

**STANDARD APPLICATION**  
**Harford County**  
**Board of Appeals**  
 Bel Air, Maryland 21014

RECEIVED  
 HARFORD COUNTY COUNCIL  
 JUN 22 2020  
 ZONING BOARD OF APPEALS  
 HARFORD COUNTY, MD

Case No. 5932  
 Date Filed 6/22/20  
 Hearing Date \_\_\_\_\_  
 Receipt \_\_\_\_\_  
 Fee \$400.00  
 Type Modification

**Information to be Submitted with Application**

1. A plot plan drawn to scale indicating all pertinent data.
2. A list of all adjoining property owners with mailing addresses.
3. Names and addresses of all persons having legal or equitable interest in the property.
4. All required supporting documentation or additional studies as may be required; including traffic and environmental studies, etc.

**NOTE:**

All applicants **MUST** schedule a pre-application meeting with the Department of Planning and Zoning prior to filing any application to the Board of Appeals.

To schedule please call **410-638-3119**.

*Shaded areas for Office Use Only*

**Nature of Request and Section(s) of Code**

CASE 5932 MAP 36 TYPE Modification  
ELECTION DISTRICT 02 TAX ID 02-096919  
LOCATION 3633 Level Village Road, Havre de Grace 21078  
BY Level Volunteer Fire Department  
Appealed because a modification of the Hearing Examiner's Decision in Case No. 5295 to extend the height of an existing monopole by 15 feet in the B2 district requires approval by the Board

**Owner (please print or type)**

Name Level Volunteer Fire Department Phone Number \_\_\_\_\_

Address 3633 Old Level Road, Havre De Grace, MD 21078  
Street Number Street City State Zip Code

Co-Applicant American Tower Corp. and Verizon Wireless Phone Number \_\_\_\_\_

Address 10 Presidential Way, Woburn, MD 01801  
Street Number Street City State Zip Code

Contract Purchaser \_\_\_\_\_ Phone Number \_\_\_\_\_

Address \_\_\_\_\_  
Street Number Street City State Zip Code

Attorney/Representative NB+C, Alexandra Bull Phone Number 443-605-6312, abull@nbcllc.com

Address 6095 Marshalee Drive, Suite 300, Elkridge, MD 21075  
Street Number Street City State Zip Code

**Land Description**

Address and Location of Property 3633 Level Village Road, Havre De Grace, MD 21078

Subdivision \_\_\_\_\_ Lot Number 1

Acreeage/Lot Size 7.980 Election District 02 Zoning B-2 Tax ID # 096919

Tax Map No. 0036 Grid No. 004D Parcel 0080 Water/Sewer: Private \_\_\_\_\_ Public \_\_\_\_\_

List ALL structures on property and current use: Existing fire station and telecommunication tower facility

Estimated time required to present case: \_\_\_\_\_

If this Appeal is in reference to a Building Permit, state number \_\_\_\_\_

Would approval of this petition violate the covenants and restrictions for your property? Yes \_\_\_\_\_ No X

Is this property located within the County's Chesapeake Bay Critical Area? Yes \_\_\_\_\_ No X

If so, what is the Critical Area Land Use designations: \_\_\_\_\_

Is this request the result of a zoning enforcement investigation? Yes \_\_\_\_\_ No X

Is this request within one (1) mile of any incorporated town limits? Yes \_\_\_\_\_ No X

**Request**

Modify previous Special Exception, BOA Case Number 5295, to extend the height of an existing monopole by 15 feet.

**Justification**

Please see attached.

*If additional space is needed, attach sheet to application. In answering the above questions, please refer to the Requirements that pertain to the type of approval request. (Special Exception, Variance, Critical Area or Natural Resource District (NRD) Variance, etc.)*

## Zoning Code Requirements

### Appeal from Administrative Decision/Interpretation Requirements (Article 267-7A)

- (6) Render a final written determination, within 45 calendar days of the written request, of whether a proposed use is permitted in a particular zoning district, or whether a proposed use is a legal nonconforming use upon written request of any person. The Director of Planning may determine a materially similar use exists, based on the North American Industrial Classification System (NAICS). The final written determination of the Director of Planning shall be subject to appeal to the Board by the applicant within 20 calendar days of the date of the decision.

### Variance Requirements (Article 267-11)

- (A) Variances from the provisions or requirements of this Code may be granted if the Board finds that:
- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of the Code would result in practical difficulty or unreasonable hardship; and
  - (2) The variance will not be substantially detrimental to adjacent properties, or will not materially impair the purpose of this Code or the public interest.

*(The Board may impose such conditions as it deems necessary in each particular case. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Code.)*

### Special Overlay District Requirements (Article 267-62)

#### (E) Natural Resources District

**Variances.** The Board may grant a variance to Subsection C or D upon a finding by the Board that the proposed development has been designed to minimize adverse impacts to the Natural Resources District to the greatest extent possible. Prior to rendering approval, the Board shall request advisory comments from the Director of Planning, the Soil Conservation District and the Maryland Department of the Environment.

### Chesapeake Bay Critical Area Overlay District (Article 267-63)

- (1) Variances from the provisions of this section may only be granted if, due to special features of a site or other circumstances, implementation of this section or a literal enforcement of its provisions would result in unwarranted hardship to an applicant.
- (2) All applications for variances shall be reviewed by the Director of Planning for conformance with applicable provisions of this section, and a written report shall be provided to the Board of Appeals.
- (3) In granting a variance, the Board shall issue written findings demonstrating that the requested approval complies with each of the following conditions:

- (a) That special conditions or circumstances exist that are peculiar to the land or structure within the County's Critical Area, and a literal enforcement of the Critical Area Program would result in an unwarranted hardship.
  - (b) That a literal interpretation of the provisions of this section will deprive the applicant of rights commonly enjoyed by other properties in similar geographic and land use management areas within the Critical Area.
  - (c) That the granting of a variance will not confer upon the applicant any special privilege that would be denied by this section to other lands or structures within the Critical Area.
  - (d) That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.
  - (e) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and the granting of the variance will be in harmony with the purpose and intent of this section.
  - (f) That all identified habitat protection areas on or adjacent to the site have been protected by the proposed development and implementation of either on-site or off-site programs.
  - (g) That the growth allocation for the County will not be exceeded by the granting of the variance.
  - (h) That the variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of the Code or the public interest.
- I. Special exceptions. All projects requiring approval as special exceptions within the Critical Area must meet the standards of this section. The Director of Planning may require such additional information, studies or documentation deemed necessary to ensure that applicable requirements of this district are met. Applications will not be considered complete for processing until all information as required by the Director of Planning has been received.

