

BOARD OF APPEALS CASE NO. 4703

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BEFORE THE

APPLICANT: APC Realty & Equip. Co., LLC

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ZONING HEARING EXAMINER

REQUEST: Special Exception to construct a communications tower in the AG District; east side of Mountain Road, Central, Joppa

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 4/9/97 & 4/16/97

HEARING DATE: June 18, 1997

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Record: 4/11/97 & 4/18/97

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ZONING HEARING EXAMINER'S DECISION

This application was originally filed on behalf of American PCS, L.P. The Applicant, as a preliminary matter, amended the application and the Applicant is now known as APC Realty and Equipment Company, LLC. The Applicant is requesting a Special Exception to Section 267-53(I)(4) of the Harford County Code, to allow a communications tower in an Agricultural District.

The subject parcel is owned by T.C. Simons, Inc. and is located on the east side of Mountain Road in the First Election District. The parcel is identified as Parcel No. 292, in Grid 2-F, on Tax Map 60. The parcel contains 31.27 acres, m/ l, all of which is zoned Agricultural.

Mr. Greg Sarro appeared and testified that he is the zoning manager for the Applicant and that the Applicant is proposing construction of a 190-foot, 3-leg, lattice-type tower. The witness said the tower will contain 6 to 18 antennas which will be 4 to 6 feet tall and will be mounted on the tower..

Mr. Jonathan Reno, also an employee of the Applicant, appeared and testified that he is an RF engineer and that the proposed tower is needed to provide additional coverage. Mr. Reno testified that the Applicant places search rings on a map in order to locate coverage holes to determine the geographic area which is suitable for the proposed tower.

Case No. 4703 - APC Realty & Equipment Co., LLC

The witness said that the tower will have up to 18 antennas and a maximum of 200 watts each, and that the antennas will comply with all FCC guidelines. The witness said he did not feel that approval and installation of the tower at that location would have any greater impact than if located elsewhere in the zoning district and did not feel that there would be a detrimental impact resulting from the location of the tower on the subject parcel.

Mr. Todd Ude appeared and testified that he is a structural engineer and that he has a M.A. and Ph.D. in the field. Mr. Ude said that he has reviewed the Applicant's request and conducted calculations on the proposed tower. The witness said that the structural integrity of the tower follows established guidelines for transmission tower construction.

Ms. Melanie Moser appeared and qualified as an expert in matters of planning and zoning. Ms. Moser described the area of the subject parcel and also the parcel itself. She said the closest home to the proposed tower is approximately 300 feet away and that the Applicant's request meets or exceeds the "Limitations, Guides and Standards" set forth in Section 267-9(l) of the Code. Ms. Moser said it was her opinion that the Applicant's request on the subject parcel will not have a greater impact than if located elsewhere in the zoning district and that she did not expect the tower to have an adverse impact on the neighborhood.

Mr. Anthony McClune, Chief of Current Planning for the Harford County Department of Planning and Zoning, appeared and testified that he had reviewed the application, was present for the testimony of the Applicant's witnesses, and had reviewed the amended site plan. Mr. McClune said that the Applicant can meet all Code requirements and that the Department of Planning and Zoning is recommending conditional approval of the request.

CONCLUSION:

The Applicant is requesting a Special Exception for a communications tower. Section 267-53(l)(4) of the Harford County Code provides:

"Towers, communications and broadcasting. These uses may be granted in the AG, B2 and B3 Districts, provided that the setback of the tower from all property lines shall be equal to the height of the tower plus ten (10) feet."

Case No. 4703 - APC Realty & Equipment Co., LLC

Under Maryland law, the special exception use is part of the comprehensive zoning plan sharing the presumption, that, as such, is in the interest of the general welfare, and therefore valid. A special exception use is a valid zoning mechanism that delegates to an administrative board 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 (1981).

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

In the recent case of Mossburg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995), 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, 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.

Thus, the Court of Special Appeals emphasized that once the applicant has shown 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 that location than elsewhere. If the protestants fail to meet that burden of proof the requested special exception must be approved.

