

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
S side of Ebenezer Road; 266 feet W of	*	DEPUTY ZONING
the c/l of Eastern Avenue		
15 th Election District	*	COMMISSIONER
6 th Councilmanic District		
(6923 Ebenezer Road)	*	FOR BALTIMORE COUNTY
 JPH, LLC	*	
<i>Legal Owner</i>		
Tower Development Corporation	*	Case No. 2011-0079-SPHA
<i>Contract Lessee</i>	*	

* * * * *

ORDER ON MOTION FOR RECONSIDERATION

This matter comes before this Deputy Zoning Commissioner for consideration of a Motion for Reconsideration filed by Peter Max Zimmerman, People's Counsel for Baltimore County. The Motion for Reconsideration was filed pursuant to Rule 4(k) of Appendix G of the Baltimore County Zoning Regulations (B.C.Z.R.) wherein the Rules of Practice and Procedure before the Zoning Commissioner/Hearing Officer for Baltimore County are provided. Rule 4(k) permits a party to file a Motion for Reconsideration of an Order issued by the Zoning Commissioner. This Motion must be filed within 30 days of the date the Order was issued, and must state with specificity the grounds and reasons for their request.

In the instant matter, Petitioner requested Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a telecommunications facility in a B.R. zoning district with a setback of 203 feet to the nearest residential property line as in compliance with Section 426.6.A.1 of the B.C.Z.R., and to determine that Section 426.6.A.1 does not require a 200 foot setback to a railroad property that is zoned D.R.5.5 and has no residences and cannot have any residences on it. Petitioner also requested Variance relief from Section 426.6.A.1 of the B.C.Z.R. only in the event that special hearing relief was not granted and

it was found that Section 426.6.A.1 requires a 200 foot setback from a telecommunications facility to a railroad property that has no home upon it and cannot, in fact, have any home on it, but is nonetheless zoned D.R.5.5. In an Order dated November 24, 2010, the undersigned granted the Special Hearing request and dismissed the Variance request as moot.

Thereafter, Peter Max Zimmerman, People's Counsel for Baltimore County, submitted a letter dated December 16, 2010 to be treated as a Motion for Reconsideration. In his Motion, Mr. Zimmerman indicated that he believes the 200 foot requirement of Section 426.6.A.1 of the B.C.Z.R. was intended to broaden the scope of that Regulation so that other zones in residential use might also be covered, and was not intended to exclude residentially zoned properties merely because they are not currently in residential use. Recognizing there might be room for debate in the interpretation of the Regulation and in that vein, he requested that the undersigned condition and limit my granting of the special hearing so that it is effective only so long as the adjacent residentially zoned property is used for railroad purposes, and that if the railroad use changed to another use, Petitioners would be required to file another Petition for Special Hearing to determine if the use can continue. Mr. Zimmerman also asked that my decision be clarified so that the granting of relief is limited to the particular circumstances of this case, and that the decision not extend to residentially zoned properties which are vacant or in other uses permitted in the residential zone.

In response, Petitioner's attorney, Gregory E. Rapisarda, submitted a letter dated January 7, 2011. In his letter, Mr. Rapisarda indicated that Petitioner has no objection to the addition of a sentence clarifying that the decision is intended only to apply to a residentially zoned railroad and not to a residentially zoned vacant or similarly situated parcel, but took issue with People's Counsel's other issues and assertions. In particular, Mr. Rapisarda reiterated that the legislature's use of the words 200 feet from any other owner's "residential property line" in Section 426.6.A.1

highlights the legislative intent that the 200 foot setback should apply to a residential use, as opposed to any specific zoning designation. He also points out that when the legislature wants to specify residentially zoned areas in the Regulations, it does so (*See*, Section 243.4 of the B.C.Z.R.). Mr. Rapisarda also objects to a "conditional approval" that would potentially compel Petitioner to come before this Commission in the future for a special hearing in the event (however unlikely) the current railroad use of the adjacent property changed in order to determine if the use of the property for a telecommunications tower could continue. He does not believe the relief should be conditioned or limited based upon the actions of a future theoretical residential landowner on the railroad property.

In considering the Motion for Reconsideration, the undersigned reviewed the file -- including the Petitions and exhibits and Zoning Advisory Committee comments -- and the Findings of Fact and Conclusions of Law dated November 24, 2010, as well as Mr. Zimmerman's Motion and Mr. Rapisarda's response. After reviewing these items, I shall grant the Motion in part and deny it in part. Although I believe it is self evident that each case decided by this Commission stands on its own merits, based on how the individual facts and circumstances apply to the law and Regulation at issue, I am nonetheless willing to appease People's Counsel to the limited extent of adding a condition to the Order indicating the decision is limited to the particular circumstances of this case.

As to the other contentions in People's Counsel's Motion, they shall be denied. Although I believe my rationale and interpretation of Section 426.6.A.1 regarding the 200 foot setback requirement was well covered in my November 24, 2010 Order, I shall once again explain my thinking. Section 426.6.A.1 of the B.C.Z.R. states that "[a] tower shall be set back at least 200 feet from any other owner's residential property line." As I stated previously, the issue then, is what is the meaning within the Regulation of "at least 200 feet from any other owner's *residential*

property line.” (emphasis added). Section 426.5 of the B.C.Z.R. delineates the location and height restrictions for telecommunications towers and antennas and categorizes the various zones. It is without question that the D.R. zones are considered residential zones, as are R.C., R.C.C., C.R. District, and R.O.A. zones. Section 426.5 also categorizes the OR-2, B.L.R., B.L., B.M., B.R., M.R., M.L., and M.L.R. zones as medium-intensity commercial, and the O-3, O.T., and M.H. as high-intensity commercial. This Regulation also delineates so-called transitional zones that include the S-E, R-O, OR-1, B.M.M., B.M.Y.C., B.M.B., and C.B. zones. Against this amalgamation of residential versus commercial zones, with transitional zones mixed in, the issue once again is what is the proper meaning of “residential property line” as used in the context of Section 426.6.A.1 of the B.C.Z.R.

In the first full paragraph of his Motion, Mr. Zimmerman states that “[t]he designation of a residential zone indicates a legislative intent that the property be used residentially. In this connection, the language does not say ‘residentially used property line.’” In that same paragraph, Mr. Zimmerman states that the requirement “to provide a minimum setback of 200 feet from a residential property line instead of a residential zone line was intended to broaden the scope of that Regulation so that other zones *in residential use* might also be covered, and was not intended to exclude residentially zoned properties merely because they are not currently in residential use” (emphasis added). All of this could tend to get rather confusing, but in my view and looking at the plain meaning of the Regulation, I do not believe my view and Mr. Zimmerman’s statements are that far off from one another. I think we agree that the D.R. and R.C zones are generally considered residential zones. I think we would also agree that B.M., M.L., M.H. and M.L.R. zones are commercial zones. To that end, there is a reason that telecommunications towers less than 200 feet in height are permitted by right in the commercial zones, but require a special exception in residential zones. It is also noteworthy that the transitional zones such as R-O, OR-1,

and B.M.M. (residential – office, office building – residential, and business maritime marina, respectively) have residential and commercial components that also require a special exception.