**Change/Extension of Non-Conforming Use Requirements**

267-20(3) - When authorized by the Board, one nonconforming use may be substituted for another nonconforming use.

267-21(d) - The Board may authorize the extension or enlargement of a nonconforming use, with or without conditions, provided that:

- (A) The proposed extension or enlargement does not change to a less restricted and more intense use.
- (B) The enlargement or extension does not exceed 50% of the gross square footage in use at the time of the creation of the nonconformity.

**Special Exceptions Requirements (Article 267-87)**

(a) Special exceptions require the approval of the Board of Appeals in accordance with 267-9 (Board of Appeals). The Board may impose such conditions limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Code and the public health, safety and welfare.

(b) A special exception grant or approval shall be limited to the Site Plan approved by the Board. Any substantial modification to the approved Site Plan shall require further Board approval.

(c) Extension of any use or activity permitted as a special exception shall require further Board approval.

(d) The Board may require a bond, irrevocable letter of credit or other appropriate guarantee as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.

(e) In the event the development or use is not commenced within 3 years from date of final decision, after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Director of Planning shall have the authority to extend the approval for an additional 12 months or any portion thereof. (See Article 267-88 for specific requirements of Special Exception uses.)

I/We agree to provide additional information as requested by the Department of Planning and Zoning or the Hearing Examiner.

I/We do hereby declare that no officer or employee of Harford County, whether elected or appointed, has received prior hereto or will receive subsequent hereto any monetary or material consideration, any service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally in connection with the submission, processing, issuance, grant or award of the within application or petition.

I/We do solemnly declare and affirm under the penalties of perjury that this petition contains names and addresses of all persons having legal or equitable interest in the property, including shareholders owning more than five percent (5%) of the stock in a corporation having any interest in the property, except those corporations listed and traded on a recognized stock exchange.

I/We do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavit are true and correct to the best of my/our knowledge, information and belief.

I/We agree, upon final action, to comply with all requirements or conditions imposed by the Board.

See attached authorization  
\_\_\_\_\_  
Signature of Owner Date

\_\_\_\_\_  
Witness Date


See attached authorization  
\_\_\_\_\_  
Signature of Co-Applicant Date

\_\_\_\_\_  
Witness Date

 5/28/20  
\_\_\_\_\_  
Signature of Attorney/Representative Date

 5-28-20  
\_\_\_\_\_  
Witness Date

\_\_\_\_\_  
Director of Planning and Zoning Date

 6-22-20  
\_\_\_\_\_  
Zoning Staff Date

**Verizon Wireless – Site Name: Garland**

3633 Level Village Road  
Havre De Grace, MD 21078

PROJECT DESCRIPTION

The proposed Verizon Wireless (VZW) installation will consist of a 15' extension to an existing 114' American Tower monopole, resulting in a new tower height of 129'. VZW proposes to install a total of six panel antennas at a centerline height of 129', the resulting tip height of the antennas will be 133'. VZW will utilize the existing equipment compound related equipment cabinets on a proposed concrete pad, on grade. to install an equipment pad on grade.

In order to utilize this existing tower, VZW must extend the height. There are currently four existing carriers located on this structure. As a result, the highest available location for new antennas would be a centerline mount height of 76'. As shown on the provided photo simulations, antennas installed below the existing carriers would be located below surrounding tree line. Verizon Wireless has also provided propagation maps showing the proposed propagation at the available height of 76' and the proposed height of 129' in order to demonstrate the insufficient coverage at the lower height.

The existing monopole was originally approved by Special Exception through Zoning Case #5295 in January of 2003. Due to the increase in height, a Special Exception Amendment is being requested.

JUSTIFICATION STATEMENT

[Please note that **Section 267-95** (Communications Towers), **Section 267-96** (Provisions Applicable To All Communications Towers), **Section 267-97** (Additional Special Exception Requirements), and **Section 267-98** (Additional Provisions Applicable to Proposed Sitings in RR, R1, R2, R3, R4, RO, VR, VB, B1 and B2 Districts) of the Harford County Zoning Ordinances are listed below in bold. *Applicant responses* to each subsection are shown in italics.]

**§ 267-95. Communications Towers.** [Amended by Bill 17-18, As Amended]

- A. **Communications towers shall be allowed by right, up to 199 feet, in the B3, CI, LI, GI and MO districts.**  
*Not Applicable.*
  
- B. **A communications tower shall be allowed by right within an existing overhead transmission line right-of-way provided that the height of the communications tower does not exceed the height of the existing structure by more than 20%.**  
*Not Applicable.*
  
- C. **Communications towers shall be allowed by special exception, up to 199 feet, in all other districts.**  
*The proposed height will not exceed 199 feet.*

