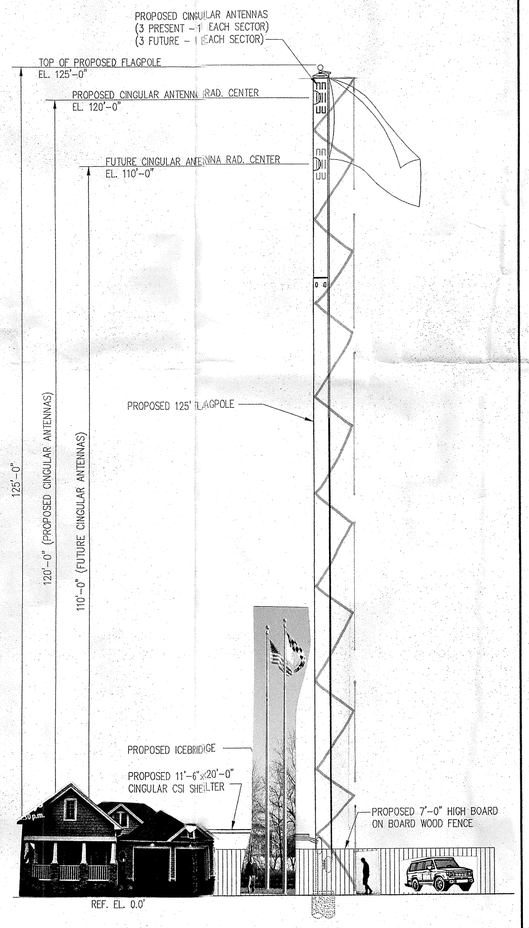


COMPOUND LAYOUT PLAN

SCALE: 1" = 10'-0"

1 / Z-2

TRUE NORTH



FLAGPOLE ELEVATION

SCALE: 3/32"=1'-0"

E1 / Z-2

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		ANTENNAS	TOWERS	
	HOW PERMITTED	MAXIMUM ANTENNA HEIGHT AND ANTENNA DIAMETER	<200 FT. HIGH	>=200 FT. HIGH
RESIDENTIAL ZONES R.C., R.C.C., C.R. DISTRICT, D.R., R-O-A	R	15 FEET HIGH, DIAMETER 3 FEET	SE	SE
			R IF IN AN R.C. ZONE WITHIN THE RIGHTS-OF-WAY OF PUBLIC UTILITY OVERHEAD ELECTRICAL TRANSMISSION LINES CARRYING MORE THAN 69,000 VOLTS, PROVIDED THAT THE HEIGHT OF THE TOWER DOES NOT EXCEED 250 FEET	
TRANSITIONAL ZONES S-E, R-O, OR-1, B.M.M., B.M.Y.C, B.M.B., C.B.	R	15 FEET HIGH, DIAMETER 3 FEET	SE	SE
MEDIUM INTENSITY COMMERCIAL OR-2, B.L.R., B.L., B.M., B.R., M.R., M.L., M.L.R.	R	NOT REGULATED	SE	SE
HIGH INTENSITY COMMERCIAL O-3, O.T., M.H.	R	NOT REGULATED	SE	SE

SECTION 426.6

SETBACK REQUIREMENTS FOR WIRELESS TELECOMMUNICATIONS TOWERS.

A. SETBACKS. **[BILL NO. 17-2002]**

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.

3. NOTWITHSTANDING THE PROVISIONS OF SECTION 102.2 OF THESE REGULATIONS, IF MULTIPLE STRUCTURES HOUSING EQUIPMENT FOR A TOWER ARE LOCATED ON THE SAME OWNER'S PROPERTY, A YARD OR SETBACK IS NOT REQUIRED BETWEEN THE STRUCTURES.

B. EXCEPT AS REQUIRED BY THE FEDERAL AVIATION ADMINSTRATION:

1. STROBOSCOPIC LIGHTS ARE NOT PERMITTED ON A TOWER.

2. THE TOWER, ANTENNA AND SUPPORTING LINES SHALL BE NEUTRAL IN COLOR.

C. IF A TOWER IS LOCATED IN A RESIDENTIAL OR TRANSITIONAL ZONE, ANY STRUCTURE HOUSING EQUIPMENT FOR THE TOWER SHALL BE:

1. SCREENED IN ACCORDANCE WITH THE LANDSCAPE MANUAL, CLASS "A" SCREENING REQUIREMENTS.

2. FACED WITH A MATERIAL COMPATIBLE WITH BUILDINGS OR STRUCTURES SURROUNDING THE TOWER.

D. UPON COMPLETION OF A TOWER AND EVERY FIVE YEARS AFTER THE DATE OF COMPLETION, THE OWNER OF THE TOWER SHALL SUBMIT TO THE CODE OFFICIAL WRITTEN CERTIFICATION FROM A PROFESSIONAL ENGINEER VERIFYING THAT THE TOWER AND ANY STRUCTURE HOUSING EQUIPMENT FOR THE TOWER MEETS ALL APPLICABLE BUILDING CODE AND SAFETY REQUIREMENTS.

E. THE OWNER OF A TOWER SHALL SUBMIT ANNUALLY TO THE TOWER COORDINATOR WRITTEN CERTIFICATION OF THE NUMBER OF PROVIDERS AND ANTENNAS ON THE TOWER.

SECTION 426.9

ADDITIONAL CONDITIONS FOR TOWERS PERMITTED BY EXCEPTION. TOWERS PERMITTED BY SPECIAL EXCEPTION SHALL MEET THE REQUIREMENTS OF THIS SECTION.

A. A PETITIONER SHALL HAVE THE BURDEN OF DEMONSTRATING THAT:

1. THE PETITIONER HAS MADE A DILIGENT ATTEMPT TO LOCATE THE ANTENNA ON AN EXISTING TOWER OR NONRESIDENTIAL BUILDING OR STRUCTURE;

2. DUE TO THE LOCATION, ELVATION, ENGINEERING, TECHNICAL FEASIBILITY OR INABILITY TO OBTAIN A LEASE OR OWNERSHIP PF A LOCATION ELSEWHERE, THE CONSTRUCTION OF A TOWER AT THE PROPOSED LOCATION IS WARRENTED;

3. TO THE EXTENT TECHNICALLY FEASIBLE, THE TOWER HAS BEEN DESIGNED TO ACCOMMODATE ANTENNAS OF AT LEAST TWO OTHER PROVIDERS; AND

4. THE HEIGHT OF THE TOWER IS NO HIGHER THAN WHAT IS REQUIRED TO ENABLE PRESENT AND FUTURE CO-LOCATION OF OTHER PROVIDERS.

B. THE ZONING COMMISSIONER SHALL REVIEW THE PETITIONER'S SUBMITTAL WITH REGARD TO THE LEGISLATIVE POLICY UNDER SECTION 426.2.

C. IN A RESIDENTIAL OR TRANSITIONAL ZONE, A TOWER SHALL MEET THE FOLLOWING ADDITIONAL REQUIREMENTS:

1. A PETITIONER SHALL HAVE THE BURDEN OF DEMONSTRATING THAT:

A. THERE IS NO AVAILABLE, SUITABLE SITE FOR THE TOWER IN A MEDIUM OR HIGH INTENSITY COMMERCIAL ZONE, IDENTIFYING WITH PARTICULARITY ANY SITES CONSIDERED; OR

B. DUE TO TOPOGRAPHICAL OR OTHER UNIQUE FEATURES, THE PROPOSED SITE IS MORE CONSISTENT WITH THE LEGISLATIVE POLICY UNDER SECTION 426.2 THAN A SITE IN AN AVAILABLE MEDIUM OR HIGH INTENSITY COMMERCIAL ZONE.

2. A TOWER IN AN R.C. ZONE SHALL BE LOCATED ON A LOT OF AT LEAST FIVE ACRES. IN ALL OTHER RESIDENTIAL OR TRANSITIONAL ZONES, A TOWER SHALL BE LOCATED ON A LOT OF AT LEAST THREE ACRES.

3. IN GRANTING A SPECIAL EXCEPTION, THE ZONING COMMISSIONER, OR BOARD OF APPEALS UPON APPEAL, SHALL IMPOSE CONDITIONS OR RESTRICTIONS AS PROVIDED IN SECTION 502.2. IN ADDITION, THE COMMISSIONER SHALL REQUIRE THAT THE TOWER BE DISGUISED AS A STRUCTURE OR NATURAL FORMATION, SUCH AS A FLAGPOLE, STEEPLE OR TREE, WHICH IS FOUND, OR LIKELY TO BE FOUND, IN THE AREA OF THE TOWER UNLESS THE COMMISSIONER FINDS THAT THE REQUIREMENT IS NOT REASONABLE OR ADVISABLE FOR THE PROTECTION OF PROPERTIES SURROUNDING THE TOWER.

entrex
communication services, inc.
1575 Eye Street, N.W. Suite 350
WASHINGTON, D.C. 20005
PHONE: (202)408-0960
FAX: (202)408-0961
VelociTel®

SUBMITTALS

DATE	DESCRIPTION	REV.
05-10-06	ZONING REVIEW	
05-30-06	ZONING	
06-07-06	ZONING	

SEAL:



cingular WIRELESS
7150 Standard Dr.
Hanover, MD 21076

PROJECT NO: 1087.022
DESIGNER: TMF
ENGINEER: H.M.