Where People's Counsel and I part ways is how the phrase "residential property line" in Section 426.6.A.1 is interpreted. Put simply, in my judgment, in residential or transition zones in particular, it is the use that controls. The instant case is a perfect example. Contrary to what People's Counsel may want to believe, the nearest "residential property line" is not the railroad property adjacent to the subject property, but is in fact the residential property owned by Gary and Theresa Oakley at 6917 Ebenezer Road -- 203 feet from the proposed tower. To assert that the railroad property constitutes a "residential property line" merely because of its D.R. zoning makes very little logical sense.

I believe it is instructive that the undersigned has taken a similarly consistent position when ruling against a petitioner regarding interpretation of Section 426.6.A.1 of the B.C.Z.R. In Case No. 08-084-A, the Petitioner, Nextel Communications, sought variance relief under Section 426.6.A.1 to permit a tower 74 feet from a residential property line in lieu of the required 200 feet. The nearest residential property line in question was zoned R-O. Under People's Counsel's interpretation, even if that property were used commercially as an office, it would have still been deemed a residential property line by virtue of the residential component to its R-O zoning. To that extent, I do not agree. In that case, though zoned R-O, the property was being used as a residence by the owner. The Petitioner put forth expert testimony that concluded that the R-O zone -- as a transitional zone -- should not be included as "any other owner's residential property line" and subject to the setback requirement of Section 426.6.A.1. In my Order dated January 25, 2008, I disagreed with the Petitioner's interpretation and found that Section 426.6.A.1 was implicated, and that the nearest owner's property line, zoned R-O, constituted a "residential

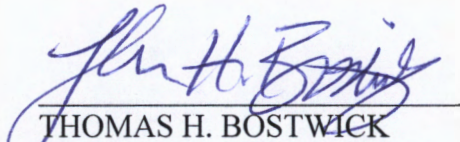
property line,” thus requiring a variance. I also concluded that variance relief was not warranted in that case.

In the instant matter, and using the same reasoning as the prior case, I do not believe the railroad property constitutes “any other owner’s residential property line” and shall deny People’s Counsel’s Motion as it pertains to that interpretation. Although residentially zoned, it is not a residential property line.

WHEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 13th day of January, 2011 that the aforementioned Motion for Reconsideration pertaining to adding a condition to the Order indicating the decision is limited to the particular circumstances of this case, be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that the Motion for Reconsideration is in all other respects be and is hereby **DENIED**.

Any appeal of this Decision must be filed within thirty (30) days from the date of this Order.


THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
S side of Ebenezer Road; 266 feet W of	*	DEPUTY ZONING
the c/l of Eastern Avenue		
15 th Election District	*	COMMISSIONER
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(6923 Ebenezer Road)	*	FOR BALTIMORE COUNTY
 JPH, LLC	*	
<i>Legal Owner</i>		
Tower Development Corporation	*	Case No. 2011-0079-SPHA
<i>Contract Lessee</i>	*	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by Phil Harris on behalf of the legal property owner, JPH, LLC, and R. Scott Cheek on behalf of the contract lessee, Tower Development Corporation, a subsidiary of Crown Castle USA, Inc. Petitioner is requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a telecommunications facility in a B.R. zoning district with a setback of 203 feet to the nearest residential property line as in compliance with Section 426.6.A.1 of the B.C.Z.R., and to determine that Section 426.6.A.1 does not require a 200 foot setback to a railroad property that is zoned D.R.5.5 and has no residences and cannot have any residences on it. Petitioner is also requesting Variance relief from Section 426.6.A.1 of the B.C.Z.R. only in the event that special hearing relief is not granted and it is found that Section 426.6.A.1 requires a 200 foot setback from a telecommunications facility to a railroad property that has no home upon it and cannot, in fact, have any home on it, but is nonetheless zoned D.R.5.5. The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioner's Exhibit 1.

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Date

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Appearing at the requisite public hearing in support of the requested relief were Hillorie Morrison with Network Building & Consulting, LLC, agent for Petitioner Tower Development Corporation and Gregory E. Rapisarda, Esquire, attorney for Petitioner. Also appearing in support of the requested relief was Michael McGarity with Daft McCune Walker, Inc. ("DMW"), the firm that prepared the site plan. There were no Protestants or other interested persons in attendance.

Testimony and evidence in the case was presented by way of a proffer from Petitioner's attorney, Mr. Rapisarda, and included the expert testimony of Mr. McGarity and Mr. Morrison, whose resumes were marked and accepted into evidence as Petitioner's Exhibits 3 and 4, respectively. As their resumes indicate, Mr. McGarity has a degree in civil engineering and has extensive experience with DMW in managing wireless telecommunications projects for numerous carriers. Ms. Morrison is a licensed attorney with a significant background in transportation and land planning, as well as site acquisition and development in the telecommunications industry. They were both accepted as experts in their respective fields.

The proffered testimony revealed that the subject property is rectangular, but somewhat irregular, shaped and consists of approximately 2.30 acres, more or less, zoned B.R. with a small portion zoned B.L. to the south. The property is located on the southwest side of Ebenezer Road, east of Strawberry Court, in the Chase/Middle River area of eastern Baltimore County, and is also situated parallel and just east of existing railroad tracks currently utilized by Amtrak. The property is currently improved with an existing large (100 feet by 80 feet) one-story warehouse building to the rear and a two-story building (30 feet by 40 feet) near the center of the property. The current use of the property is commercial/office/warehouse. Petitioner Tower Development Corporation is a subsidiary of Crown Castle USA, Inc., a company involved in the engineering, deployment, marketing, ownership, operation and leasing of shared wireless communication

sites. Tenants include every major wireless carrier, various state and federal government agencies, narrowband and broadband data service providers. The company's tower portfolio consists of over 22,000 towers in 92 of the top 100 U.S. markets.

At this juncture, Petitioner desires to lease a portion of the subject property for a proposed 60 foot by 60 foot telecommunications compound as delineated on the site plan. The plan calls for a 10 foot by 20 foot T-Mobile equipment pad and an 11.7 foot by 30 foot Verizon Wireless equipment shelter at the base of a proposed 170 foot tall monopole tower inside the fenced, graveled compound. A MESA cabinet, 10 foot backboard, and a transformer will be installed outside the compound. In addition, proposed Verizon Wireless antennas will be mounted to the tower at the centerline height of 166 feet and T-Mobile antennas will be mounted at a centerline height of 156 feet on the monopole.

The proposed tower as shown on the site plan is permitted as of right; however an issue has arisen with regard to the proximity of the tower to a residential zone line and interpretation of the B.C.Z.R. In particular, Section 426.6.A.1 of the B.C.Z.R. states that "[a] tower shall be set back at least 200 feet from any other owner's residential property line." That requirement is met without question at the north, south, and east side property lines. These areas are zoned B.L., B.R., B.M., and B.L.-A.S. and have various business and commercial uses throughout. The only issue is with the land to the west of the subject property and the site of the proposed tower. As shown on the site plan, that area is zoned D.R.5.5 and has predominantly residential uses. Located in between and along the subject property and the residentially zoned property is the railroad property that is approximately 120 feet wide. As labeled on the site plan, the B.R. zoning on the subject property side and the D.R.5.5 zoning on the residentially zoned side meet down the center of the railroad property. As also labeled on the site plan, the proposed telecommunications tower is located 142 feet from where the zoning changes from B.R. to

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D.R.5.5 at the center of the railroad property, and is 203 feet from the nearest residential property line located west of the tower, owned by Gary and Theresa Oakley at 6917 Ebenezer Road.

