

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

RECEIVED

JUN 30 2009

Case No. 5694  
 Date Filed 6/29/09  
 Hearing Date \_\_\_\_\_  
 Receipt \_\_\_\_\_  
 Fee \$450.00

HARFORD COUNTY BOARD OF APPEALS

Shaded Areas for Office Use Only

Type of Application	Nature of Request and Section(s) of Code
<input type="checkbox"/> Administrative Decision/Interpretation <input type="checkbox"/> Special Exception <input type="checkbox"/> Use Variance <input type="checkbox"/> Change/Extension of Non-Conforming Use <input type="checkbox"/> Minor Area Variance <input type="checkbox"/> Area Variance <input checked="" type="checkbox"/> Variance from Requirements of the Code <input type="checkbox"/> Zoning Map/Drafting Correction	CASE 5694 MA P-52 TYPE Variance ELECTION DISTRICT 06 LOCATION 2128 Pulaski Highway, Havre de Grace 21078 BY Sallee Rigler McElroy, 1 Bonnie Avenue, Bel Air 21014 Appealed because a variance pursuant to Sec. 267-60B(1) Table 60-1 of the Harford County Code to allow a communications tower to encroach the minimum 40' rear yard setback (12' proposed) in the CI District requires approval by the Board.

**NOTE:** A pre-conference is required for property within the NRD/Critical Area or requests for an Integrated Community Shopping Center, a Planned Residential Development, mobile home park and Special Exceptions.

**Owner (please print or type)**

Name Sallee Rigler McElroy Phone Number 410 836 9290  
 Address 1 Bonnie Ave MD 21014  
Street Number Street City State Zip Code

Co-Applicant Amy Bird, T-Mobile Northeast LLC Phone Number 240-264-8616  
 Address 12050 Baltimore Ave Beltsville, MD 20705  
Street Number Street City State Zip Code

Contract Purchaser N/A Phone Number \_\_\_\_\_  
 Address \_\_\_\_\_  
Street Number Street City State Zip Code

Attorney/Representative Gregory Rapisarda, Sail Ewing LLP Phone Number 410-332-8963  
 Address 500 E. Pratt St., Suite 800, Baltimore MD 21202  
Street Number Street City State Zip Code

**Land Description**

Address and Location of Property 2128 Pulaski Highway, Howe de Grace, Md, 21078  
Located on south side of Pulaski Highway & north of Amtrak railroad

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

Acreage/Lot Size 1.06 acres Election District 06 Zoning CI

Tax Map No. 52 Grid No. 30 Parcel 209 Water/Sewer: Private  Public

List ALL structures on property and current use: billboard and 1 commercial building

Estimated time required to present case: up to 45 minutes

If this Appeal is in reference to a Building Permit, state number N/A

Would approval of this petition violate the covenants and restrictions for your property? No

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

If so, what is the Critical Area Land Use designations: N/A

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

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

**Request**

See attached

**Justification**

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.)*

**Attachment to T-Mobile's  
Variance Application to  
Harford County Board of Appeals**

**Site Address:** 2128 Pulaski Highway  
Havre de Grace, Maryland 21078

**Owner:** Sallee Rigler McElroy

**Site Info:** Tax Id: 006892  
Zoning = CI

**Applicant:** T-Mobile Northeast LLC  
12050 Baltimore Avenue  
Beltsville, Maryland 20705

**Applicant's Counsel:** Gregory E. Rapisarda  
Saul Ewing LLP  
500 E. Pratt Street  
Baltimore, Maryland 21202  
410-332-8963 (desk)  
410-323-8155 (facsimile)

**Request:**

To obtain a variance under § 267-11 to allow a 12' rear yard setback rather than the 40' rear yard setback as required by § 267-60.B.1 and Table 60-1.

**Justification:**

This property at 2128 Pulaski Highway (the "Site") is located within T-Mobile's search ring, in an area of substandard wireless services. The search ring is a limited area, from which a theoretical antennas can be placed that will allow T-Mobile to fill its coverage hole. The search ring is meant to identify potential areas that will allow T-Mobile to meet its coverage objectives, which are primarily to improve in-train coverage for the Amtrak passengers in Havre de Grace, specifically around the Glann Heights- Swan Creek area and to improve indoor coverage in those neighborhoods as well.