SCALE:
0 1/2 1
GRAPHIC SCALE IN INCHES

CHATTOLANE
1964
4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

TITLE:

COMPOUND LAYOUT PLAN, MONOPOLE ELEVATION AND ZONING NOTES

SHEET NUMBER:

Z-2

3B

Prot Ex 4

IN RE: PETITIONS FOR SPECIAL EXCEPTION, SPECIAL HEARING & VARIANCE S/S of Painters Mill Road, south of Lyons Mill Road 2nd Election District 4th Councilmanic District **(4424 Painters Mill Road)**	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY
American Legion Liberty Post 122, Leon McGee, Jr., Commander *Legal Owner and Petitioner*	*	CASE NO. 06-637-SPHXA

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as Petitions for Special Exception, Special Hearing and Variance filed by the legal owner of the subject property, American Legion Liberty Post 122, Leon McGee, Jr., Commander. The Petitioners are requesting special exception, special hearing and variance relief for property located at 4424 Painters Mill Road. The special hearing is to continue the use of the property as an American Legion Post in combination with a wireless telecommunications facility and to confirm that there is no conflict with prior zoning Case No. 2812-S. The special exception is to permit a wireless telecommunications facility and construction will be consistent with the accompanying plans. The variance request is to allow a tower with a 47.0 foot side yard setback and a 59.6 foot front yard setback to any other residential property line in lieu of the minimum required 200 feet for both.

The property was posted with Notice of Hearing on July 28, 2006, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on August 1, 2006, to notify any interested persons of the scheduled hearing date.

Prot. Ex 5a

Section 502, Special Exceptions [BCZR 1955]

(See Section 270, Schedule of Special Exceptions.)

NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junkyards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety or general welfare of the public, the uses listed as special exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the County Board of Appeals.

In granting any special exception, the Zoning Commissioner and the County Board of Appeals, upon appeal, shall be governed by the following principles and conditions.

502.1 Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

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

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

C. Create a potential hazard from fire, panic or other danger;

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

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

F. Interfere with adequate light and air; [Bill No. 45-1982]

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; [Bill No. 45-1982]

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]

Section 426
Wireless Telecommunications Facilities
[Bill No. 30-1998[10]]

426.1 Definitions. In this section, the following words have the meanings indicated: **[Bill No. 121-2001]**

ANTENNA — A wireless telecommunications antenna.

OWNER — The owner, agent, lessee or person in control of a wireless telecommunications tower.

PROVIDER — A wireless telecommunications service provider.

SCENIC VIEWSHED — A scenic route or view as designated in the Baltimore County Master Plan.

SCENIC VIEWSHED ELEMENTS:

A. Those visual elements of a scenic viewshed which are of a quality, character, rarity and nature to cause a viewshed to be designated in the Baltimore County Master Plan by the Baltimore County Planning Board; and

B. Which are catalogued by the Planning Board in accordance with § 32-4-417 of the Baltimore County Code. **[Bill No. 137-2004]**

TOWER — A wireless telecommunications tower.

TOWER APPLICANT — A person who applies to the Committee pursuant to Section 426.4.

426.2 Legislative policy for siting of wireless telecommunications antennas and towers. It is the intent of Baltimore County that: **[Bill No. 121-2001]**

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.

426.3 Exceptions. The provisions of this section do not apply to: **[Bill No. 121-2001]**

---

10 Editor's Note: This bill also repealed former Section 426, Wireless Transmitting or Receiving Structures, added by Bill No. 64-1986. In addition, Section 5 of Bill No. 30-1998 provided that "...this Act shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any person who has had a hearing on a proposed tower before the Zoning Commissioner before the effective date of this Act" (March 30, 1998), and Section 6 of Bill No. 30-1998 provided that "...the provisions of this Act shall be interpreted consistent with the Telecommunications Act of 1996."

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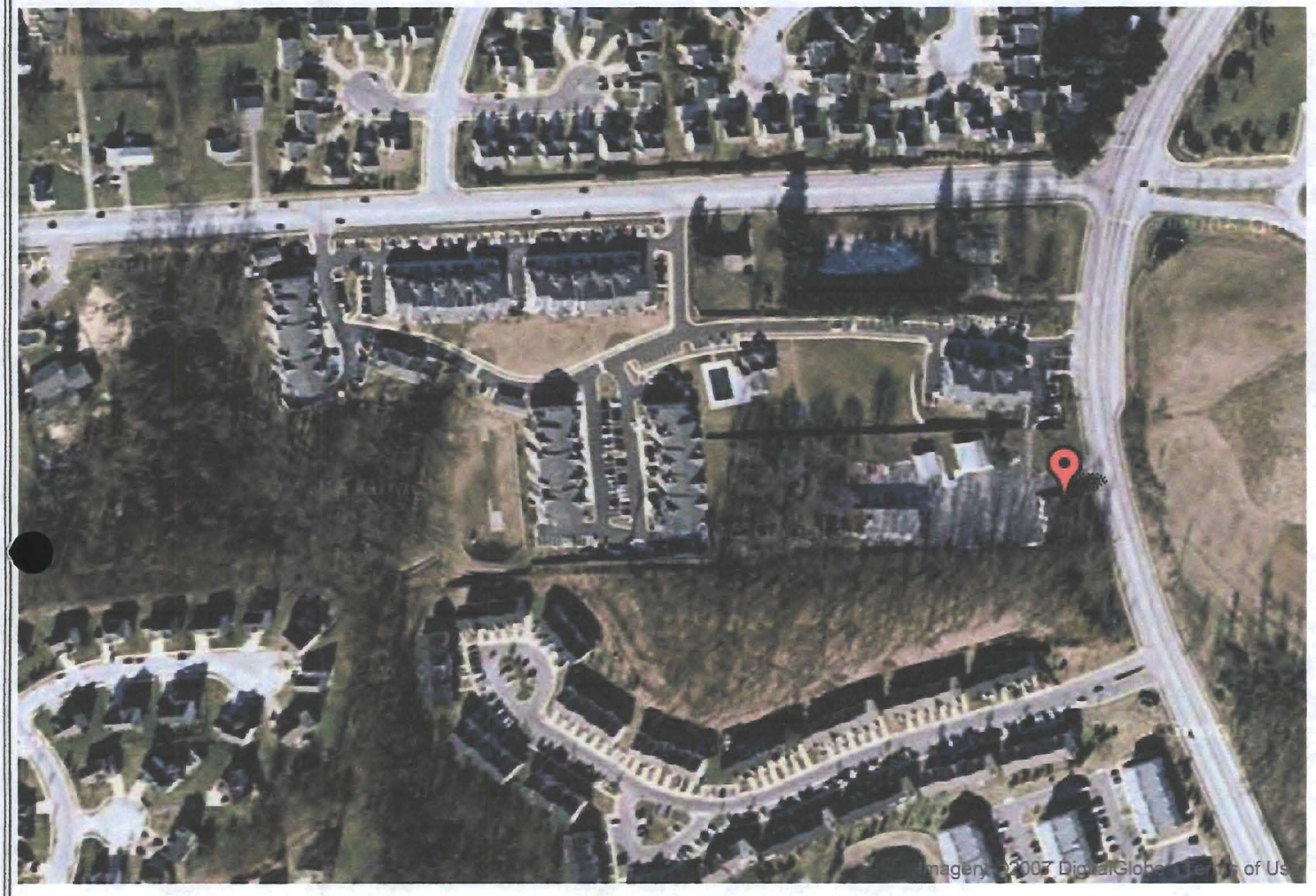