**§ 267-96. Provisions Applicable To All Communications Towers.** [Amended by Bill 17-18, As Amended]

- A. All communications towers shall be structurally designed to accommodate for colocation, which shall mean the ability of the structure to allow for the placement of antennas for 3 or more carriers. This provision may be waived by the approving body if it is determined that a co-location design will have an adverse impact on the surrounding area.**  
*The subject tower is an existing structure with four carries currently installed. The addition of a 15ft extension will allow for the structure to accommodate Verizon Wireless in addition to the existing carriers.*
- B. No aviation-related lighting shall be placed upon any communications tower unless specifically required by the Federal Aviation Administration or other governmental entity.**  
*No aviation related lighting is requested or proposed, a No Hazard Determination Letter from the Federal Aviation Administration has been included with this submission.*
- C. Monopoles shall be the preferred communications tower structure type within the County.**  
*The subject tower is an existing monopole.*
- D. To the extent practical, communication towers shall have suitable landscaping in order to buffer the site from adjoining properties.**  
*The existing monopole is location is surrounded by mature trees on three sides which provides a buffer between the tower facility and the adjoining properties.*
- E. The only signage permitted on any communications tower shall be a single sign, no larger than 6 square feet, affixed to the equipment building or fence enclosure that identifies the tower owner, each locating provider and the telephone number for the person to contact in the event of an emergency.**  
*Applicant will comply with the signage regulations.*
- F. All zoning certificate applications for the construction of new communications towers shall be subject to the Development Advisory Committee (DAC) review process, with the following additional requisites:**

  - 1. Whether an applicant has satisfied the radio frequency need requirements identified in this section shall be reviewed by a radio frequency engineer. The engineer shall be retained by the County from an approved panel of such engineers to be created and maintained by the County. The engineer shall determine whetherSec the applicant has shown a radio frequency need, based on coverage and/or capacity issues or other engineering requisites, to construct a new communications tower.**  
*Applicant acknowledges this requirement.*
  - 2. When the communications tower is permitted by right, the engineer's determination shall be made in the ordinary course of DAC review.**  
*Not Applicable.*
  - 3. When the communications tower is allowed by special exception, the County's radio frequency engineering review shall be made in connection with the staff report review pursuant to Chapter A274-1.D of the Harford County Code, as**

amended. Such review will be completed prior to any zoning hearing and will preclude further DAC review of radio frequency issues.

*Applicant acknowledges this requirement.*

4. **The County's radio frequency engineer shall ensure that any new tower does not interfere with or obstruct existing or proposed communications towers designed for public safety use.**

*Applicant acknowledges this requirement.*

- G. **The applicant shall be responsible for maintaining the communications tower in a safe condition.**

*The applicant agrees to continue to maintain the tower in safe working conditions.*

- H. **Communications towers shall be utilized continuously for wireless communications. In the event that a communications tower ceases to be used for wireless communications for a period of 6 months, the approval will be revoked. In the event that the Director of Planning is presented with evidence that further viability of the tower is imminent, the Director of Planning may grant 1 extension of the approval for a period not to exceed 6 months beyond the revocation of the use. The applicant shall take all necessary steps to dismantle the tower and remove and dispose of all visible remnants and materials from the subject parcel within 90 calendar days after termination. The applicant shall ensure removal of the tower and all associated accessory structures by posting an acceptable monetary guarantee with the County on forms provided by the Department of Planning and Zoning. The guarantee shall be submitted prior to the issuance of a building permit and shall be for an amount equal to a cost estimate approved by the Director of Planning for the removal of the tower, plus a 15% contingency.**

*Applicant complied with this provision during the initial construction of the of monopole (Zoning Case Number 5295).*

- I. **Every application for the construction of a new communications tower shall include the following:**

1. **Information demonstrating the applicant's radio frequency need for the facility, including computer modeling information, an explanation as to why co-location is not feasible and a list of alternative sites considered;**

*Verizon Wireless proposes to collocate on an existing monopole.*

2. **A checklist prepared, in conformity with Section 106 of the National Environmental Policy Act, and any other documents filed by the applicant with the FCC related to this site if requested by the Department;**

*The existing facility is in compliance with Section 106 of the National Environmental Policy Act. During the initial approval process for this monopole, the NEPA height allowance was 144', which is greater than the proposed height.*

3. **A Site Plan, including the layout of the site, a drawing or other physical depiction of the proposed communications tower and any equipment buildings, and a map showing the area within a 1 mile radius of the tower;**

*Site plan drawings and maps have been included with this submission. There are no existing towers within a 1 mile radius of the subject tower.*

4. **A description of the number of carriers' equipment that the tower can accommodate and a statement as to whether the applicant will allow other carriers to co-locate on the facility;**  
*Please see the "Project Description" section of the document and the enclosed construction drawings.*
  5. **Documentation demonstrating the tower shall be designed and constructed in accordance with any applicable American National Standards Institute Standards;**  
*All submitted plans are signed and sealed by a qualified registered engineer.*
  6. **Proof that the applicant owns, or otherwise has permission to use, the site, along with any easements necessary to access the site;**  
*Please see enclosed Authorization Form and redacted lease agreement.*
  7. **A Certification from each carrier that will utilize the facility that its equipment will meet all applicable Federal standards governing the emission of energy from such facilities; and**  
*Verizon Wireless operates a Personal Communication Service authorized by the Federal Communications Commission (FCC) to provide state of the art digital wireless communications in many parts of the nation, including Harford County. Verizon Wireless operations and network are licensed and regulated by the FCC. The antennas, as proposed and designed for the above noted site, are in compliance with all applicable FCC requirements. In addition, the proposed site meets all applicable ANSI/IEEE C95.1-1992 exposure levels, as adopted by the FCC requirements. Verizon Wireless is committed to compliance with all government regulations and standards.*
  8. **A nonbinding 5-year plan showing the applicant's existing and proposed communications network within the County. In accordance with State law on access to public records, §10-611 et seq. Of the State government Article, the Department shall treat the 5-year plan it obtains as confidential and shall not permit public inspection of that information.**  
*Applicant will comply.*
- J. **When proposing a new communications tower, the applicant must demonstrate a radio frequency need for such a facility by showing:**
1. **That the applicant has researched the co-location possibilities in the area, including in its research a review of the County's database of structures; and That due to the absence of sufficiently tall structures in the search area, the absence of structural capacity on existing structures or other valid engineering or economic factors, no viable co-location opportunities exist in the search area.**  
*Verizon Wireless is utilizing an existing structure.*
- K. **Communication towers shall not be located within 1,000 feet of a historic landmark.**  
*Existing structure is in compliance.*
- L. **Communications towers shall be set back from existing dwellings and any structures attached thereto by a distance equal to 125% of the height of the tower.**  
*The proposed tower extension will not violate this setback requirement. The nearest dwelling is over 350' from the tower location.*