The issue, then, is what is the meaning within the Regulation of "at least 200 feet from any other owner's *residential property line*." (emphasis added). One could argue that "residential property line" means a residentially "zoned" property line, such as the adjacent D.R.5.5 Zone in this case. On that basis, the tower is only 142 feet from the adjacent D.R.5.5 Zone and this explains why Petitioner has requested the variance relief from Section 426.6.A.1 of the B.C.Z.R. in the alternative. On the other hand, Petitioner's experts and counsel assert that the meaning of "residential property line" means just what it says; that is, a property line that is not merely "zoned" residential, but that is actually "used" residential. Mr. Rapisarda argues that the plain meaning of the Regulation at issue is clear and that when the County Council enacted the Zoning Regulations, it specified when it meant a residential property line, as above, and when it meant a residential zone line. He pointed to Section 243.4 of the B.C.Z.R., which states that in the M.R. Zone, "[n]o building or other structure shall be closer than 125 feet at any point to the nearest boundary line of a *residential zone*." (emphasis added). In that section the Council specified "residential zone" because that is precisely what it meant to convey. In the instant matter, by specifying "residential property line" in Section 426.6.A.1 of the B.C.Z.R., the Council was more concerned with the location of a telecommunications tower being at least 200 feet from a residentially used property line than a residential zone line, and stated that clearly in the Regulation. Thus, Mr. Rapisarda requests that I confirm such an interpretation and approve the proposed telecommunications tower in a B.R. Zone with a setback of 203 feet to the nearest residential property line as being in compliance with Section 426.6.A.1 of the B.C.Z.R.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Department of Environmental

Protection and Resource Management dated October 12, 2010 which states that development of the property must comply with the Forest Conservation Regulations. Given that no forest exists on this commercially zoned site, 0.3 acre of afforestation must be addressed prior to issuance of any permit.

After due consideration of the testimony and evidence presented, I am persuaded to grant the special hearing relief requested. I agree with Petitioner's position that Section 426.6.A.1 of the B.C.Z.R. requiring that the proposed tower be at least 200 feet from any other owner's residential property line means, literally, a "residential property line" and does not mean in this instance a "residential zone line." In being proposed for a location 203 feet from another owner's residential property line, I find that Petitioner is in compliance with this Regulation, as delineated on the site plan. It is also noteworthy that in an Inter-Office Correspondence dated October 4, 2010, which was marked and accepted into evidence as Petitioner's Exhibit 5, the Tower Review Committee unanimously recommended approval of the proposed 170 foot tower and also found that the proposed location meets all of the requirements of Section 426 of the B.C.Z.R.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioner's special hearing should be granted. Having found in Petitioner's favor on the special hearing, it is not necessary to consider the variance request and it shall be dismissed as moot.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 24th day of November, 2010 that Petitioner's Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a telecommunications facility in a B.R. zoning district with a setback of 203 feet to the nearest residential property line as in compliance with section 426.6.A.1 of the B.C.Z.R., and to

ORDER RECEIVED FOR FILING

Date

By

determine that Section 426.6.A.1 does not require a 200 foot setback to a railroad property that is zoned D.R.5.5 and has no residences and cannot have any residences on it, be and is hereby **GRANTED**; and

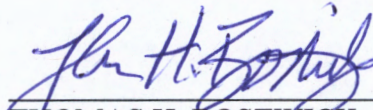
IT IS FURTHER ORDERED that Petitioner's Variance request from Section 426.6.A.1 of the B.C.Z.R., filed only in the event that special hearing relief is not granted and it is found that Section 426.6.A.1 requires a 200 foot setback from a telecommunications facility to a railroad property that has no home upon it and cannot, in fact, have any home on it, but is nonetheless zoned D.R.5.5, be and is hereby **DISMISSED AS MOOT**.

The relief granted herein is subject to the following conditions:

1. Petitioner is advised that it may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code). Given that no forest exists on this commercially zoned site, 0.3 acre of afforestation must be addressed prior to issuance of any permit.

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

Order.


THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

THOMAS H. BOSTWICK
Deputy Zoning Commissioner

November 24, 2010

GREGORY E. RAPISARDA, ESQUIRE
SAUL EWING LLP
LOCKWOOD PLACE
500 EAST PRATT STREET
BALTIMORE MD 21202

Re: Petition for Special Hearing and Variance
Case No. 2011-0079-SPHA
Property: 6923 Ebenezer Road

Dear Mr. Rapisarda:

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,

A handwritten signature in dark ink, appearing to read "THB", written over the printed name.

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

Enclosure

c: Phil Harris, JPH, LLC, 13128 Sylvan Avenue, Baltimore MD 21220
R. Scott Creek, NSD Real Estate and Zoning Manager, Tower Development Corporation,
2000 Corporate Drive, Canonsburg, PA 15317
Hillorie Morrison, NB&C, 7380 Coca Cola Drive #106, Hanover, MD 21076
Michael McGarity, DMW, Inc., 200 East Pennsylvania Avenue, Towson MD 21286
Jefferson Building | 105 West Chesapeake Avenue, Suite 103 | Towson, Maryland 21204 | Phone 410-887-3868 | Fax 410-887-3468
www.baltimorecountymd.gov



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 6923 Ebenezer Road Baltimore MD 21220
which is presently zoned BR

(This petition **must** be filed in person, in the zoning office, in triplicate, with original signatures.)

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
(This box to be completed by planner)

See attached description

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:

Tower Development Corporation, a Maryland Corporation
Name - Type or Print by Crown Castle USA INC., its Agent and Attorney in Fact
Signature R. Scott Cheek
R. Scott Cheek, NSD Real Estate and Zoning Manager
2000 Corporate Drive 724-416-2000
Address Telephone No.
Canonsburg PA 15317
City State Zip Code

Attorney For Petitioner:

Gregory E. Rapisarda, Esquire

Name - Type or Print Gregory E. Rapisarda
Signature [Signature]
Saul Ewing LLP
Company
Lockwood Place 500 East Pratt Street 410-332-8963
Address Telephone No.
Baltimore MD 21202
City State Zip Code

Legal Owner(s):

JPH, LLC

Name - Type or Print

Signature

Phil Harris

Name - Type or Print

Signature

13128 Sylvan Avenue

Address Telephone No.
Baltimore MD 21220
City State Zip Code

Representative to be Contacted:

Steve Weber - NB+C

Name
Coca Cola drive Suite 106 410-340-8754
Address Telephone No.
Hanover MD 21076
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING

Reviewed By D.T. Date 8/23/10

ORDER RECEIVED FOR FILING
Date 11-24-10
By Case No. 2011-0079-SPHA
REV 9/15/98

**Attached Description to Petition for Special Hearing
and/or, in the Alternative Petition for Variance
In re. 6923 Ebenezer Road, Baltimore Maryland 21220**

The Petition for Special Hearing:

Zoning Commissioner should approve "... a telecommunications facility in a BR zoning district with a setback of 203' to the nearest residential property line as in compliance with section 426.6.A.1, and determine that section 426.6.A.1 does not require a 200' setback to a railroad property that is zoned DR 5.5 and has no residences and cannot have any residences on it."