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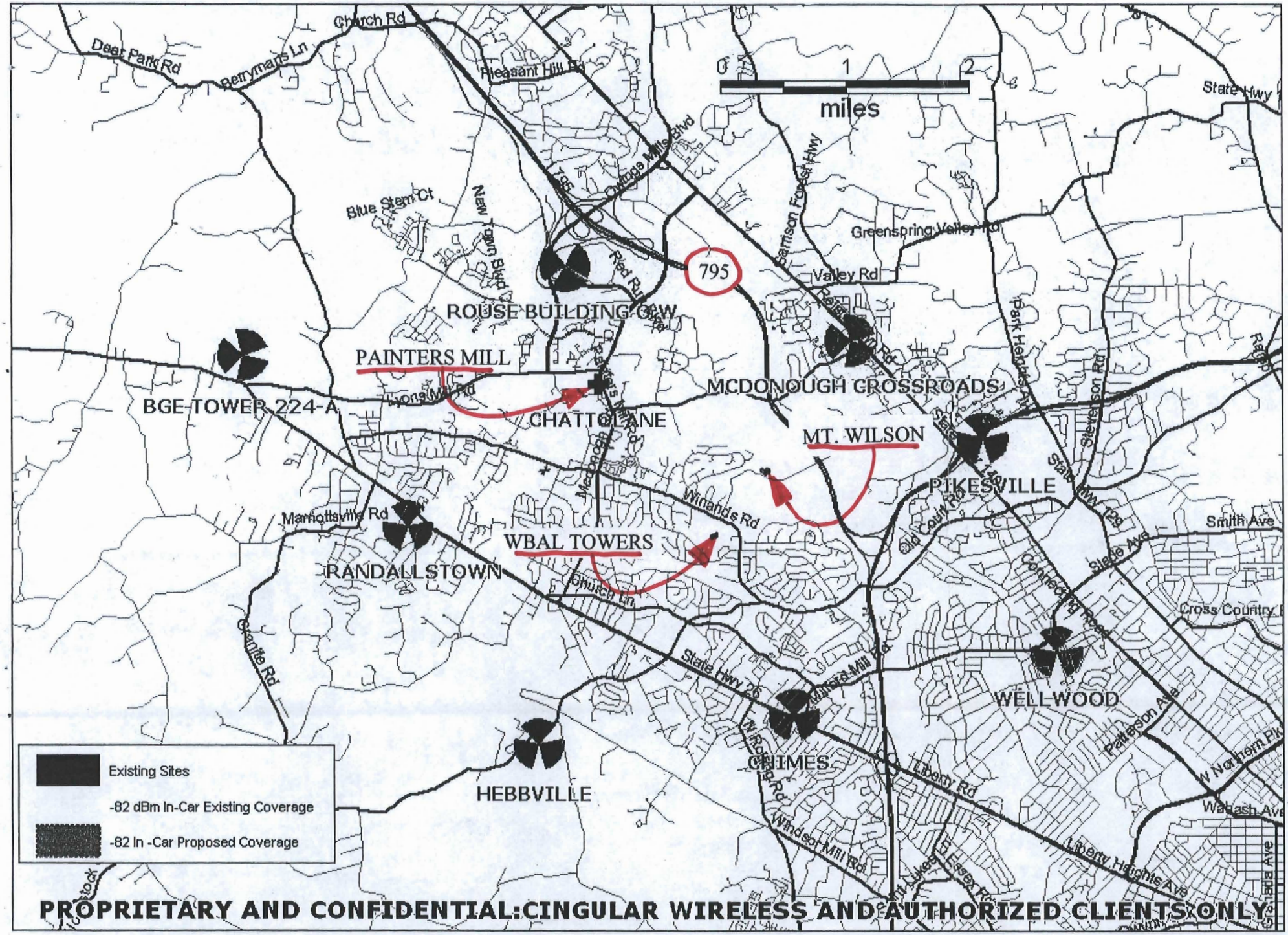
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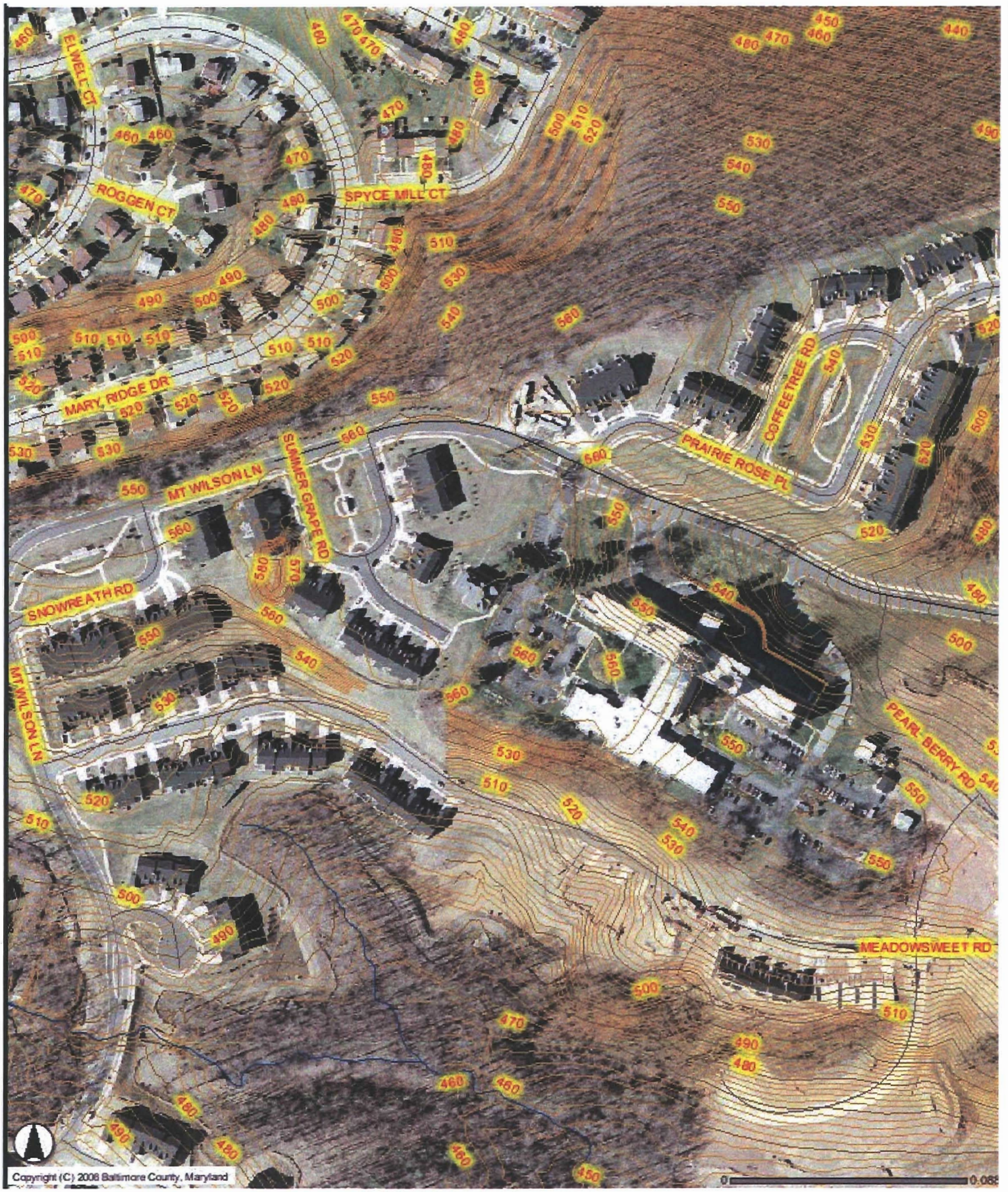
CINGULAR WIRELESS EXISTING COVERAGE WITHOUT CHATTOLANE SITE



PROPRIETARY AND CONFIDENTIAL:CINGULAR WIRELESS AND AUTHORIZED CLIENTS ONLY

7B3

My Neighborhood: PlanTopo - Map Output



http://bamaps1.baltimorecountymd.gov/arcims_path/bcgims?ServiceName=PlanTopo&ClientVersion=4.0&Form=Tr

cingular
WIRELESS

7C

October 27, 2005

Tower Review Committee
Richard Bohn, Chief
C/O Electronic Services/ Telecommunications
11112 Gilroy Road; Suite 101
Hunt Valley, Maryland 21031

OCT 28 [redacted]

Dear Mr. Bohn,

I respectfully request a meeting with the Tower Review Committee for the attached project called "Chattolane." I am submitting all required technical information, and will be available to supply anything additional that you may need to make your decision.

Please contact me at your earliest convenience, should you need anything further. Thank you for your valuable time and consideration.