The Site is approximately 635' (site to side) by approximately 71' (front to rear) at the point where the Site is vacant and unused. Furthermore, the Site is surrounded by other commercial/industrial zoned properties. In addition, this Site adjoins the Amtrak Railroad site on the rear yard, which is the setback in need of a variance. While technically there is a 12' rear yard setback to the property line, the Amtrak Railroad property, and its existing 200' right of way, creates an actual 92' setback between the proposed monopole and the rear yard use, which is the Amtrak line. These facts, as well as additional information which will be submitted at the hearing, evidence the appropriateness of a variance request under § 267-11.

**Information to Be Submitted with Application to Board of Appeals:**

1. A plot plan drawn t scale indicating all pertinent data.

*See Site Plan from Daft McCune Walker Inc. attached to this as Exhibit A*

2. A list of all adjoining property owners with mailing addresses.

*See below:*

- a. **North of Site**  
Pulaski Highway
- b. **East of Site**  
Sallee Rigler McElroy  
Tax ID: 006884  
1 Bonnie Avenue  
Bel Air, Maryland 21014
- c. **South of Site**  
National RR Pass Corp.  
Tax ID: 005772  
400 North Capitol Street NW  
Washington, D.C. 20001
- d. **West of Site**  
Lewis C. McCannon Jr.  
Tax ID: 003893  
2206 Pulaski Highway  
Havre de Grace, Maryland 21078

3. Names and Addresses of All Personals having legal or equitable interest in the property.

*See below:*

Owner Sallee Rigler McElroy  
2128 Pulaski Highway  
Havre de Grace, Maryland 21078

Lessee:T-Mobile Northeast LLC  
12050 Baltimore Avenue  
Beltsville, Maryland 20705

4. All required supporting documentation or additional studies as may be required; including traffic and environmental studies, etc.

*Pertinent data for a new telecommunications facility is required under certain provisions within Article XI and is analyzed below.*

§ 267-95.A *Allows for new telecommunications facility by right in a CI district*

§ 267-96. **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 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.

*As shown on the Site Plan, the proposed monopole is designed to accommodate three carriers including T-Mobile. The Site Plan is attached as Exhibit A.*

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

*As shown on the Jeppesen Study, FAA regulations would not require aviation related lighting on the proposed monopole. The Jeppesen Study is attached as Exhibit B.*

- (c) Monopoles shall be the preferred communications tower structure type within the County.

*The proposed facility includes a monopole.*

- (d) To the extent practical, communication towers shall have suitable landscaping in order to buffer the site from adjoining properties.

*Suitable landscaping is proposed and is shown on the Site Plan at Exhibit A.*

- (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.

*T-Mobile will abide by this requirement, as shown in Note 10 of the Site Plan at Exhibit A.*

- (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:

- (i) 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.

***T-Mobile will show compliance with this requirement in the DAC process.***

- (ii) When the communications tower is permitted by right, the engineer's determination shall be made in the ordinary course of DAC review.

N/A

- (iii) When the communications tower is allowed by special exception...

N/A

- (iv) 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.

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

***T-Mobile will show compliance with this requirement in the DAC process.***

- (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.

***T-Mobile will show compliance with this requirement in the DAC process.***

- (i) Every application for the construction of a new communications tower shall include the following:

- (i) 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;

***Radio Frequency Propagation Maps showing existing and proposed coverage are attached as Exhibit C. These maps show T-Mobile's existing coverage (or lack of coverage), as well as T-Mobile's coverage with the proposed tower demonstrate T-Mobile's need for additional coverage in this area. Additional evidence of co-location unfeasibility and alternative sites considered will be presented in the DAC process.***

- (ii) 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;

***A Phase I Environmental Site Assessment has been completed and will be submitted during the DAC process.***

- (iii) 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;

***A map showing a 1 mile radius around proposed tower is included in the Site Plan, which is attached as Exhibit A.***

- (iv) 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;

***As shown in the Site Plan, the proposed monopole can accommodate three carriers including T-Mobile and T-Mobile will allow two other carriers to utilize the facility.***

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

***T-Mobile will show compliance with this requirement in the DAC process.***

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

***The application for a variance was signed by the owner, and T-Mobile has a Lease with the site owner. The Lease is attached as Exhibit D.***

- (vii) 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

***T-Mobile will show compliance with this requirement in the DAC process.***

- (viii) 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.