**§ 267-97. Additional Special Exception Requirements.** [Amended by Bill 17-18, As Amended]

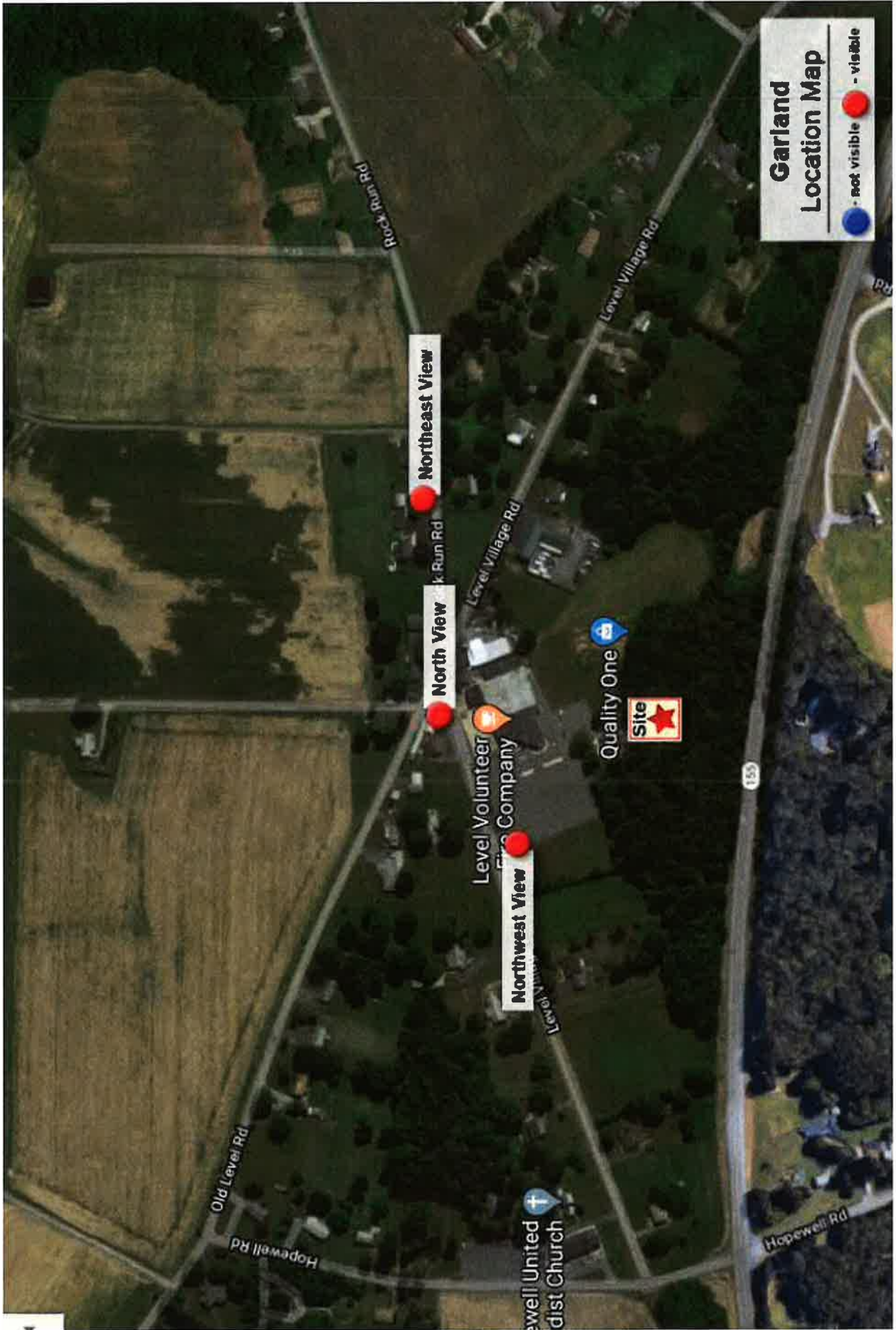
An applicant proposing a new communications tower in the RR, R1, R2, R3, R4, RO, VR, VB, B1, B2 or AG districts shall demonstrate that the request complies with the following conditions:

- A. The placement of the communications tower, at the proposed location, will not have a material negative impact on the value, use or enjoyment of any adjoining parcel. The applicant has made a diligent attempt to locate the applicant's antenna on an existing tower or nonresidential building or structure.
- B. The applicant shall provide the following additional information in support of its application:
  - 1. Photographs of existing site conditions;  
*Please see enclosed photos simulations.*
  - 2. Photographs demonstrating that a balloon test has been conducted, or other evidence depicting the visual impact of the proposed tower within a 1 mile radius of the tower; and  
*Please see enclosed photos simulations.*
  - 3. A map describing the topography of the site and the area within a 1 mile radius of the proposed tower.  
*Please see enclosed topography map.*

**§ 267-98. Additional Provisions Applicable to Proposed Sitings in RR, R1, R2, R3, R4, RO, VR, VB, B1 and B2 Districts.** [Amended by Bill 17-18, As Amended]

Applications proposing new communications towers in the RR, R1, R2, R3, R4, RO, VR, VB, B1 and B2 districts shall be presumed not to be favored unless the applicant can demonstrate that no suitable alternative site exists. In order to obtain a special exception in one of these districts, the applicant must demonstrate, in addition to the requisites applicable to all other tower requests, the following:

- A. There exists no suitable alternative location in a B3, CI, GI, LI or AG district identifying with particularity any other sites considered;  
*Verizon Wireless is utilizing an existing monopole.*
- B. There is something unique about the proposed location, such as its size, the nature of surrounding uses or other factors, that negates the presumption that such facilities are generally incompatible with residential zoning; and  
*Verizon Wireless is utilizing an existing tall structure.*
- C. That due to the location, elevation, engineering, technical feasibility or inability to obtain a lease or ownership of a location elsewhere, the construction of a tower at the proposed location is warranted.  
*Verizon Wireless is utilizing an existing tall structure.*