Best regards,

Jack E. Barber
Site Acquisition Manager
Velocitel, Inc.
443.226.1529
j.barber@velocitel.net

CBA
Pro. EXH
No. 7C

Prot Ex 8

#2812-S

MAP #2-B "S" PRIVATE CLUB 11/25/53

PETITION FOR SPECIAL PERMIT

IN THE MATTER OF : BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

LOUIS I. PLACK, Sr. et al :

For a Special Permit

To The Zoning Commissioner of Baltimore County

Louis I. Plack, Sr. and Nellie C. Plack, his wife
Earl B. Jones and Frances Jones, his wife
Legal Owners

The American Legion Department of Maryland, Liberty Post No. 122, Inc.
Contract Purchaser

hereby petition for a Special Permit, Under the Zoning Regulations and Restrictions passed by the County Commissioners of Baltimore County, agreeable to Chapter 377 of the Acts of the General Assembly of Maryland of 1943, for a certain permit and use, as provided under said Regulations and Act, as follows:

A Special Permit to use the land (and improvements now or be erected thereon) hereinafter described for a private club - BEGINNING for the same in the center of Lyons Mill Road, approximately 197 feet South from the right angle turn in Lyons Mill Road at Painters Lane, said beginning being also at the end of the first line in a deed dated Dec 31, 1942 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1272, folio 192, from Richard T. Jones and wife to Nellie C. Plack etal, running thence North 83 degrees 43 minutes West 626.25 feet, South 5 degrees 11 minutes West 421.53 feet, South 85 degrees, 50 minutes East 109.54 feet, South 83 degrees, 43 minutes East 569.51 feet and North 21 degrees 26 minutes East 49.50 to the center of Lyons Mill Road and thence binding thereon, North 28 degrees 49 minutes West 89.10 feet, North 6 degrees, 34 minutes West 82.5 feet and North 5 degrees 11 minutes East 216.33 feet to the place of beginning.

The American Legion Department of Md.
Contract Purchaser
Liberty Post No. 122, Inc.
By Charles W. Weidman President
Randallstown, Maryland
Address

Earl B. Jones
Legal Owner
Frances Jones
3129 Kenyon Avenue,
Baltimore 13, Md.
Address

Louis I. Plack Sr.
Legal Owner
Nellie C. Plack
913 Lyndhurst Street,
Baltimore 29, Md.
Address

Notify

12/7

0014503 628

Prot Ex 9

RETURN TO:
HAMMOND & HAMMOND, LLC
P.O. BOX 569, 465 MAIN STREET
REISTERSTOWN, MD. 21136
410-833-7576
FILE NO. 6064

THIS DEED, made this 23rd day of May, 2000, by and between **THE AMERICAN LEGION, DEPARTMENT OF MARYLAND, LIBERTY POST 122, INC., a Maryland Corporation**, Grantor, party of the first part, and **SAMUEL R. ROTHBLUM AND CHRISTOPHER S. HOWELL**, parties of the second part, Grantees.

WITNESSETH, that in consideration of sum of TWO HUNDRED FORTY THOUSAND and no/100ths Dollars ($240,000.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said party of the first part does grant and convey unto the said parties of the second part, as tenants in common, their personal representatives, heirs and assigns, in fee simple, all that lot of ground situate in the Second (2nd) Election District, Baltimore County, State of Maryland, and described as follows, that is to say:

FOR LEGAL DESCRIPTION SEE ATTACHED EXHIBIT "A"

BEING THE SECONDLY DESCRIBED PARCEL OF LAND in a Deed dated December 30, 1953 and recorded among the Land Records of Baltimore County in Liber GLB No.2414, Folio 296, was granted and conveyed by Earl B. Jones, et al unto The American Legion, Department of Maryland, Liberty Post 122, Inc, the Grantor herein.

SUBJECT to covenants and restrictions of record.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises to the said parties of the second part, as tenants in common, their personal representatives, heirs and assigns, in fee simple forever in the following shares and proportion:

As to Samuel R. Rothblum a 50% undivided interest;

As to Christopher S. Howell a 50% undivided interest.

REVIEWED SDAT
BY 6/5/00
DATE

BA CIRCUIT COURT (Land Records) [MSA CE 62-14358] SM 14503, p. 0628. Printed 09/19/2006. Online 04/08/2005

Variance - pet Bach.

Prot Ex 10

Baltimore City Zoning Regulations

Section 307, Variances [BCZR 1955; Bill Nos. 107-1963; 32-1988; 2-1992; 9-1996]

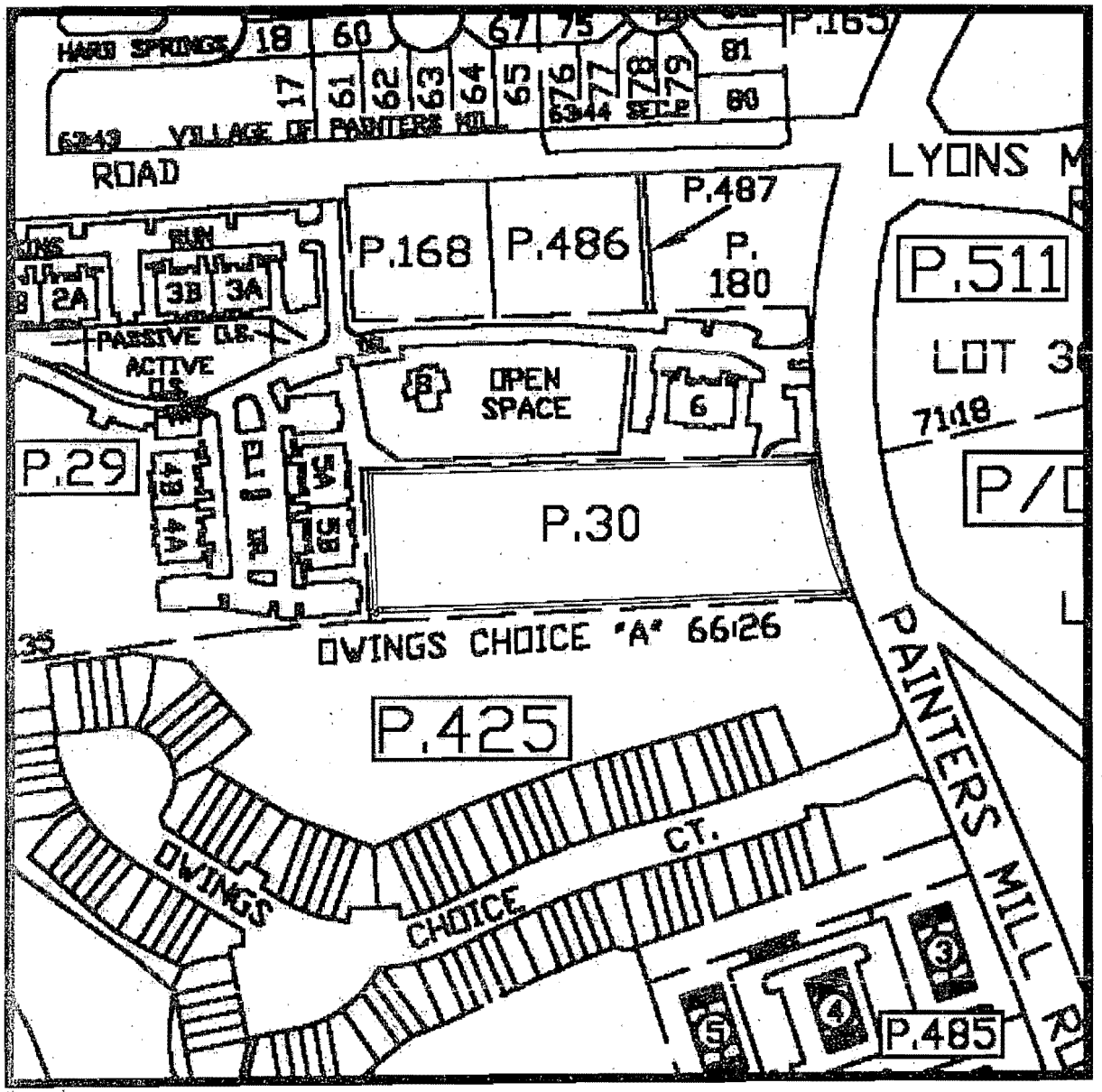
307.1 The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances 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. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. [EN] Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance.

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

11A

Go Back
View Map
New Search

District - 02Account Number - 0201500001



Property maps provided courtesy of the Maryland Department of Planning ©2004.
For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/webcom/index.html

Ex. 11B

STATE OF MARYLAND
Property Tax Assessment Appeals Board
Baltimore County

Hampton Plaza
300 E. Joppa Road, Suite 404
Towson, Maryland 21286

Martin O'Malley
Governor
Anthony G. Brown
Lt. Governor
Kent T. Finkelsen
Administrator
Julie M. Greene
Executive Associate

June 18, 2007

JONES, Richard A. & Mary D.
P.O. Box 792
Owings Mills, MD 21117-0792

Appeal Number: 07-84
Account Number: 020210450620

Re: 9109 Lyons Mill Rd.

ORDER

I HEREBY CERTIFY THAT THE PROPERTY TAX ASSESSMENT APPEALS BOARD HAS CONSIDERED THE ABOVE NUMBERED CASE AND HAS RULED THAT THE DETERMINATION BY THE DEPARTMENT OF ASSESSMENTS AND TAXATION IS HEREBY: **REVERSED** and a reduction of $15,340.00 has been made on the improvements for tax year beginning 7/1/07. The full cash value will be as follows:

Land - $ 87,800.00

Imps. - 159,580.00

$ 247,380.00

Memorandum of Grounds for Decision – Reduction reflects additional functional obsolescence for proximity to cell tower and commercial encroachment, etc..