***A map showing all existing and proposed antennas and/or sites in Harford County is attached as Exhibit E. THIS EXHIBIT IS TO BE TREATED AS CONFIDENTIAL AND SHALL NOT BE SUBJECT TO PUBLIC INSPECTION OR SUBJECT TO ANY REQUEST UNDER A PUBLIC INFORMATION REQUEST.***

- (j) When proposing a new communications tower, the applicant must demonstrate a radio frequency need for such a facility by showing:
  - (i) 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

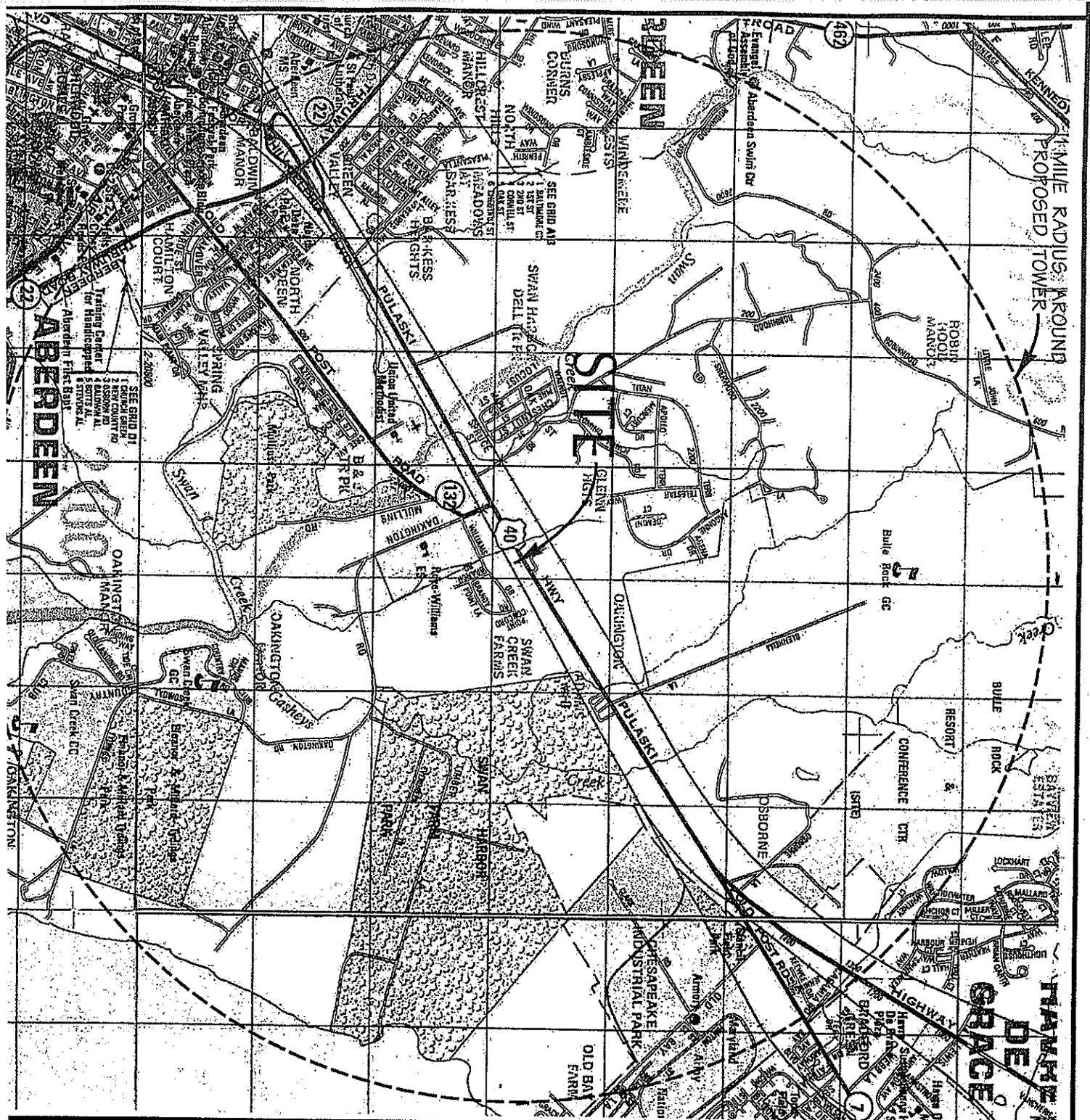
***T-Mobile will show compliance with this requirement in the DAC process.***