The Petition for Variance:

Variance from Section(s) "... 426.6.A.1, only in the event that special hearing relief is not granted and it is found that section 426.6.A.1 requires a 200' setback from a telecommunications facility to a railroad property that has no home upon it and cannot, in fact, have any home on it, but is nonetheless zoned DR 5.5."

Special circumstances and conditions exist at this property and are peculiar to the land and peculiar to the proposed structure (telecommunications facility) and in the event that it is determined that section 426.6.A.1 requires a 200' setback to the railroad property with no residential structures on it, because it is zoned DR 5.5, and strict compliance will result in practical difficulty and unreasonable hardship that will be detailed at the public hearing.



Petition for Variance

to the **Zoning Commissioner of Baltimore County** for the property
located at 6923 Ebenezer Road Baltimore MD 21220
which is presently zoned BR

Deed Reference: 22837/316 Tax Account # 1513007262

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)

See attached description

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

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:

Tower Development Corporation, a Maryland Corporation

Name - Type or Print : by Crown Castle USA INC., its Agent and Attorney in Fact

Signature R. Scott Cheek, NSD Real Estate and Zoning Manager

2000 Corporate Drive 724-416-2000

Address Telephone No.

Canonsburg PA 15317

City State Zip Code

Attorney For Petitioner:

Gregory E. Rapisarda, Esquire

Name - Type or Print

Signature

Saul Ewing LLP

Company

Lockwood Place 500 East Pratt Street 410-332-8963

Address Telephone No.

Baltimore MD 21202

City State Zip Code

Legal Owner(s):

JPH, LLC

Name - Type or Print

Signature

Phil Harris

Name - Type or Print

Signature

13128 Sylvan Avenue

443-844-5945

Address

Telephone No.

Baltimore

MD

21220

City

State

Zip Code

Representative to be Contacted:

Steve Weber

Name

Coca Cola drive Suite 106 410-340-8754

Address

Telephone No.

Hanover

MD

21076

City

State

Zip Code

Office Use Only

Case No. 2011-0079-SPHA

Estimated Length of Hearing _____
Unavailable For Hearing _____

Reviewed by D.T. Date: 8/23/10

REV 8/20/07

ORDER RECEIVED FOR FILING

Date 11-24-10

By DW

**Attached Description to Petition for Special Hearing
and/or, in the Alternative Petition for Variance
In re. 6923 Ebenezer Road, Baltimore Maryland 21220**

The Petition for Special Hearing:

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Variance from Section(s) "... 426.6.A.1, only in the event that special hearing relief is not granted and it is found that section 426.6.A.1 requires a 200' setback from a telecommunications facility to a railroad property that has no home upon it and cannot, in fact, have any home on it, but is nonetheless zoned DR 5.5."

Special circumstances and conditions exist at this property and are peculiar to the land and peculiar to the proposed structure (telecommunications facility) and in the event that it is determined that section 426.6.A.1 requires a 200' setback to the railroad property with no residential structures on it, because it is zoned DR 5.5, and strict compliance will result in practical difficulty and unreasonable hardship that will be detailed at the public hearing.



Description
To Accompany a Petition
For a Special Hearing
Ebenezer Road
Baltimore County, Maryland

Beginning for the same at a point distant 266', more or less; northwesternly along the centerline of Ebenezer Road measured from the intersection of the centerline of Eastern Avenue and the center line of Ebenezer Road said point of beginning also being the first or South 46 degrees 09 minutes West 382.10 feet line as described in a deed dated June, 3, 2003, conveyed by Fred Homan, director of Budget and Finance for Baltimore County and Collector of State and County Taxes for Baltimore County, to J P H, LLC., and recorded among the Land Records of Baltimore County in Liber S.M. 22837, Folio 316, Thence leaving said centerline of Ebenezer and running with and binding on the outlines of the abovementioned deed as now surveyed, and referring all courses of this description of the Maryland Coordinate System (NAD 83 1991) 1.) South 39 Degrees 16 minutes 55 seconds West 382.10 Feet; thence 2.) South 42 degrees 36 minutes 55 seconds West 43.48 feet, thence 3.) South 42 degrees 36 minutes 55 seconds West 190.00 feet; thence 4.) North 58 degrees 29 minutes 05 seconds West 148.99 feet, thence 5.) Northeasterly by a line curving to the left, having radius of 22,978.00 for a distance of 569.49 feet, (the arc of said curve being subtended by a chord bearing North 36 degrees 54 minutes 59 seconds East, 569.49 feet); thence 6.) South 70 degrees 28 minutes 05 seconds East

196.25 feet; to the Point of Beginning containing 100523 Square Feet, 2.308 Acres of land
more or less, as now surveyed by DMW in August, 2010.

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

August 12, 2010

Project No. 10036.A (L10036.A)



Michael D. Martin

8.12.10

January 7, 2011

Thomas H. Bostwick
Deputy Zoning Commissioner
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

RECEIVED

JAN 10 2011

ZONING COMMISSIONER

RE: Petition for Special Hearing and Variance
JPH, LLC, Legal Owner & Tower Development
Corporation, Contract Lessee – Petitioners
6923 Ebenezer Road
Case No. 2011-79-SPHA
Response to People's Counsel's Motion for Reconsideration

Dear Mr. Bostwick:

I am writing on behalf of my client, JPH, LLC (the "Petitioner") which is the owner and contract lessee of the Property located at 6923 Ebenezer Road, Baltimore Maryland, 21220 (the "Property"). This letter is a response to the Motion for Reconsideration (the "Motion") filed by the People's Counsel on December 16, 2010.

By way of background, in its Application, Petitioner requested that the Zoning Commissioner:

determine that a telecommunications facility in a BR zoning district with a setback of 203' to the nearest residential property line is in compliance with section 426.6.A.1, and determine that section 426.6.A.1 does not require a 200' setback to a railroad property that is zoned DR 5.5 and has no residences and cannot have any residences on it.

Petitioner also sought, in the alternative and in the event that the Zoning Commissioner ruled against the Special Hearing relief, a variance for the setback due to the existing special circumstances and conditions that are peculiar to the land and proposed telecommunications facility.

Saul Ewing LLP

500 East Pratt Street • Baltimore, MD 21202-3133 • Phone: (410) 332-8600 • Fax: (410) 332-8862

DELAWARE MARYLAND NEW JERSEY NEW YORK PENNSYLVANIA WASHINGTON, DC

A DELAWARE LIMITED LIABILITY PARTNERSHIP

A public hearing was held on November 3, 2010, to address the two petitions, and on November 24, 2010, you issued the Findings of Fact and Conclusions of Law (the "Decision"). The Decision granted the Special Hearing relief and held that a "203 feet [setback] to the nearest residential property line [is] in compliance with section 426.6.A.1 of the [Baltimore County Zoning Regulations] B.C.Z.R." In addition, the Decision "determine[d] that Section 426.6.A.1.1 does not require a 200 foot setback to a railroad property that is zoned D.R.5.5 and has no residences and cannot have any residences on it..." See Decision pp. 5-6. As a result of these findings, the request for a Variance in the alternative was dismissed as "moot."