P.S.Johnson
Clerk to the Board

cc: Department of Assessments

NOTICE: Under the provisions of the Tax-Property Article, Section 14-512 of the Annotated Code of Maryland, you have the right to appeal the above order to the Maryland Tax Court, 301 West Preston Street, Suite 1513, Baltimore, Maryland 21201. Your appeal must be filed in the Maryland Tax Court within thirty (30) days from the date indicated above. Should you have questions concerning the filing of your appeal, you may contact Maryland Tax Court at 410-767-4830. You may obtain further information about Maryland Tax Court by visiting their website: www.txcrt.state.md.us

Post Ex 12

Click here for a plain text ADA compliant screen.

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 02 **Account Number** - 0201500001

Owner Information

Owner Name:	AMERICAN LEGION LIBERTY POST 122 MD	**Use:**	EXEMPT COMMERCIAL
		Principal Residence:	NO
Mailing Address:	P O BX 112	**Deed Reference:**	1)
	RANDALLSTOWN MD 21133		2)

Location & Structure Information

Premises Address
4424 PAINTERS MILL RD

Legal Description
3.0957 AC WS
PAINTERS MILL RD
1320 W MCDONOUGH RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
67	14	30						1	Plat Ref:

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1958	1,387 SF	3.09 AC	01

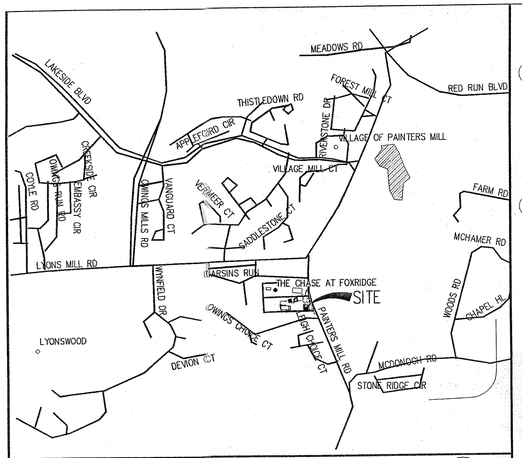
Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2006	As Of 07/01/2007
Land:	386,900	386,900		
Improvements:	31,800	31,800		
Total:	418,700	418,700	418,700	NOT AVAIL
Preferential Land:	0	0	0	NOT AVAIL

Transfer Information

Seller:	Date:	Price:



VICINITY MAP

SCALE: 1"=1000'-0"

TRUE NORTH

SITE INFORMATION

1.) SITE NAME: CHATTOLANE
SITE NUMBER: 1964

2.) THIS IS NOT A BOUNDARY SURVEY AND IS NOT TO BE USED FOR THE TRANSFER OF PROPERTY.

3.) THE PARENT PARCEL INFORMATION:
OWNER: AMERICAN LEGION LIBERTY POST 122 MD
ADDRESS: 4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

COUNTY: BALTIMORE COUNTY
TAX MAP: 67 PARCEL: 30
DISTRICT NUMBER: 02 ACCOUNT NUMBER: 0201500001
ADC MAP: N/A GRID N/A
ZONING: DR-16 (SEE BALTIMORE CO. ZONING MAPS 067A3 AND 067A2
USE: EXEMPT COMMERCIAL

4.) ELECTION DISTRICT: 11
COUNCILMANIC DISTRICT: 72 PRECINCT: 2-15

5.) THE RECORDED REFERENCES FOR THE PARENT PARCEL ARE AS FOLLOWS:
DEED: LIBER 2414 , FOLIO 296-298
PLAT: N/A
AREA: 134,600 SF (3.09 AC)

6.) THE DATUM'S ARE NAD 83 AND NAVD 88, AND THE BEARING BASE IS STATE GRID.

7.) NO UNDERGROUND UTILITIES HAVE BEEN LOCATED, THE PRESENCE OF ANY SUCH UTILITIES MUST BE CONFIRMED BY THE CONTRACTOR BEFORE CONSTRUCTION.

8.) NO WETLANDS HAVE BEEN DEFINED AND ANY AREAS SHOWN AS MARSH, PONDS OR DITCHES ARE DONE SO FROM VISIBLE SURFACE FEATURES AND IN NO WAY CONSTITUTE A DEFINED WETLAND.

9.) THE FLOOD ZONE OF THE PROPOSED TOWER IS AS FOLLOWS; FLOOD ZONE C, AREA OF MINIMAL FLOODING. SOURCE, FEMA FLOOD MAP FOR TALBOT COUNTY, MD.
COMMUNITY PANEL NUMBER 240010 0220 C.
REVISED, SEPTEMBER 3, 1992.

10.) NO TITLE REPORT WAS FURNISHED FOR THIS SURVEY.

11.) THE DATA COLLECTED AND SHOWN ON THIS DRAWING ARE FOR THE PURPOSES OF CONSTRUCTION OF A CELLULAR TOWER, ANY NECESSARY ANCILLARY EQUIPMENT AND ALL APPROPRIATE EASEMENTS.

12.) NO UNRECORDED EASEMENTS ARE SHOWN ON THIS SURVEY AND IT IS POSSIBLE THAT SUCH EASEMENTS IMPACT THE SITE.

13.) THIS PROPERTY IS SUBJECT TO ALL MATTERS OF PUBLIC RECORD.

14.) THE LOCATION OF THE PROPOSED TOWER IS AS FOLLOWS; THE VALUES LISTED BELOW ARE WITHIN ±50' HORIZONTAL AND ±20' VERTICAL.
LATITUDE: N 39° 23' 33.9"
LONGITUDE: W 76° 47' 20.3"
ELEVATION: ±573' AMSL

15.) AMERICAN LEGION PARKING WILL NOT BE ADVERSELY AFFECTED BY TOWER OR EQUIPMENT.

PROPERTY: ±3.09 ACRES GROSS AREA

AREA SUBJECT TO HEARING: 3,720 SF/0.09 AC

	YES	NO
CHESAPEAKE BAY CRITICAL AREA:	☐	☒
FLOOD PLAIN:	☐	☒
HISTORIC:	☐	☒

TAX INFORMATION

(1) PARCEL 30
TAX MAP 67
ACCOUNT NO. 02-0201500001
N/F
AMERICAN LEGION LIBERTY POST 112 MD
PREMISES ADDRESS: 4424 PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 112
RANDALLSTOWN, MD 21133
DEED LIBER 1479, FOLIO 153
ZONING: DR-16 USE: COMMERCIAL

(2) PARCEL 29
TAX MAP 67
ACCOUNT NO. 02-2300011948
N/F
OWINGS PARK LLC
PREMISES ADDRESS:PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 490
JOPPATOWNE, MD 21085-0490
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: APARTMENTS

(3) PARCEL 511
TAX MAP 67
ACCOUNT NO. 02-2300006065
N/F
TRP SUBURBAN SECOND INC
PREMISES ADDRESS: 4401 PAINTERS MILL RD
MAILING ADDRESS: ATTN FIN RPT-13
P.O. BOX 89000
BALTIMORE, MD 21289-0001
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: COMMERCIAL

(4) PARCEL 426
TAX MAP 67
ACCOUNT NO. 02-2300025451
N/F
TRP SUBURBAN SECOND INC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: ATTN FIN RPT-13
P.O. BOX 89000
BALTIMORE, MD 21289-0001
DEED LIBER 12290, FOLIO 259
ZONING: N/A USE: COMMERCIAL

(5) PARCEL 425
TAX MAP 67
ACCOUNT NO. 02-2200018213
N/F
OWINGS CHOICE HOMEOWNERS ASSOC. NC
PREMISES ADDRESS: OWINGS CHOICE CT
MAILING ADDRESS: 139 N MAIN ST, STE 302
BEL AIR, MD 21014
DEED LIBER 10562, FOLIO 669
ZONING: N/A USE: RESIDENTIAL

(6) PARCEL 29
TAX MAP 67
ACCOUNT NO. 02-2300011947
N/F
OWINGS PARK LLC
PREMISES ADDRESS: PAINTERS MILL RD
MAILING ADDRESS: P.O. BOX 490
JOPPATOWNE, MD 21085-0490
DEED LIBER N/A, FOLIO N/A
ZONING: N/A USE: APARTMENTS