- (ii) 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.

***T-Mobile will show compliance with this requirement in the DAC process.***

- (k) Communication towers shall not be located within 1,000 feet of a historic landmark.

***A Phase I Environmental Site Assessment shows that the proposed site is not within 1,000 feet of a historic landmark, and this Phase I EA will be submitted during the DAC process.***



PROJECT: 7BAN568B

UNMANNED WIRELESS COMMUNICATION SITE

**RIGLER PROPERTY**

2128 Pulaski Highway  
Havre De Grace, MD 21078

DRAWING TITLE:  
**PLAN TO ACCOMPANY REQUEST FOR VARIANCE**

DRAWN: GMO

CHECKED BY: MDM

DATE CHECKED:

DRAWING:  
**Z-1**

6th DISTRICT HARFORD COUNTY, MD

PROJECT NO.: 09028

SHEET SCALE: AS SHOWN

**DAVID R. CRAIG**  
HARFORD COUNTY EXECUTIVE

**LORRAINE COSTELLO**  
DIRECTOR OF ADMINISTRATION



**C. Pete Gutwald**  
Director of Planning & Zoning

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## HARFORD COUNTY GOVERNMENT

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Department of Planning and Zoning

August 25, 2009

### STAFF REPORT

#### **BOARD OF APPEALS CASE NO. 5694**

**APPLICANT/OWNER:** Sallee Rigler McElroy  
1 Bonnie Avenue, Bel Air, Maryland 21014

**Co-APPLICANT:** Amy Bird, T-Mobile Northeast LLC  
12050 Baltimore Avenue, Beltsville, Maryland 20705

**REPRESENTATIVE:** Gregory Rapisarda, Saul Ewing LLP  
500 E. Pratt Street, Suite 800, Baltimore, Maryland 21202

**LOCATION:** 2128 Pulaski Highway, Havre de Grace, Maryland 21078  
Tax Map: 52 / Grid: 3D / Parcel: 209  
Election District: Sixth (6)

**ACREAGE:** 1.06 acres

**ZONING:** CI/Commercial Industrial

**DATE FILED:** June 29, 2009

**HEARING DATE:** September 16, 2009

#### **APPLICANT'S REQUEST and JUSTIFICATION:**

See Attachment 1.

#### **CODE REQUIREMENTS:**

The Applicants are requesting a variance pursuant to Section 267-60B(1) Table 60-1 of the Harford County Code to allow a communications tower to encroach the minimum 40 foot rear yard setback (12 feet proposed) in the CI/Commercial Industrial District.

*Preserving Harford's past; promoting Harford's future*

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Board of Appeals Case Number 5693

Sallee Rigler McElroy

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Section 267-60B(1) of the Harford County Code reads:

- (1) *Minimum lot area, area per dwelling or family unit, building setback from adjacent residential lot lines, lot width, front, side and rear yard and maximum building height, as displayed in Tables 60-1 thorough 60-3, shall apply, subject to other requirements of this Part 1.*

Enclosed with the report is a copy of Table 60-1 of the Harford County Code (Attachment 2).