The People's Counsel filed the Motion on December 16, 2010 and asks the Zoning Commissioner (1) to "condition[] and limit[] [the approval] so that it is effective only so long as the adjacent residentially zoned property is used for railroad purposes;" and (2) to "limit[] [the Decision] to the particular circumstances of this case [and] not extend [the Decision] to residentially zoned properties which are vacant or in other uses permitted in the residential zone or reasonably available for such uses."

Petitioner has no objection to adding a sentence to the Decision to clarify that the Decision is intended to only apply to a residentially zoned railroad and not to a residentially zoned vacant or similarly situated parcel. Petitioner, however, objects to other portions of the Motion as set forth below.

People's Counsel asserts that § 426.6.A.1. of the B.C.Z.R. broadened the scope of the setback requirement to include residential uses that may be on non-residentially zoned properties. See Motion p. 1, ¶ 2. The legislature's use of the words "200 feet from any other owner's residential property line" in § 426.6.A.1 of the B.C.Z.R., (emphasis added), highlight the legislative intent that the 200' setback should apply to a residential use -- as opposed to any specific zoning designation. In fact, the legislature left out all references to zoning classification in § 426.6.A.1., despite other provisions throughout the B.C.Z.R. that specifically require setbacks to specific zoning classifications. For example, and as referenced on p. 4 of the Decision, § 243.4 of the B.C.Z.R. prohibits any structure from being within 125' from "the nearest boundary line of a residential zone."

If the legislature's goal with § 426.6.A.1 was to create a required 200' setback to all residentially zoned properties and all non-residentially zoned properties with a residential use, then the legislature could and should have simply included that language. Instead, language that would support the People's Counsel's proposed interpretation was not used. Consequently, in the instant case where a railroad is split zoned, in part as a residential district, the underlying use dictates whether the 200' setback is applicable. In this case, the 200' setback is not applicable.

People's Counsel also requests that any approval be "conditioned and limited so that it is effective only so long as the adjacent residentially zoned property is used for railroad purposes." See Motion, p.1, ¶ 4. In essence, People's Counsel advocates a conditional approval that can be rescinded in the admittedly "unlikely" event that the railroad changes use in the future. See

Motion p. 1, ¶ 4. Such a conditional approval is unnecessary and would be inequitable to the Petitioner.

The Petitioner is entitled to a final decision now and any approval should not be conditioned upon the actions of a future theoretical residential landowner on the railroad property. In fact and law, any future landowner would be required to take the land as it exists – with a telecommunications facility on the adjoining lot. In the unlikely event that the railroad becomes a residential use, the telecommunications facility would be a non-conforming use. In the event that the Deputy Zoning Commissioner believes this issue should be reconsidered, Petitioner requests, as it presented at the public hearing, a variance in order to achieve the necessary security to allow it to invest and move forward with the project. Petitioner does not advocate for such a variance, but merely points out that it is more appropriate than the suggested conditional approval.

Finally, People's Counsel seeks a clarification that the approval be "limited to the particular circumstances of this case [and] not extend to residentially zoned properties which are vacant or in other uses permitted in the residential zone or reasonably available for such uses." See Motion p. 2, ¶ 1. Petitioner believes this is People's Counsel's underlying concern. Petitioner also believes that the Decision already addresses this concern.

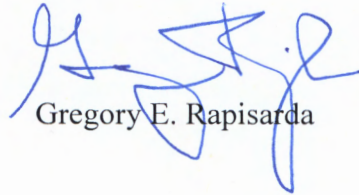
The Decision, on p. 5, provides that the Deputy Zoning Commissioner "agree[s] with Petitioner's position that Section 426.6.A.1. of the B.C.Z.R. require[s] that the proposed tower be at least 200 feet from any other owner's residential property line mean, literally, a 'residential property line and does not mean in this instance a 'residential zone line.'" (Emphasis added). In addition, the Order on page 6 of the Decision provides that "Section 426.A.1. does not require a 200 foot setback to a railroad property that is zoned D.R.5.5..." (Emphasis added). Furthermore, the Decision specifies that the railroad property "has no residences and cannot have any residences on it." (See Decision pp. 5-6, emphasis added). It is not possible that a vacant lot "cannot have residences on it."

In the event that provisions from the Decision noted above do not adequately address People's Counsel's concern, Petitioner will consent to adding language to your Decision that clarifies that the Decision applies only to a residentially zoned railroad and not to a residentially zoned vacant or similarly situated parcel.

Ultimately, Petitioner seeks a final determination that will allow the project to move forward as proposed and without delay. Consequently, and for the reasons stated above, Petitioner requests that the findings of fact and conclusions of law contained within the Decision be affirmed and, in an effort to address the People's Counsel's underlying concern, be clarified with a sentence that provides that the Decision is intended to apply to a residentially zoned railroad and not to a residentially zoned vacant or similarly situated parcel.

I am available if you have any questions or concerns and I thank you for your time and attention to this matter.

Yours truly,



Gregory E. Rapisarda

GER:lh

cc: Peter "Max" Zimmerman, Esquire



KEVIN KAMENETZ
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

January 13, 2011

GREGORY E. RAPISARDA, ESQUIRE
SAUL EWING LLP
LOCKWOOD PLACE
500 EAST PRATT STREET
BALTIMORE MD 21202

PETER MAX ZIMMERMAN
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
105 WEST CHESAPEAKE AVENUE
ROOM 204
TOWSON MD 21204

Re: Petition for Special Hearing and Variance
Order on Motion for Reconsideration
Case No. 2011-0079-SPHA
Property: 6923 Ebenezer Road

Dear Mr. Rapisarda:

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.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas H. Bostwick", is written over a horizontal line.

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

Enclosure



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

December 16, 2010

HAND-DELIVERED

Thomas H. Bostwick, Deputy Zoning Commissioner
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

RECEIVED

DEC 16 2010

ZONING COMMISSIONER

Re: PETITION FOR SPECIAL HEARING AND VARIANCE
JPH, LLC, Legal Owner & Tower Development
Corporation, Contract Lessee - Petitioners
6923 Ebenezer Road
Case No: 2011-79-SPHA

Dear Mr. Bostwick:

Please accept this letter as a Rule K Motion for Reconsideration of the Findings of Fact and Conclusions of Law, and Order dated November 24, 2010 in the above case.

In our view, the amendment of the BCZR Section 426.6.A.1 to provide a minimum setback of 200 feet from a residential property line instead of a residential zone line was intended to broaden the scope of coverage, so that other zones in residential use might also be covered. It was not intended to exclude residentially zoned properties simply because they are not currently in residential use. The designation of a residential zone indicates a legislative intent that the property be used residentially. In this connection, the language does not say "residentially used property line."

We understand that there may be room for debate. The present case is unusual because the adjacent residentially zoned property is in railroad use by Amtrak. While the Petitioners argue that the property cannot be used residentially, there is always the potential that a property in railroad use may change to some other use. Even though it appears unlikely the railroad use here will change any time soon, there are many examples in Baltimore County of abandonment of railroad lines.

Under these circumstances, we ask that the approval be conditioned and limited so that it is effective only so long as the adjacent residentially zoned property is used for railroad purposes. In the event (however unlikely) of any change to any other use, Petitioners should be required to file another petition for special hearing to determine whether the use can continue. Since the Petitioners seem confident that the adjacent property will never be used for any other purpose in the foreseeable future, they should have no objection to this limitation.