ZONING INFORMATION FOR DR-16

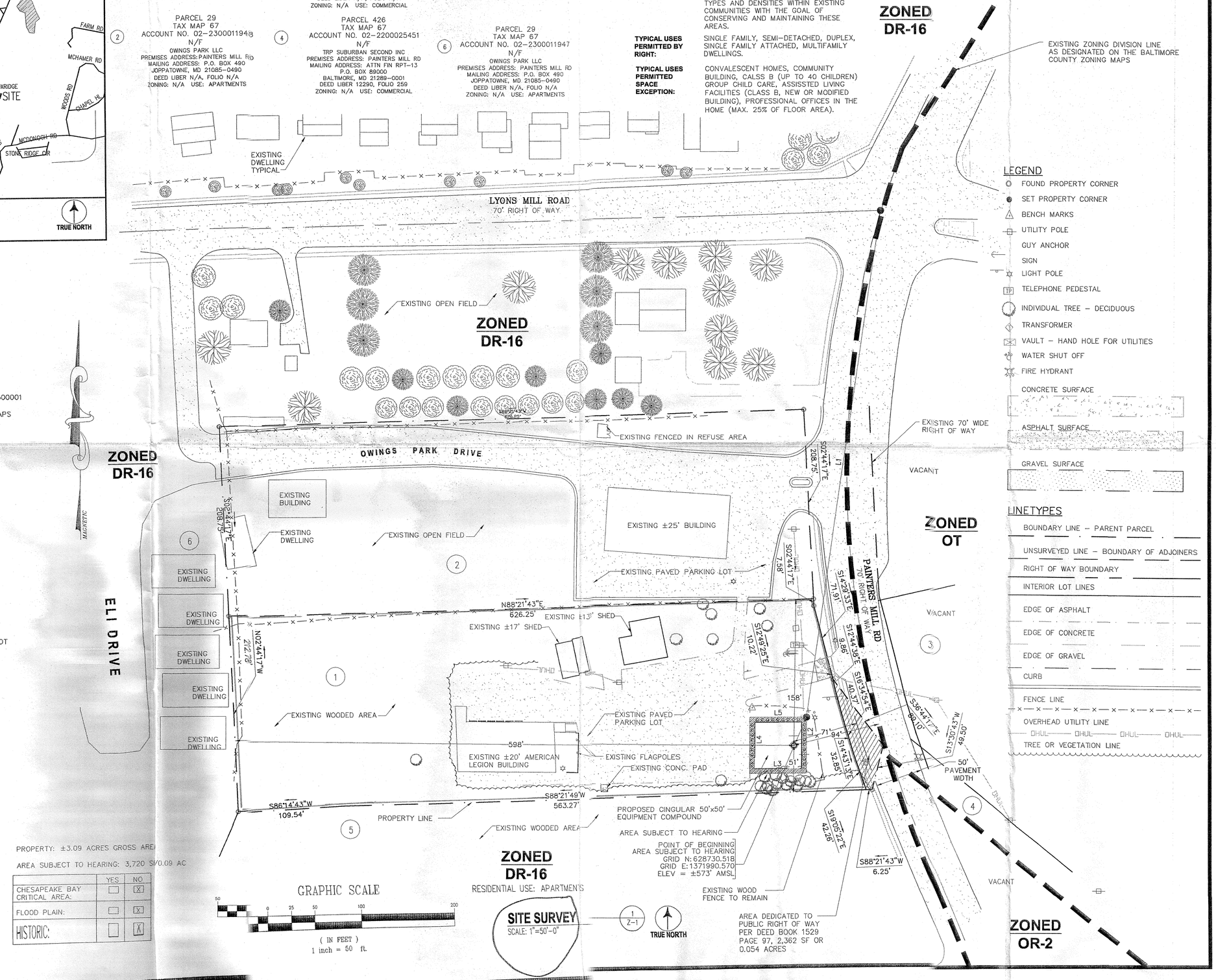
ZONE DESCIPTION: DENSITY RESIDENTIAL; 16 UNITS/ACRE

INTENT: TO FOSTER A GREATER VARIETY OF HOUSING TYPES MEETING THE NEEDS OF DIFFERENT HOUSING MARKET REQUIREMENTS; TO ALLOW MORE PRESERVATION OF NATURAL FEATURES AND INDUCE THE RESERVATION OF BETTER OPEN SPACE; TO PROVIDE GREATER CERTAINLY ABOUT DWELLING TYPES AND DENSITIES WITHIN EXISTING COMMUNITIES WITH THE GOAL OF CONSERVING AND MAINTAINING THESE AREAS.

TYPICAL USES PERMITTED BY RIGHT: SINGLE FAMILY, SEMI-DETACHED, DUPLEX, SINGLE FAMILY ATTACHED, MULTIFAMILY DWELLINGS.

TYPICAL USES PERMITTED SPACE EXCEPTION: CONVALESCENT HOMES, COMMUNITY BUILDING, CALSS B (UP TO 40 CHILDREN) GROUP CHILD CARE, ASSISTED LIVING FACILITIES (CLASS B, NEW OR MODIFIED BUILDING), PROFESSIONAL OFFICES IN THE HOME (MAX. 25% OF FLOOR AREA).

LINE TABLE		
LINE	LENGTH	BEARING
L1	557.08	S08°13'20"W
L2	61.00	S00°00'00"E
L3	61.00	N90°00'00"W
L4	61.00	N00°00'00"E
L5	61.00	S90°00'00"E



LEGEND
FOUND PROPERTY CORNER
SET PROPERTY CORNER
BENCH MARKS
UTILITY POLE
GUY ANCHOR
SIGN
LIGHT POLE
TELEPHONE PEDESTAL
INDIVIDUAL TREE - DECIDUOUS
TRANSFORMER
VAULT - HAND HOLE FOR UTILITIES
WATER SHUT OFF
FIRE HYDRANT
CONCRETE SURFACE
ASPHALT SURFACE
GRAVEL SURFACE

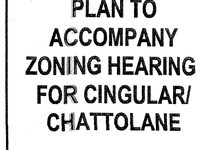
LINETYPES
BOUNDARY LINE - PARENT PARCEL
UNSURVEYED LINE - BOUNDARY OF ADJOINERS
RIGHT OF WAY BOUNDARY
INTERIOR LOT LINES
EDGE OF ASPHALT
EDGE OF CONCRETE
EDGE OF GRAVEL
CURB
FENCE LINE
OVERHEAD UTILITY LINE
TREE OR VEGETATION LINE

entrex
communication services, inc.
1575 Eye Street, N.W. Suite 350
WASHINGTON, D.C. 20005
PHONE: (202)408-0960
FAX: (202)408-0961
VelociTel®

SUBMITTALS

DATE	DESCRIPTION	REV.
05-10-06	ZONING REVIEW	
05-30-06	ZONING	
06-07-06	ZONING	

SEAL:



cingular WIRELESS
7150 Standard Dr.
Hanover, MD 21076

PROJECT NO:	1087.022
DESIGNER:	TMF
ENGINEER:	C.G.

SCALE:
0 1/2 1
GRAPHIC SCALE IN INCHES

CHATTOLANE
1964
4424 PAINTERS MILL RD
RANDALLSTOWN, MD 21133

TITLE:

PLAN TO ACCOMPANY ZONING HEARING FOR CINGULAR/ CHATTOLANE

SHEET NUMBER:

Z-1

Prot Ex 14

Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

SCOTT A. LINDGREN
PROFESSIONAL LAND SURVEYOR #21081
PROJECT MANAGER

320 East Towsontown Boulevard
Suite 100
Towson, Maryland 21286

Phone: (410) 823-4470
Fax: (410) 823-4473
www.slindgren@gcelimited.com

Pet Ex 15

LIBER 2414 PAGE 296

THIS DEED, Made this 30th day of December in the year nineteen hundred and fifty-three, by and between EARL B. JONES and FRANCES V. JONES, his wife, and WILLIE C. BLACK and LOUIS D. BLACK, her husband, of Baltimore City, parties of the first part, and THE AMERICAN LEGION, DEPARTMENT OF MARYLAND, LIBERTY POST NO. 122, INC., a corporation of the State of Maryland, party of the second part.

WITNESSETH, That in consideration of the sum of five dollars and other good and valuable considerations, this day paid, the receipt whereof is hereby acknowledged, the said EARL B. JONES and FRANCES V. JONES, his wife, and WILLIE C. BLACK and LOUIS D. BLACK, her husband, do grant and convey unto the said THE AMERICAN LEGION, DEPARTMENT OF MARYLAND, LIBERTY POST NO. 122, INC., its successors and assigns, in fee simple, all those two parcels of land situate, lying and being in the second Election District of Baltimore County and described as follows, that is to say:

1. BEGINNING for the same at a stone heretofore set at the beginning of the South 86-1/2 degrees East 96 perch line of a parcel of land which by a deed dated March 27, 1928 and recorded among the Land Records of Baltimore County in Liber C.W.B. No. 2250, folio 186, was conveyed by Paul Culotta and wife to Richard T. Jones and wife and running thence with and binding on the outlines of said land as now surveyed the two following courses and distances viz: South 83 degrees 42 minutes East 360.11 feet and North 21 degrees 26 minutes East 49.50 feet to a point in the bed of the Lyons Mill Road (formerly Old Church Road), thence binding in or near the center of said Road and continuing to bind on the outlines of said parcel of land the three following courses and distances viz: North 28 degrees 49 minutes West 89.10 feet North 6 degrees 34 minutes West 82.50 feet

BALTIMORE COUNTY CIRCUIT COURT (Land Records) [MSA CE 62-2259] GLB 2414, p. 0296. Printed 12/19/2006. Image available as of 11/03/2005.