**LAND USE and ZONING ANALYSIS:**

Land Use – Master Plan:

The subject property is located on the south side of Pulaski Highway (MD Rt. 40) east of Oakington Road. Enclosed with the report are a location map and the Applicant's site plan (Attachments 3 and 4).

The subject property is located within the Development Envelope. The predominant land use designations in this area of the County are Low, Medium and High Intensities. The Natural Features Map reflects Chesapeake Bay Critical Area, Habitats of Local Significance, and Sensitive Species Project Review Areas. The subject property is designated as High Intensity which is defined by the 2004 Master Plan as;

*High Intensity - Areas within the Development Envelope where residential development occurs at a density greater than 7.0 dwelling units per acre. Major retail commercial centers and highway-related businesses, such as automobile dealerships and home improvement centers, are examples of some of the most intensive uses associated with this designation.*

Enclosed with the report are copies of the 2004 Land Use Map, the Natural Features Map and the Greater Aberdeen-Greater Havre de Grace Community Area Map (Attachments 5, 6 and 7).

Land Use – Existing:

The existing land uses within the area generally conform to the overall intent of the Master Plan. Land uses include residential, commercial, industrial and institutional uses. The topography of the area ranges from rolling to steep especially along Swan Creek and its tributaries. Enclosed with the report is a copy of the Aerial Photograph and Topography Map (Attachments 8 and 9).

The property is long and narrow and is approximately 1.06 acres in size. The rear property line backs up to the Amtrak Railroad right-of-way. The topography for the subject property and immediate surrounding area ranges from level to gently rolling. The eastern half of the property contains the existing improvements. The western portion of the site is wooded. Site improvements consist of a commercial building, parking area and billboard. There is

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Sallee Rigler McElroy

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approximately 80 feet between the rear property line and the railroad tracks. The tower will be 12 feet from the property line. Enclosed with the report are site photographs, site topography map and aerial photos (Attachments 10, 11 and 12).

Zoning:

The zoning classifications in the area are consistent with the 2004 Master Plan as well as the existing land uses. Residential zoning ranges from R1 to R4/Urban Residential Districts. Along US Route 40 are areas of CI/Commercial Industrial and GI/General Industrial Districts. The subject property is zoned CI/Commercial Industrial District as shown on the enclosed copy of the Zoning Map (Attachment 13).

**SUMMARY:**

The Applicants are requesting a variance pursuant to Section 267-60B(1) Table 60-1 of the Harford County Code to allow a communications tower to encroach the minimum 40 foot rear yard setback (12 feet proposed) in the CI/Commercial Industrial District.

Variances of this nature may be approved by the Board of Appeals pursuant to Section 267-11 of the Harford County Code, provided it finds by reason of the uniqueness of the property or topographical conditions that literal enforcement of the Code would result in practical difficulty or unreasonable hardship. Further, the applicant must show that the request will not be substantially detrimental to adjacent properties or will not materially impair the purpose of the Code or the public interest.

The Department finds that the property is unique based on its configuration. The property is long and narrow. The site fronts on US Route 40 and backs up to the Amtrak Railroad right-of-way. The tower will still be approximately 92 feet from the railroad tracks. The existing building is currently non-conforming to the required setbacks. The tower is a permitted use in the CI zoning district and will be required to meet all applicable requirements. Also, the site is within the 100 year floodplain and the proposed structures must be elevated to meet the floodplain regulations.

**RECOMMENDATION and or SUGGESTED CONDITIONS:**

The Department of Planning and Zoning recommends that the requested variance be approved subject to the following conditions.

- 1) The Applicants shall submit a site plan to the county for review and approval through the Development Advisory Committee (DAC).
- 2) The development of the site shall meet all floodplain requirements.

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Sallee Rigler McElroy

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- 3) The Applicants shall obtain all necessary permits and approvals for the proposed tower.



Dennis J. Sigler, Coordinator  
Zoning & Board of Appeals Review

DJS/ASM/jf



Anthony S. McClune, AICP  
Deputy Director, Planning and Zoning