Thomas H. Bostwick, Deputy Zoning Commissioner

December 16, 2010

Page 2

We also ask that the decision be clarified so that the allowance is limited to the particular circumstances of this case. The decision does not extend to residentially zoned properties which are vacant or in other uses permitted in the residential zone or reasonably available for such uses.

For all these reasons, it appears that reconsideration is warranted, and that the approval should be conditionally limited to the duration of the railroad use of the adjacent property. We would be interested in reviewing any response by Petitioners to the aforementioned concerns.

Sincerely,



Peter Max Zimmerman

People's Counsel for Baltimore County

cc: Gregory Rapisarda, Esquire



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

11-3 *LM*
JOHN J. HOHMAN, Chief
Fire Department

September 1, 2010

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

ATTENTION: Zoning Review

Distribution Meeting of: August 30, 2010

Item No.:

Administrative Variance: 2011-0073A

Variance: 2011-0026SPHXA, 2011-0074A – 0078A, 2011-0079SPHA, 2011-0081SPHA,
2011-0082A

Special Exception: 2011-0026SPHXA

Special Hearing: 2011-0026SPHXA, 2011-0079SPHA, 2011-0080SPH,, 2011-0081SPHA

Pursuant to your request, the referenced plans have been reviewed by the **Baltimore County Fire Marshal's Office** and the comment below is applicable for the above listed properties.

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

Don W. Muddiman, Acting Lieutenant
Baltimore County Fire Marshal's Office
700 E. Joppa Road, 3RD Floor
Towson, Maryland 21286
Office: 410-887-4880
Mail Stop 1102
cc: File



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

October 27, 2010

Gregory Rapisarda
500 E. Pratt St.
Baltimore, MD 21202

Dear: Gregory Rapisarda

RE: Case Number 2011-0079-SPH, 6923 Ebenezer Rd.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on August 23, 2010. This letter is not an approval, but only a **NOTIFICATION**.

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:lnw

Enclosures

c: People's Counsel
R. Scott Cheek; 2000 Corporate Dr.; Canonsburg, PA 15317
JPH, LLC; 13128 Sylvan Ave.; Baltimore, MD 21220
Steve Weber; Coca Cola Dr. Ste. 106; Hanover, MD 21076

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

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

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

SUBJECT: Zoning Advisory Committee Meeting
For September 13, 2010
Item Nos. 2011- 026, 073, 076, 077,
078, 079, 081 and 082

DATE: September 7, 2010

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

DAK:CEN:cab

cc: File

G:\DevPlanRev\ZAC -No Comments\ZAC-09132010 -NO COMMENTS.doc



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

September 1, 2010

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

ATTENTION: Zoning Review

Distribution Meeting of: August 30, 2010

Item No.:

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2011-0082A

Special Exception: 2011-0026SPHXA

Special Hearing: 2011-0026SPHXA, 2011-0079SPHA, 2011-0080SPH,, 2011-0081SPHA

Pursuant to your request, the referenced plans have been reviewed by the **Baltimore County Fire Marshal's Office** and the comment below is applicable for the above listed properties.

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

Don W. Muddiman, Acting Lieutenant
Baltimore County Fire Marshal's Office
700 E. Joppa Road, 3RD Floor
Towson, Maryland 21286
Office: 410-887-4880
Mail Stop 1102
cc: File



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

Beverly K. Swalm-Staley, Secretary
Neil J. Pedersen, Administrator

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: SEPT. 13, 2010

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

RE: Baltimore County
Item No. 2011-0079-SPHA
6923 EBENEZER RD
JPH, LLC PROPERTY
SPECIAL HEARING -

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 2011-0079-SPHA.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-5593 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,

For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/mb

IN RE: PETITIONS FOR SPECIAL HEARING, *	BEFORE THE
SPECIAL EXCEPTION & VARIANCE	
N/S Black Friars Road, 48' E of *	ZONING COMMISSIONER
Chesworth Road	
(1315 Black Friars Road) *	OF
1 st Election District *	BALTIMORE COUNTY
1 st Council District *	
Westview Swimming Club, Inc., <i>Legal Owner</i>	
T-Mobile Northeast, LLC, <i>Contract Lessee</i> *	Case No. 2009-0161-SPHXA
Petitioners *	

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing, Special Exception, and Variance filed by the owner of the subject property, Westview Swimming Club, Inc., and T-Mobile Northeast, LLC (Petitioner or T-Mobile), Contract Lessee, of a portion of the property located at 1315 Black Friars Road in the Catonsville area of Baltimore County. Petitioner requests a special hearing to confirm (1) that the property meets the 3 acre requirement in Baltimore County Zoning Regulations B.C.Z.R. Section 426.9.C.2; (2) that the 30' rear yard setback requirement in Section 1B01.2.C.1(a) does not apply because the rear yard abuts the Baltimore Beltway - Interstate 695 (I-695); (3) that the tower/facility is distinct and separate from any existing use, and can under B.C.Z.R. Section 102.2 share yard space with the concession pavilion and swimming pool; and (4), that these existing uses operated by the swim club are nonconforming. Petitioner also requests special exception approval pursuant to Sections 1B01.1.C(24), 426 and 502.1 of the (B.C.Z.R.) for a wireless telecommunications tower/facility compound to be located on the Westview Swimming Club property. In the event I determine that any of the special hearing relief requested above

PETITIONER' S

EXHIBIT NO. 2

APK, LLC / Tower
CASE NAME Development Corporation
CASE NUMBER 2011-0079-SPHA
DATE 11-3-10

[illegible]

TB 11-3 9am

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: September 14, 2010

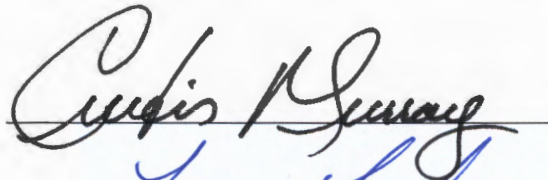
FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): **Case(s) 11-079- Variance and Special Hearing**

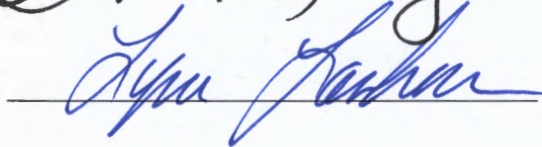
The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

For further questions or additional information concerning the matters stated herein, please contact Laurie Hay in the Office of Planning at 410-887-3480.

Prepared By:



Division Chief:
CM/LL



RECEIVED

SEP 17 2010

ZONING COMMISSIONER

TB
11-3-10
9AM

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



RECEIVED

OCT 12 2010

ZONING COMMISSIONER

TO: Timothy M. Kotroco
FROM: Dave Lykens, DEPRM - Development Coordination
DATE: October 12, 2010
SUBJECT: Zoning Item # 11-079-SPHA
Address 6923 Ebenezer Road
(JPH, LLC)

Zoning Advisory Committee Meeting of August 30, 2010.

X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

X Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

Given that no forest exists on this commercially zoned site, 0.3 acre of afforestation must be addressed prior to issuance of any permit.

Reviewer: Glenn Shaffer Date: September 7, 2010



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

October 27, 2010

Gregory Rapisarda
500 E. Pratt St.
Baltimore, MD 21202

Dear: Gregory Rapisarda

RE: Case Number 2011-0079-SPH, 6923 Ebenezer Rd.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on August 23, 2010. This letter is not an approval, but only a **NOTIFICATION**.