Prot Ex 16

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 1998, Legislative Day No. 4

Bill No. 30-98

All Councilmembers

By the County Council, February 17, 1998

A BILL
ENTITLED

AN ACT concerning

Zoning - Wireless Telecommunications Towers and Antennas

FOR the purpose of amending the Zoning Regulations in order to establish guidelines regarding the regulation of certain towers and antennas; excepting certain towers and antennas from regulation; establishing the Tower Review Committee; requiring certain persons to meet with and submit certain information to the Committee; authorizing the Committee to provide certain comments; authorizing certain towers and antennas to be located in certain zones under certain circumstances; requiring certain towers and structures to meet certain requirements; requiring a security bond or fee; requiring the owner of certain towers and structures to take certain actions; providing for the issuance of certain notices under certain circumstances; providing for the removal of a tower under certain circumstances; requiring towers by special exception to meet certain conditions;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining INDICATES AMENDMENTS TO BILL.

Prot Ex 17

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0047

September Term, 2004

COURT COSA

FILED 8-3-05 DOCKET/TERM 0047/04 JUDGE ADKINS

SPRINT PCS, ET AL.

v.

BALTIMORE COUNTY, MARYLAND

Eyler, James R.,
Adkins,
Barbera,

JJ.

Opinion by Adkins, J.

Filed: August 3, 2005

3C03005849

see no error in these findings.[3] Accordingly, the court correctly directed Ms. Droney to transfer the home in its 1992 Order; the court's finding of contempt in the 1994 Order, based on Ms. Droney's failure to comply, was not an abuse of discretion.

III.

[13] Ms. Droney contends that even if the court did not err in finding that the term "real estate" encompassed the home, the court lacked the statutory authority to order her to transfer her interest in property, either as part of a divorce decree or in the enforcement thereof. Under Md.Fam.Law Code Ann., § 8–202(a) (1991), the court may determine ownership of disputed property when the court grants an absolute divorce, but the statute expressly denies the court the power to transfer property, other than money, as part of an award. *See also, Kline v. Kline,* 93 Md.App. 696, 703, 614 A.2d 984 (1992). At the same time, the court can merge the terms of a deed, agreement, or settlement made between the parties during the divorce as a part of the divorce decree. Md.Fam. Law Code Ann., § 8–105(a); *Goldberg v. Goldberg,* 290 Md. 204, 210 n. 6, 428 A.2d 469 (1981). Once the terms are so merged, the court has the power to enforce those terms using the contempt power. Md.Fam.Law Code Ann., § 8–105(a);

3. In addition, our decision finds logical support in the area of lawful warrantless searches of vehicles under the Fourth Amendment of the United States Constitution. In *California v. Carney,* 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985), the Supreme Court held that the mobile home in question was sufficiently mobile that it fell within the "automobile exception" to the prohibition on warrantless searches, even if it was being used primarily as a residence and not as a means of transportation. *Id.* at 393, 105 S.Ct. at 2070. The Court suggested, however, that the same home, on blocks and connected to utility lines in a mobile home park, would not have been subject to a warrantless search, because the critical element of mobility would be lacking. *Id.* at 394 n. 3, 105 S.Ct. at 2071 n. 3. *See also, Doering v. State,* 313 Md. 384, 398–99, 545 A.2d 1281 (1988) (interpreting *Carney,* defendant's bus, which had been converted into lodging, was subject to warrantless search as it had all of its tires fully inflated, had all its windows intact, had all its lights in apparently functional condition, and was near a road).

Prot Ex 18

Md.Rule 2–648; *Mendelson v. Mendelson,* 75 Md.App. 486, 497–98, 541 A.2d 1331 (1988).

Ms. Droney relies on the case of *McAlear v. McAlear,* 298 Md. 320, 469 A.2d 1256 (1984) for the proposition that contempt may not be used to enforce a "property disposition award." In *McAlear,* the divorced wife sought to have her ex-husband held in contempt for his failure to pay the monetary award specified in the judgment of absolute divorce. The Court held that, unlike alimony, a monetary award in a divorce case constitutes a "debt," and as the Maryland Constitution, Art. III, § 38 forbids incarceration for the failure to pay a debt, contempt was not an available method of enforcement. *Id.* at 349–52, 469 A.2d 1256.

Ms. Droney's reliance on *McAlear* is inapposite. The Court did not consider Fam.Law, § 8–105(a), and we find nothing in *McAlear* that approaches the question of whether a court may use contempt to enforce the lawful terms of its own orders. Given the clear statutory authority to merge the terms of an agreement into a judgment of divorce and to enforce such terms with contempt, the court did not err in seeking to enforce the terms of the Judgment by ordering Ms. Droney to transfer her ownership of the Property to Mr. Droney.

AFFIRMED. COSTS TO BE PAID BY APPELLANT.

---

651 A.2d 424

David CROMWELL, et al. appellant

v.

Arthur Thomas WARD, III. appellee defendant

No. 617, Sept. Term, 1994.

Court of Special Appeals of Maryland.

Decided Jan. 4, 1995.

The Circuit Court, Baltimore County, Lawrence Daniels, J., affirmed order of board of appeals granting height variance

PEOPLE'S COUNSEL'S EXHIBITS

PEOPLE'S COUNSEL EXHIBITS

Verified
11-15-07

1. Overlay of the American Legion Property

2. A Zoning Map - North
B. Zoning Map - South

3. Petition For Special Permit For Use as a Private Club

PC #1

4424 Painters Mill Road



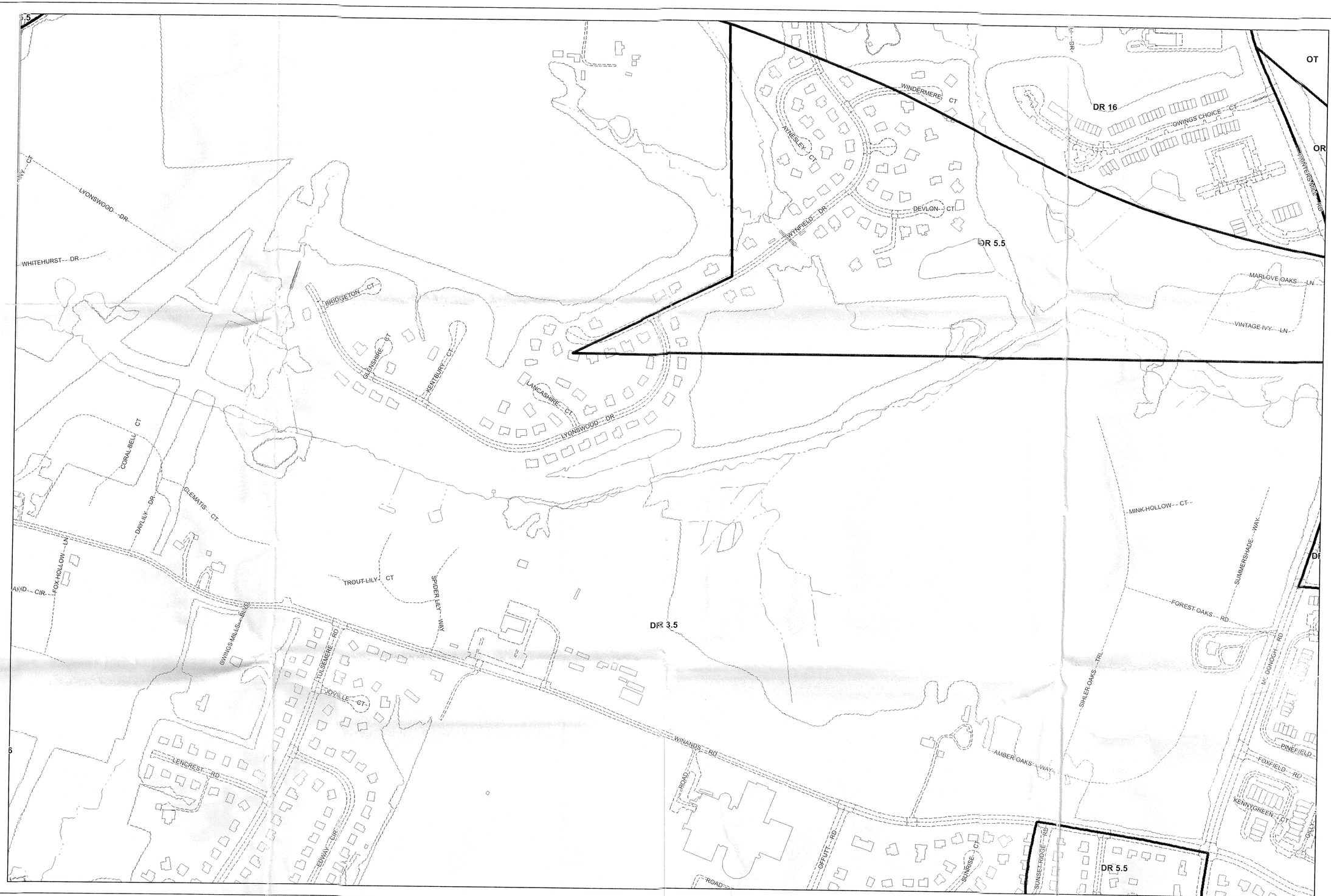
Produced by Baltimore County GIS Services Unit
Date: October 26, 2007
Date of Imagery: April 2005

1 inch equals 50 feet

The Cadastral Information on this Plot was compiled from existing deed information. This Information is not to be considered authoritative. The Survey Information was not field checked and Certified by a licensed land surveyor.