Northeast View

North View

Northwest View

Level Volunteer  
Fire Company

Quality One  
Site

Hopewell United  
Methodist Church

Old Level Rd

Hopewell Rd

Brock Run Rd

Level Village Rd

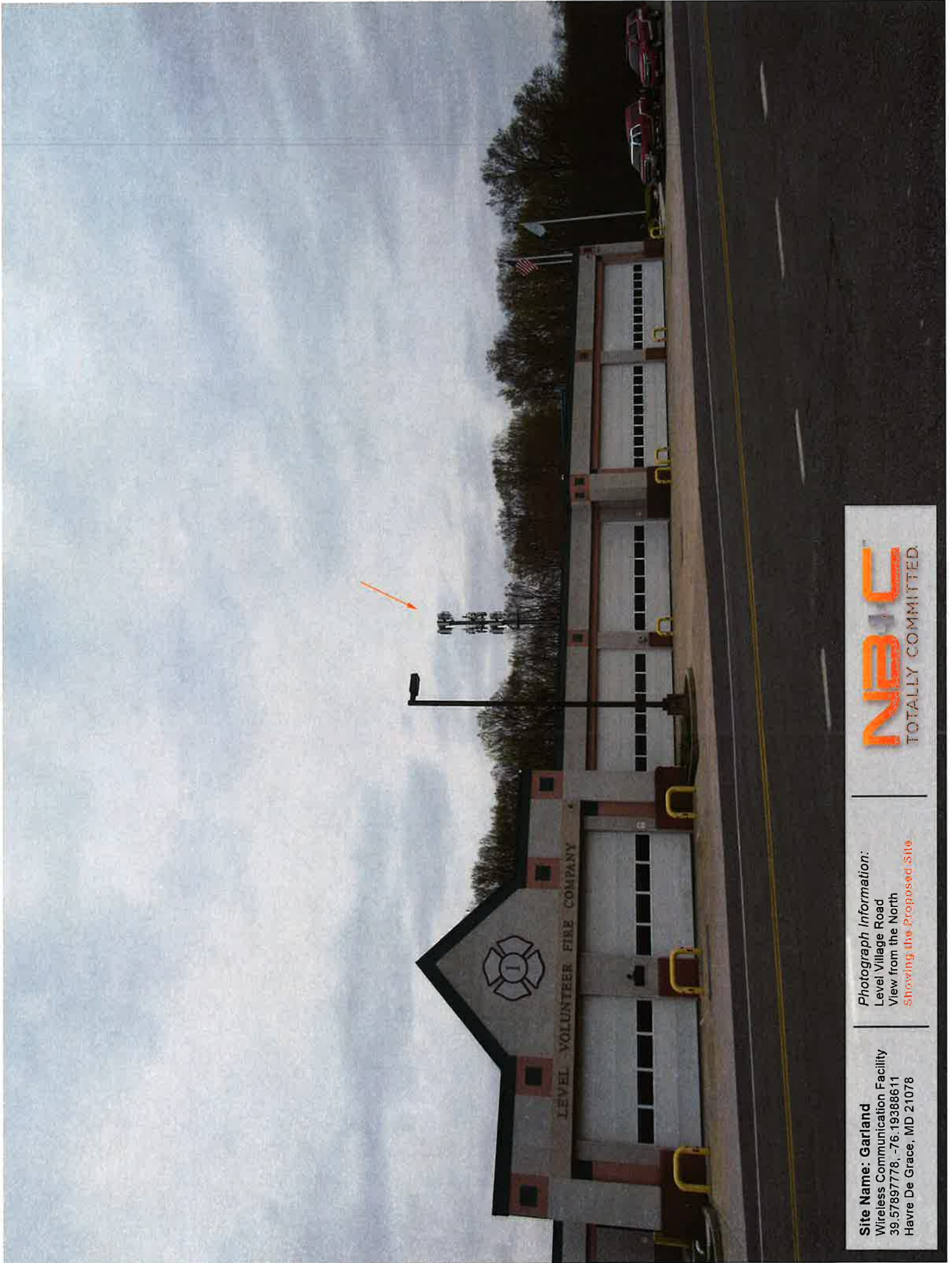
Level Village Rd

Hopewell Rd

155

**Garland**  
**Location Map**

- - not visible
- - visible



**Site Name: Garland**  
Wireless Communication Facility  
39.57897778, -76.19388611  
Havre De Grace, MD 21078

**Photograph Information:**  
Level Village Road  
View from the North  
*Showing the Proposed Site*

**NBC**  
TOTALLY COMMITTED.

**BOARD OF APPEALS CASE NO. 5295**

\*

**BEFORE THE**

**APPLICANT: Level Volunteer Fire Department  
and American Tower Corp.**

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**ZONING HEARING EXAMINER**

**REQUEST: Special Exception to locate a  
communications tower in the B2 District;  
3633 Level Village Road, Havre de Grace**

\*

**OF HARFORD COUNTY**

**Hearing Advertised**

**Aegis: 10/16/02 & 10/23/02**

**HEARING DATE: November 25, 2002**

\*

**Record: 10/18/02 & 10/25/02**

\* \* \* \* \*

## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, American Towers, Inc., is requesting a special exception, pursuant to Section 267-53.4C and 267-53.6 of the Harford County Code, to erect a communication tower in a B2/Community Business District.

The subject parcel is presently owned by the co-Applicant, Level Volunteer Fire Company and is located at 3633 Level Village Road, Havre de Grace, MD 21078. The subject parcel is more particularly identified on Tax Map 36, Grid 4D, Parcel 80, Lot 1. The parcel consists of 7.98± acres, is zoned B2/Community Business and RR/Rural Residential and is entirely within the Second Election District.