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:lnw

Enclosures

c: People's Counsel
R. Scott Cheek; 2000 Corporate Dr.; Canonsburg, PA 15317
JPH, LLC; 13128 Sylvan Ave.; Baltimore, MD 21220
Steve Weber; Coca Cola Dr. Ste. 106; Hanover, MD 21076

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: September 14, 2010

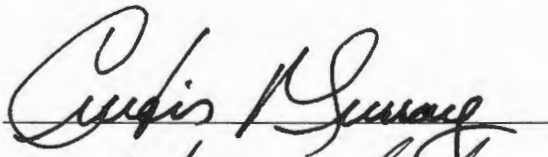
FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): **Case(s) 11-079- Variance and Special Hearing**

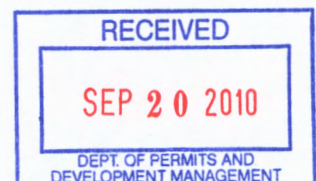
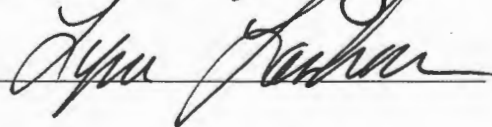
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For further questions or additional information concerning the matters stated herein, please contact Laurie Hay in the Office of Planning at 410-887-3480.

Prepared By:



Division Chief:
CM/LL



BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

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

FROM: Dennis A. Kennedy^{DM}, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For September 13, 2010
Item Nos. 2011- 026, 073, 076, 077,
078, 079, 081 and 082

DATE: September 7, 2010

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

DAK:CEN:cab

cc: File

G:\DevPlanRev\ZAC -No Comments\ZAC-09132010 -NO COMMENTS.doc



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

September 1, 2010

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

ATTENTION: Zoning Review

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Item No.:

Administrative Variance: 2011-0073A

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2011-0082A

Special Exception: 2011-0026SPHXA

Special Hearing: 2011-0026SPHXA, 2011-0079SPHA, 2011-0080SPH,, 2011-0081SPHA

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

Don W. Muddiman, Acting Lieutenant
Baltimore County Fire Marshal's Office
700 E. Joppa Road, 3RD Floor
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Office: 410-887-4880
Mail Stop 1102

cc: File



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

Beverly K. Swalm-Staley, Secretary
Neil J. Pedersen, Administrator

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: SEPT. 13, 2010

Ms. Kristen Matthews
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County Office Building, Room 109
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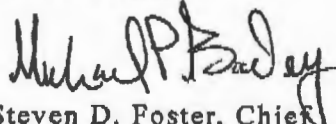
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6923 EBENEZER RD
JPH, LLC PROPERTY
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Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-5593 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,


For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/mb

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
6923 Ebenezer Road; S/S Ebenezer Road,	*	ZONING COMMISSIONER
266' W c/line of Eastern Avenue		
15 th Election & 6 th Councilmanic Districts	*	FOR
Legal Owner(s): JPH, LLC		
Contract Purchaser(s): Tower Development	*	BALTIMORE COUNTY
Corporation, a Maryland Corporation		
Petitioner(s)	*	2011-079-SPHA

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party 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 and all 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
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED

SEP 08 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of September, 2010, a copy of the foregoing Entry of Appearance was mailed to Steve Weber, Coca Cola Drive, Suite 106, Hanover, MD 21076 and Gregory Rapisarda, Esquire, Saul Ewing LLP, 500 Pratt Street, Baltimore, MD 21202, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

CERTIFICATE OF POSTING

2011-0079-SPHA

RE: Case No.: _____

Petitioner/Developer: _____

Tower Development Corp, Crown
Crown Castle, USA

Nov. 3 2010

Date of Hearing/Closing: _____

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

Attn: Kristin Matthews:

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____
6923 Ebenezer Road

October 19 2010

The sign(s) were posted on _____
(Month, Day, Year)

Sincerely,

Robert Black October 21 2010
(Signature of Sign Poster) (Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)



ZONING NOTICE
CASE #20110079 SPHA
A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

PLACE: 1000 E. LUTHER AVE. TOWSON, MD 21204
DATE AND TIME: Wednesday, June 1, 2011 at 7:00 PM
REQUEST: Change from R-1 to R-2 Single-Family Residential
The applicant, Mr. [Name], is requesting a change from R-1 to R-2 Single-Family Residential. The property is located at 1000 E. Luther Ave. The property is currently zoned R-1 and the applicant is requesting a change to R-2. The change is being requested because the property is currently zoned R-1 and the applicant is requesting a change to R-2. The change is being requested because the property is currently zoned R-1 and the applicant is requesting a change to R-2.

ZONING NOTICE
CASE #20110079 SPHA
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BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
September 28, 2010
Development Management

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: 2011-0079-SPHA

6923 Ebenezer Road

S/side of Ebenezer Road, 266 feet west of the centerline of Eastern Avenue

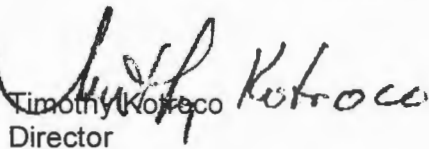
15th Election District – 6th Councilmanic District

Legal Owners: JPH, LLC

Contract Purchaser: Tower Development Corp., Crown Castle USA, Inc.

Special Hearing for a telecommunication facility in a BR zoning district with a setback of 203 feet to the nearest residential property line as in compliance with section 426.6.A.1 and determine that section 426.6.A.1 does not require a 200 feet setback to a railroad property that is zoned DR-5.5 and has no residences and cannot have any residences on it. Variance only in the even that Special Hearing relief is not granted and its found that section 426.6.A.1 requires a 200 feet setback from a telecommunications facility to a railroad property that has no home upon it and cannot, in fact, have any home on it, but is nonetheless zoned DR-5.5. Special circumstances and conditions exist at this property and are peculiar to the land and to the proposed structure (telecommunications facility) and in the event, that it is determined that Section 426.6.A.1 requires a 200 ft. setback to the railroad property with no residential structure on it, because it is zoned DR-5.5 and strict compliance will result in practical difficulty and unreasonable hardship that will be detailed at the public hearing.