PC #1 IO637SPHKA

Site South of Site
CBA
BC 2A-22
No.



Plan Sheet: *067A3*

Note:
The zoning depicted in this application incorporates the actions associated with County Council Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04 adopted by the County Council on August 31, 2004. *The action associated with County Council Bill* 130-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-01, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Legend

Zoning
Buildings
Streams
Roads
Vegetation
Rail Lines

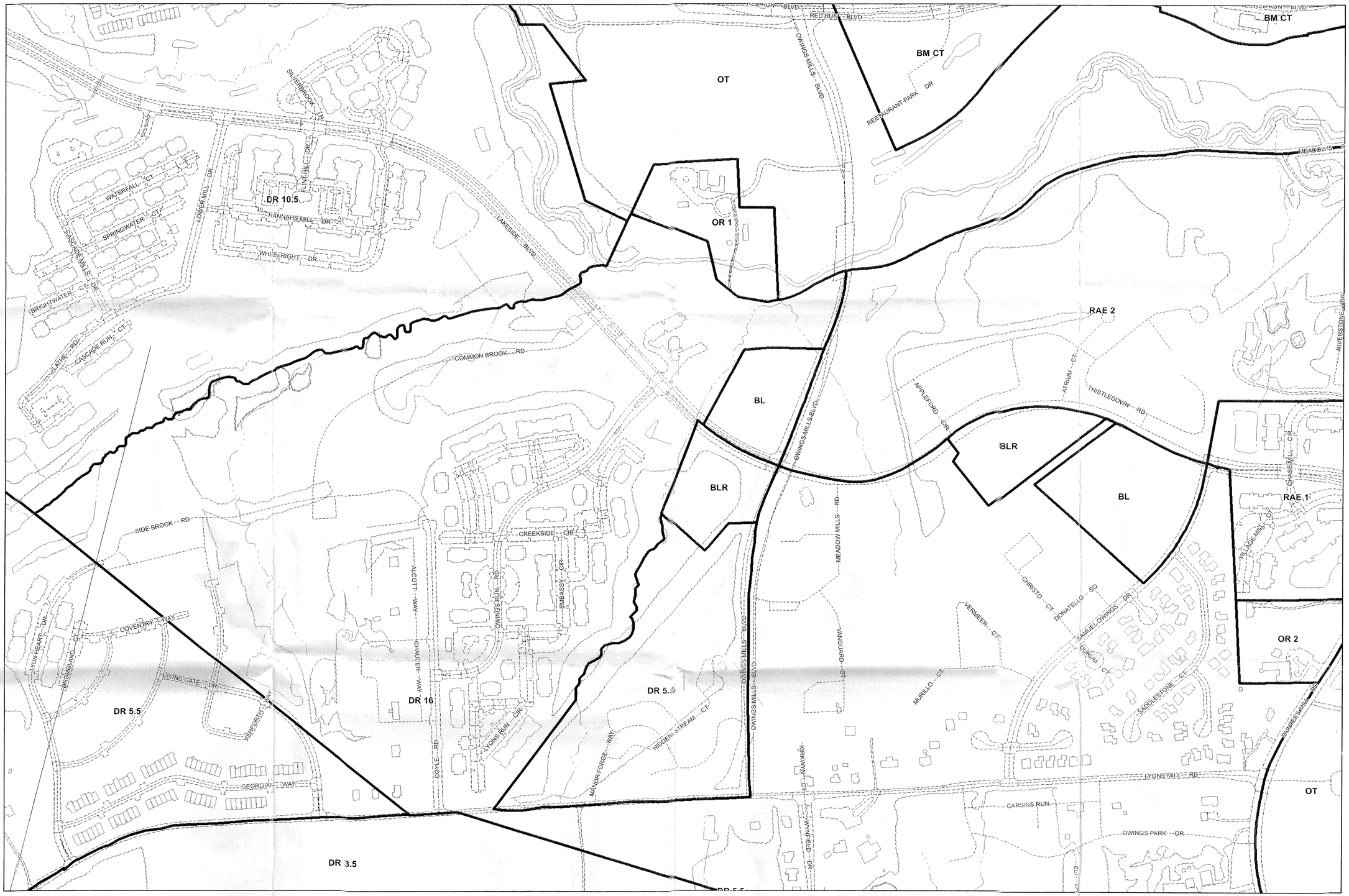
Baltimore County
Office of Planning and Zoning
Official Zoning Map

066B2	066C2	067A2	067B2	067C2
066B3	066C3	067A3	067B3	067C3
076B1	076C1	077A1	077B1	077C1

Scale
1" = 200'
0 100 200 400 Feet

1

Data Sources:
Planametric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004



Site is north of site

Plan Sheet: *067A2*

Note: The zoning depicted in this application incorporates the actions associated with County Council Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, and 89-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill 130-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-01, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Legend

Zoning — Streams — Vegetation

Buildings — Roads — Rail Lines

Baltimore County
Office of Planning and Zoning
Official Zoning Map

066B1	066C1	067A1	067B1	067C1
066B2	066C2	067A2	067B2	067C2
066B3	066C3	067A3	067B3	067C3

Scale

1" = 200'

0 100 200 400 Feet

1

Data Sources:
Planametric Data - Baltimore County OIT/GIS Services Unit 1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning 1:2400, 2004

#2912-S

MAP #2-B "S" PRIVATE ave 11/25/53

PETITION FOR SPECIAL PERMIT

IN THE MATTER OF : BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

LOUIS I. PLACK, Sr. et al :

:

:

For a Special Permit

To The Zoning Commissioner of Baltimore County

Louis I. Plack, Sr. and Nellie C. Plack, his wife
Earl B. Jones and Frances Jones, his wife
Legal Owners

The American Legion Department of Maryland, Liberty Post No. 122, Inc.
Contract Purchaser

hereby petition for a Special Permit, Under the Zoning Regulations and Restrictions passed by the County Commissioners of Baltimore County, agreeable to Chapter 377 of the Acts of the General Assembly of Maryland of 1943, for a certain permit and use, as provided under said Regulations and Act, as follows:

A Special Permit to use the land (and improvements now or be erected thereon) hereinafter described for a private club - BEGINNING for the same in the center of Lyons Mill Road, approximately 197 feet South from the right angle turn in Lyons Mill Road at Painters Lane, said beginning being also at the end of the first line in a deed dated Dec 31, 1942 and recorded among the Land Records of Baltimore County in Liber R.J.S. No. 1272, folio 192, from Richard T. Jones and wife to Nellie C. Plack etal, running thence North 83 degrees 43 minutes West 626.25 feet, South 5 degrees 11 mimutes West 421.53 feet, South 85 degrees, 50 minutes East 109.54 feet, South 83 degrees, 43 minutes East 569.51 feet and North 21 degrees 26 minutes East 49.50 to the center of Lyons Mill Road and thence binding thereon, North 28 degrees 49 minutes West 89.10 feet, North 6 degrees, 34 minutes West 82.5 feet and North 5 degrees,11 minutes East 216.33 feet to the place of beginning.

The American Legion Department of Md.
Liberty Post No. 122, Inc.
Contract Purchaser

By Charles W. Weidman
President

Randallstown, Maryland
Address

Earl B. Jones
Legal Owner

Frances Jones
3129 Kenyon Avenue,
Baltimore 13, Md.
Address

Louis I. Plack, Sr.
Legal Owner

Nellie C. Plack
913 Lyndhurst Street,
Baltimore 29, Md.
Address

Notify

12/7

CBA PC EXH NO. 3

PC