Mr. Francis Silberholz appeared on behalf of American Towers, Inc. and indicated that his organization erects towers that lease space to other communication carriers. The witness indicated that 3 carriers are currently planned for co-location on this tower. By using the Site Plan (Attachment 4 to Staff Report) the witness pointed out the proposed location of the parcel on Level Village Road and Route 155. Most of the properties around the subject site are zoned AG and this is a rural area of the County. Proposed is a 115 foot monopole tower with a 2 foot lightning rod. On the ground will be a fenced compound for supporting equipment. The compound will measure 70 feet by 80 feet. Because the proposed location is heavily forested, trees will need to be removed for the compound but the witness pointed out that remaining forest cover provides excellent natural screening for the proposed tower. The tower itself will be located 200 feet from the Route 155 road surface, 472 feet from the northern property line, 278 feet from the eastern property line and 307 feet from the western property line.

## **Case No. 5295 – Level Vol. Fire Dept. & American Tower Corp.**

The witness described the efforts made by American Tower to determine a suitable location for the proposed tower. The first analysis is done by computer modeling which identifies “holes” in existing communications coverage. This modeling results in “target” areas where towers are needed to provide communications coverage. Existing towers and other tall structures were not available in the identified coverage area, although the Applicant did seek such co-locations as part of its search. Another B3 property was identified about 1 mile from the proposed site but its proximity to an airport and the associated FAA regulations made it unsuitable as a tower site.

The witness concluded that the proposed site had numerous advantages. It was well forested, providing natural screening. It is a site within the target area. It is high ground so a shorter tower can be used than might be necessary on other sites. Towers are allowed in this zoning district as well as the AG zones surrounding the parcel. The local fire company will be provided income and communication services. The witness reviewed all of the filing requirements of the Code and stated that all necessary filings had been made with the County. The witness stated that no adverse impact would result from this tower at the proposed location. The Thorne Report (Exhibit 5) was introduced that supported the Applicant’s position that property values would not be adversely impacted by erection of this tower at this location.

Mr. Danny Lora appeared and qualified as an expert Radio Frequency (RF) engineer. Mr. Lora is employed by T-Mobile Communications and is responsible for determining locations of needed towers. He described the computer modeling techniques he employs and the propagation maps generated relative to this request. The witness also described the height requirements of the tower, indicating that the proposed 117 feet was the minimum necessary height that would provide the coverage necessary.

Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning. The Department evaluated this request based on each of the Code requirements related to Communications Towers. McClune indicated that each and every required filing had been made by the Applicant. The Department also reviewed the Limitations, Guides and Standards of Section 267-9I of the Code and concluded that this tower did not result in adverse impacts different than those inherent in any communications tower despite its location.

**Case No. 5295 – Level Vol. Fire Dept. & American Tower Corp.**

McClune concluded, in fact, that this location was a better location than many others because of the setback distances involved, the natural forestation and the minimal height proposed. The Department, in recommending approval of the request, suggested minimal conditions of approval.

There were no persons who appeared in opposition to this request.

**CONCLUSION:**

The Applicant, American Towers, Inc. is requesting a special exception, pursuant to Section 267-53.4C and 267-53.6 of the Harford County Code, to erect a communication tower in a B2/Community Business District.

Because the Harford County Code imposes extensive requirements on Applicants seeking to erect Communications Towers, the Hearing Examiner below sets forth each requirement and his conclusions related to that requirement.

**Section 267-53.4.C Communications towers.**

Communications towers shall be allowed by special exception, up to 199 feet, in the R, RR, R1, R2, VR, VB, B1, B2 and AG Districts.

*The proposed tower is less than 199 feet (117 feet proposed) and the subject property is zoned B2/RR.*

**Section 267-53.5. Provisions applicable to all communications towers.**

- A. All communications towers shall be structurally designed to accommodate for co-location, which shall mean the ability of structure to allow for the placement of antennas for 3 or more carriers. This provision may be waived by the approving body if it is determined that a co-location design will have an adverse impact on the surrounding area.

*This tower is designed for co-location to accommodate other carriers. Additionally, the compound itself is designed to accommodate three (3) other communication towers and supporting equipment.*

**Case No. 5295 – Level Vol. Fire Dept. & American Tower Corp.**

- B. No aviation-related lighting shall be placed upon any communications tower unless specifically required by the Federal Aviation Administration or other governmental entity.**

*There is no aviation lighting planned for this tower.*

- C. Monopoles shall be the preferred communications tower structure type within the county.**

*The proposed tower is a monopole design.*

- D. To the extent practicable, communication towers shall have suitable landscaping in order to screen the site from adjoining properties.**

*Landscaping is proposed and conditions of approval recommended by the Department of Planning and Zoning include the necessity of submitting the proposal through the DAC process.*

- E. The only signage permitted on any communications tower shall be a single sign no larger than 6 square feet, affixed to the equipment building or fence enclosure that identifies the tower owner, each locating provider and the telephone number for the person to contact in the event of an emergency.**

*No signage is proposed.*

- F. Upon completion of a communications tower and every 5 years after the date of completion, the owner of the tower shall submit to the Zoning Administrator written certification from a professional engineer verifying that the tower meets all applicable Building Code and safety requirements applicable at the time the original building permit was issued. Failure to submit said certification 60 days of written notification by the Department of Planning and Zoning to the owner of the tower or any successor in interest shall result in the start of the revocation process for the tower approval.**

*The Applicant's witnesses expressed their intent to comply with these provisions of the Harford County Code.*

**Case No. 5295 – Level Vol. Fire Dept. & American Tower Corp.**

- G. All zoning certificate applications for the construction of 15 new communications towers shall be subject to the DAC review process, with the following additional requisites:
- (1) Whether an applicant has satisfied the radio frequency need requirements identified in this section shall be reviewed by a radio frequency engineer. The engineer shall be retained by the county from an approved panel of such engineers to be created and maintained by the county. The engineer shall determine whether the applicant has shown a radio frequency need, based on coverage and/or capacity issues, or other engineering requisites, to construct a new communications tower;
  - (2) When the communications tower is permitted by right, the engineer's determination shall be made in the ordinary course of DAC review;
  - (3) When the communications tower is allowed by special exception, the county's radio frequency engineering review shall be made in connection with the staff report review pursuant to Chapter A274-1.D. Such review will be completed prior to any zoning hearing and will preclude further DAC review of radio frequency issues; and
  - (4) The county's radio frequency engineer shall ensure that any new tower does not interfere with or obstruct existing or proposed communications towers designed for public safety use.