Hearing: Wednesday, November 3, 2010 at 9:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204


Timothy M. Kotroco
Director

TK:kl

C: Gregory Rapisarda, 500 East Platt St., Baltimore 21202
R. Scott Cheek, 2000 Corporate Drive, Canonsburg PA 15317
JPH, LLC, 13128 Sylvan Avenue, Baltimore 21220
Steve Weber, Coca Cola Drive, Ste. 106, Hanover 21076

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, OCTOBER 19, 2010.**
- (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.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, October 19, 2010 Issue - Jeffersonian

Please forward billing to:

Gregory Rapisarda
Saul Ewing LLP
500 E. Pratt Street, Lockwood Place
Baltimore, MD 21202

410-332-8963

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: 2011-0079-SPHA

6923 Ebenezer Road

S/side of Ebenezer Road, 266 feet west of the centerline of Eastern Avenue

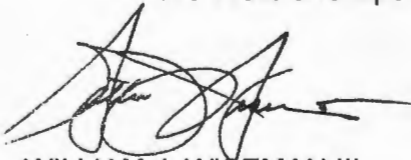
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Hearing: Wednesday, November 3, 2010 at 9:00 a.m. in Room 104, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Saul Ewing
LLP

Gregory E. Rapisarda
Phone: (410) 332-8963
Fax: (410) 332-8155
GRapisarda@saul.com
www.saul.com

August 19, 2010

VIA FEDERAL EXPRESS

Baltimore County Zoning Review
ATTN: Donna Thompson
111 West Chesapeake Avenue
Room 111
Towson, Maryland 21204

RE: Follow-up to Filing Appointment for Petition for Special Hearing
and/or in the Alternative, Variance Relating to 6923 Ebenezer Road,
Baltimore, Maryland 21220 Held on August 18, 2010

Dear Donna:

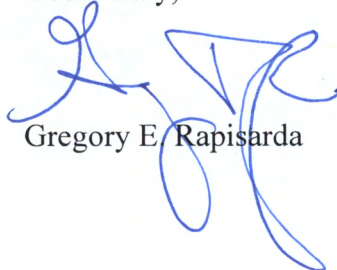
It was great meeting you yesterday morning and I appreciate your time in reviewing our application. As we discussed, enclosed please find three original Petitions for Special Hearing and three original Petitions for a variance with the attached description.

In addition, please find two checks in the amount of \$250.00 each from STC Netcom, Inc. made payable to the Finance Director of Baltimore County and one check from Saul Ewing in the amount of \$150.00. All three checks should cover the filing fee amount of \$650.00.

These items, when combined with the twelve original full size plats, the three zoning descriptions, and the zoning map that I left with you complete the application package that we discussed this morning.

Please let me know if you have any questions or concerns, and please advise when you are able to schedule a hearing date.

Yours truly,



Gregory E. Rapisarda

GER:lh
Enclosures

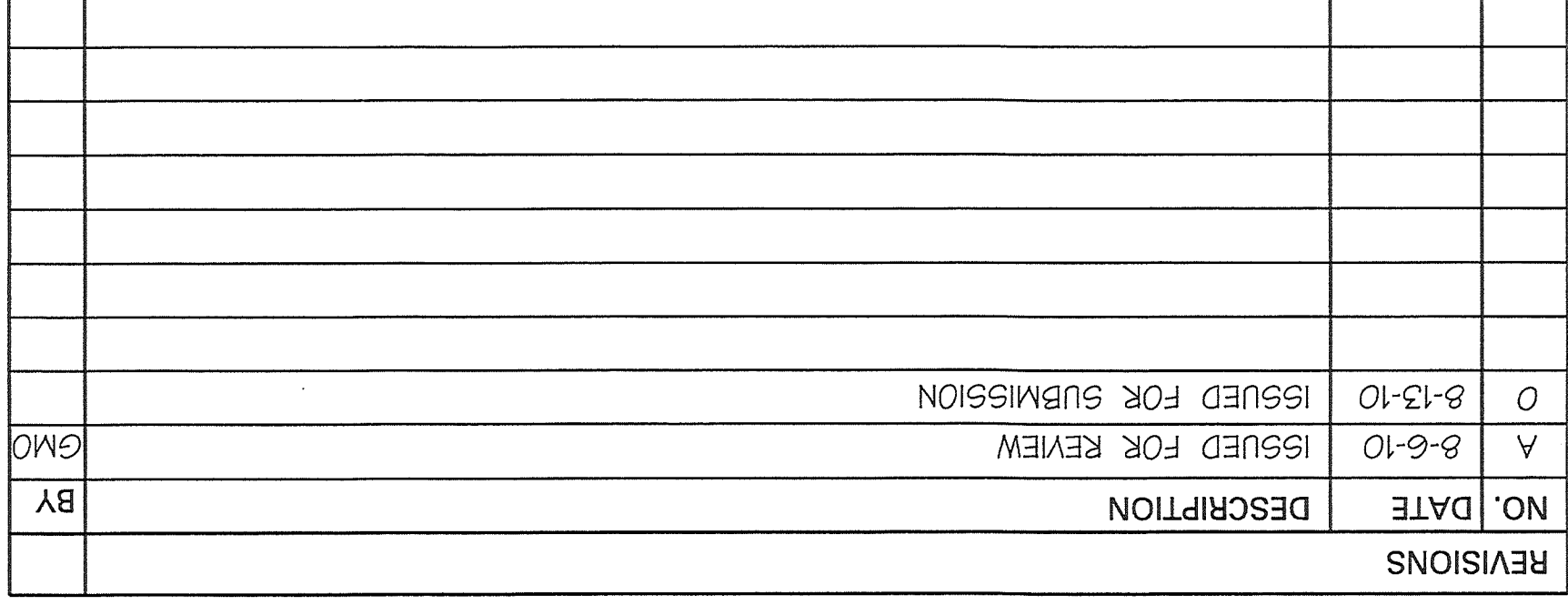
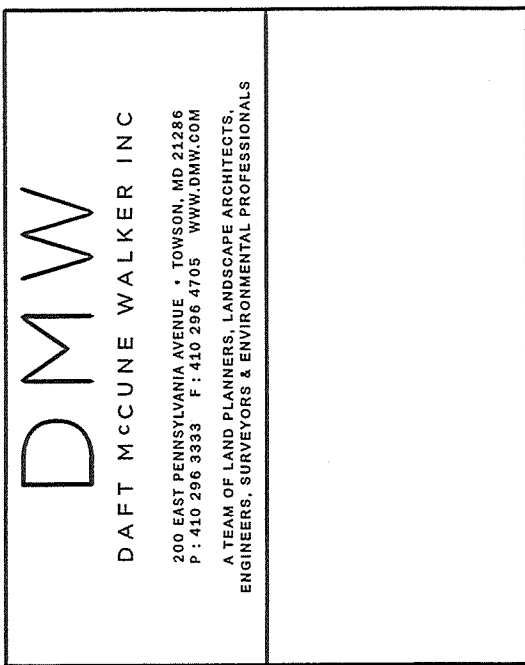
Saul Ewing LLP

500 East Pratt Street ♦ Baltimore, MD 21202-3133 ♦ Phone: (410) 332-8600 ♦ Fax: (410) 332-8862

DELAWARE MARYLAND NEW JERSEY NEW YORK PENNSYLVANIA WASHINGTON, DC

A DELAWARE LIMITED LIABILITY PARTNERSHIP





P:\10036\ENGR\10036.Z1 Fri Aug 13 09:17:14 2010



GENERAL NOTES

- # ZONING HISTORY

3808 Petition that the zoning status of the property be re-classified, pursuant to the Zoning Law of Baltimore County, from _____ on P.C. case to a BP zone

Petition was GRANTED, July 9, 1956

83-285-A Petition for Variance to permit parking, maneuvering means and driveways to be moved with crusher run in

lieu of the required macadam, tar and chip, etc.

Petition was DENIED, August 1, 1983

Other than electrical, plumbing, tank or razing permits, there are no building permits on the property.

MONOPOLE SETBACKS

	REQUIRED	PROVIDED
FRONT	25'	60'±
SIDE	30'	83'±
SIDE	30'	91'±
REAR	30'	486'±
SECTION 426.6.A.1	200'	203'±

LEGEND

[illegible]

MONOPOLE ELEVATION

NOT TO SCALE