*The Department of Planning and Zoning has recommended as a condition of approval that DAC review and approval be obtained. The applicant submitted for review to the County's RF engineer all requested radio frequency data and the County's RF Engineer issued a favorable report made part of the record as Attachment 12 to the Department of Planning and Zoning's staff report. The County's RF Engineer, Mr. Francis J. Rodriguez, concluded that the proposed tower fills an identified coverage gap in the telecommunications network; that the proposed structure will not require FCC registration or aviation lighting; and confirmed that the proposed tower does not interfere with the current or proposed microwave paths for the Public Safety radio system.*



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- H. The applicant shall be responsible for maintaining the communications tower in a safe condition.

*The Applicant's witnesses indicated their intent to comply with these provisions of the Harford County Code.*

- I. Communications towers shall be utilized continuously for wireless communications. In the event that a communications tower ceases to be used for wireless communications for a period of 6 months, the approval will be revoked. In the event that the Zoning Administrator is presented with evidence that further viability of the tower is imminent, the Zoning Administrator may grant one extension of the approval for a period not to exceed 6 months beyond the revocation of the use. The applicant shall take all necessary steps to dismantle the tower and remove and dispose of all visible remnants and materials from the subject parcel 90 days after termination. The applicant shall ensure removal of the tower and all associated accessory structures by posting an acceptable monetary guarantee with the county on forms provided by the office of the Zoning Administrator. The guarantee shall be submitted prior to the issuance of a building permit and shall be for an amount equal to a cost estimate approved by the Zoning Administrator for the removal of the tower, plus a 15% contingency.

*The Applicant's witnesses indicated their intent to comply with these provisions of the Harford County Code.*

- J. Every application for the construction of a new communications tower shall include the following:
  - (1) Information demonstrating the applicant's radio frequency need for the facility, including computer modeling information, an explanation as to why co-location is not feasible and a list of alternative sites considered;

*The Applicant submitted computer models of the coverage currently existing and resulting after erection of the proposed tower. These models lead to the conclusion that there is a gap in the telecommunications network in and near the proposed location that is filled by the proposed communication tower. The witnesses for American identified other locations that they reviewed as a co-location possibility. Each of these proved inadequate or unavailable.*

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- (2) A checklist prepared in conformity with Section 106 of the National Environmental Policy Act and any other documents filed by the applicant with the FCC related to this site if requested by the Department;

*The required checklist was submitted by the Applicant and was made part of Attachment 10 of the Department of Planning and Zoning's Staff Report.*

- (3) A site plan, including the layout of the site, a drawing or other physical depiction of the proposed communications tower and any equipment buildings, and a map showing the area within a one mile radius of the tower;

*A site plan was submitted into evidence and fully described by the Applicant's witnesses. There was no testimony challenging the accuracy of the site plan submitted.*

- (4) A description of the number of carriers' equipment that the tower can accommodate and a statement as to whether the applicant will allow other carriers to co-locate on the facility;

*The Applicant's witnesses thoroughly discussed the design of the tower to accommodate additional antennae as well as the site design which will accommodate three additional communication towers at this location.*

- (5) Documentation demonstrating the tower shall be designed and constructed in accordance with any applicable American National Standards Institute standards;

*The Applicant has demonstrated that the tower is designed and will be constructed in accordance with applicable American Standards Institute standards. (Attachment 10, Exhibit 3)*

- (6) Proof that the applicant owns or otherwise has permission to use the site, along with any easements necessary to access the site;

*The Applicant provided a "Option and Lease Agreement" executed by and between the co-Applicants. (Attachment 10, Exhibit 5)*

- (7) A certification from each carrier that will utilize the facility that its equipment will meet all applicable federal standards governing the emission of energy from such facilities; and

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*The Applicant submitted the required certification in a letter dated November 6, 2002 addressed to Harford County Department of Planning and Zoning (Attachment 12).*

- (8) A nonbinding 5-year plan showing the applicant's existing and proposed communications network within the county. In accordance with state law on access to public records, § 10-611 et seq. of the State Government Article, the Department shall treat the 5-year plan it obtains as confidential and shall not permit public inspection of that information.

*The Applicant submitted its plan in accordance with these provisions of the Harford County Code and as documented by the County's RF Engineer by letter dated September 30, 2002 (Attachment 11).*

- K. When proposing a new communications tower, the applicant must demonstrate a radio frequency need for such a facility by showing:
  - (1) That the applicant has researched the co-location possibilities in the area, including in its research a review of the county's database of structures; and

*The Applicant provided substantial data to support its efforts to find a suitable co-location tower.*

- (2) That due to the absence of sufficiently tall structures in the search area, the absence of structural capacity on existing structures or other valid engineering or economic factors, no viable co-location opportunities exist in the search area.

*The Applicant provided a full and complete explanation regarding the unsuitability of each of the possible co-locations it discovered.*

**Section 267-53.6. Additional special exception requirements.**

An applicant proposing a new communications tower in the R, RR, R1, R2, VR, VB, B1, B2 or AG Districts shall demonstrate that the request complies with the following conditions:

- A. The placement of the communications tower at the proposed location will not have a material negative impact on the value, use or enjoyment of any adjoining parcel.

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***The Applicant introduced an extensive study (the Thorne Consultants Report) of the impact of monopole communication towers on the value of adjoining parcels which concluded that the erection of the proposed monopole at the proposed location will not have a material adverse impact on the value, use or enjoyment of any adjoining parcel.(Applicant’s Exhibit 5)***

- B. The applicant has made a diligent attempt to locate the applicant's antenna on an existing tower or nonresidential building or structure.**

***The Applicant provided ample evidence of its attempts to co-locate its antennae on an existing tower or structure and fully explained the reasons why none of the possible co-location sites was suitable or available to the Applicant.***

- C. The applicant shall provide the following additional information in support of its application:**

- (1) Photographs of existing site conditions;**

***Photographs were provided by the Applicant of the site and surrounding area. (Attachment 10)***

- (2) Photographs demonstrating that a balloon test has been conducted, or other evidence depicting the visual impact of the proposed tower within a one mile radius of the tower; and**

***Computer generated models and balloon test photos were submitted by the Applicant and fully indicate the visual impact created by this tower within a one mile radius of the proposed location. (Attachment 10)***

- (3) A map describing the topography of the site and the area within a one-mile radius of the proposed tower.**

***The Applicant submitted a map that indicates the topography of the site within a one mile radius of the proposed site. (Attachment 10)***

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In addition to meeting each of the above requirements, the testimony of Anthony McClune addressed each of the “Limitations, Guides and Standards” set forth at Section 267-9I of the Harford County Code and, after addressing each of those, concluded that this tower at this location would generate no material impacts over and above those normally associated with a monopole communication tower of this height. The Department of Planning and Zoning recommends approval of the requested special exception.

### **CONCLUSION AND RECOMMENDATION**

The Hearing Examiner finds, based on the facts set forth above, that the Applicant can meet or exceed each and every requirement of the Harford County Code. In addition to specific statutory requirements, Maryland Courts have had occasion to discuss the burden of proof that must be met by an applicant in a special exception case.

Under Maryland law, the special exception use is part of the comprehensive zoning plan sharing the presumption, that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption.

The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in a particular case is in harmony with the general purpose and intent of the plan. Schultz v. Pritts, 291 Md. 1, 432 A. 2d 1319, 1325 (1981) (“Schultz”).

“While the applicant in such a case has the burden of adducing testimony, which will show that, his use meets the prescribed standards and requirements of the zoning code, he does not have the burden of showing affirmatively that his proposed use accords with the general welfare. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely effect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material; but if there is not probative evidence of harm or disturbance in light of the nature of the zoning involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for special exception is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A. 2d 543, 550-551 (1973) (“Turner”). The appropriate standard to be

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used in determining whether a requested special exception use should be denied is whether there are facts and circumstances that show the particular use proposed at the particular location proposed would have any adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. See Schultz at 432 A. 2d 1327.

Such facts and circumstances must be strong and substantial to overcome the presumption that the proposed use be allowed in the district. Anderson v. Sawyer, 23 Md. App. 612, 329 A. 2d 716, 724 (1974) (“Anderson”).

The law in Maryland is clear that the localized impact caused by a special exception must be unique and atypical in order to justify denial. Sharp v. Howard County Board of Appeals, 98 Md. App. 57, 632 A. 2d 248 (1993) (“Sharp”).

In determining whether the presence of the proposed uses would be more harmful here than if located elsewhere in the AG zone, one must take into account the area where the use is proposed. AT&T Wireless Services v. Mayor and City Council of Baltimore, 123 Md. App. 681, 720 A. 2d 925 (1998) (“AT&T”).

In Mossburg v. Montgomery County, 107 Md. App. 1, 666 A. 2d 1253 (1995) (“Mossburg”) the Court of Special Appeals had occasion to restate and clarify the law in Maryland regarding special exceptions. There the Court found that the Board of Appeals of Montgomery County improperly denied a special exception for a solid waste transfer station in an industrial zone. In reversing the Circuit Court, which upheld the Board's decision, the Court of Special Appeals found that the decision to deny the special exception was not based on substantial evidence of adverse impact at the subject site greater than or above and beyond impact elsewhere in the zone and, therefore, the decision was arbitrary and illegal. There the Court said:

“The question in the case sub judice, therefore, is not whether a solid waste transfer station has adverse effects. It inherently has them. The question is also not whether the solid waste transfer station at issue here will have adverse effects at this proposed location. Certainly it will and those adverse effects are contemplated by the statute. The proper question is whether those adverse effects are above and beyond, i.e. greater here than they would generally be elsewhere within the areas of the County where they may be established, ... In other words, if it must be shown, as it must be, that the adverse effects at the particular site are greater or “above and beyond”, then it must be asked, greater than what? Above and beyond what? Once an applicant presents sufficient evidence establishing that his proposed use meets the requirements of the statute, even including that it has attached to it

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**some inherent adverse impact, an otherwise silent record does not establish that that impact, however severe at a given location, is greater at that location than elsewhere.”** (emphasis supplied)

Thus, the Court of Special Appeals emphasized that once the applicant shows that it meets the requirements for the special exception under statute, the burden then shifts to the Protestants to show that impacts from the use at a particular location are greater at this location than elsewhere. If the Protestants fail to meet that burden of proof, the requested special exception must be approved.

There were no protesting parties that appeared and provided evidence or testimony that would lead to the conclusion that the adverse impacts associated with this communications tower are greater than or different than other communications towers of similar height, construction and location. Clearly, every communication tower has associated with it some adverse impacts including the visual intrusion of their presence into the Agricultural landscape. However the test for approval is not whether there is a material impact but whether that impact at the proposed location is greater than the impacts normally associated with a communications tower regardless of its location within the zone. The Harford County Code provisions governing the grant of a special exception use for a communication tower place a substantial burden of proof upon an applicant wishing to construct such a tower. The Code requirements are designed to uncover each and every impact associated with a tower and allow a thorough analysis of those impacts to be developed and considered by the Board.

Based on the facts presented and applying the guidance of the Schultz and Mossburg courts, the Hearing Examiner concludes that this proposed communication tower meets or exceeds each and every statutory requirement of the Harford County Code and will not result in adverse impacts greater than or different than similar monopole communication towers found at other locations throughout the B2 Community Business zone.

Date DECEMBER 26, 2002

William F. Casey  
Zoning Hearing Examiner