DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND

OFFICE OF THE ZONING HEARING EXAMINER

SPECIAL EXCEPTION
4760
EXPANSION OF NONCONFORMING USE
TOWER, POLE, MONOPOLE OR ANTENNA

DECISION

Application:	Expansion of Nonconforming Use (Tower, Pole, Monopole or Antenna
Applicant:	Verizon Wireless - Glenarden
Opposition:	None
Hearing Date:	March 15, 2017
Hearing Examiner:	Maurene Epps McNeil
Disposition:	Approval with Conditions

NATURE OF PROCEEDINGS

(1) Special Exception 4760 is a request for permission to use approximately 1,500 square feet of a 1.53 acre parcel of R-35 (One-Family Detached Residential) zoned land located on the south side of Landover Road (MD 202), approximately 600 feet west of Martin Luther King, Jr., Highway (MD 704), and identified as 7781 Landover Road, Landover, Maryland, for a Monopole with a height of 113 feet, and related equipment pad and cabinet.

(2) The Technical Staff recommended approval with conditions. (Exhibit 16) The Planning Board chose not to have a hearing and adopted Staff's recommendation as its own. (Exhibit 17(b))

(3) No one appeared in opposition to the Application at the hearing held by this Examiner.

(4) At the close of the last hearing the record was left open to allow the Applicant to submit additional information. (Exhibits 30, 31(a) and (b), 32 and 33(a)-(f)) Staff was given the opportunity to review the revised Site Plan and noted that it satisfied all of Staff's recommended conditions of approval. (Exhibit 35(a)) The record was closed on April 7, 2017, upon submission of Staff's comment.

FINDINGS OF FACT

Subject Property

(1) The subject property is developed with a Verizon land-line radio communications facility (for dispatch of service vehicles) constructed in 1959, and a 95-foot-tall Monopole. In 1998, the site was reduced from approximately 3.513 acres to approximately 1.53 acres as a result of a transfer of property to the Prince George's County Housing Authority. Applicant intends to remove the existing Monopole (that does not meet the current setback requirements) and construct a 95-foot-tall, state of the art replacement, in a manner that satisfies all setback requirements for the use in the R-35 Zone. The Verizon building will remain on site, and is classified as an exempt commercial/public utility. (Exhibit 16, p. 67)

(2) The property is not located within a Chesapeake Critical Area Overlay Zone.

(3) The site is exempt from the requirements of the Woodland and Wildlife Habitat Conservation Ordinance. Although it is larger than 40,000 square feet it has less than 10,000 square feet of existing woodland and there is no previously approved Tree Conservation Plan. (Exhibit 11) There is a Natural Resources Inventory ("NRI") equivalency letter issued for the site. (Exhibit 12)

Surrounding Property/Neighborhood

(4) The site is surrounded by the following uses:

- North - Commercial, vacant and industrial uses in the R-O-S Zone
- South - Single-family residential and garden-style multifamily condominium in the R-35 Zone
- East - Open space, townhouses, and the MD 202/MD704 interchange in the R-35 Zone
- West - Commercial uses in the C-S-C Zone

(5) The Neighborhood is a mix of commercial and residential uses. Its boundaries are as follows:

- North - MD 202
- South - Cattail Branch
- East - MD 704
- West - Kent Village Drive

Master Plan/Sectional Map Amendment

(6) The subject property is located within an area governed by the 2014 Landover Metro Area and MD 202 Corridor Sector Plan and Sectional Map Amendment. This Sector Plan recommended a mix of neighborhood-serving commercial and residential uses for the site, and does not specifically address Monopoles. The 2014 General Plan ("Plan 2035") contains no specific recommendation for the subject property, but places it within the Established Communities.

Applicant's Request

(7) The Applicant seeks permission to construct a 95-foot-tall Monopole - 18 feet west of the existing Monopole - outdoor equipment cabinets, a generator on a 12-foot by 17-foot concrete slab with a canopy, and a 3-foot by 10-foot concrete pad for a propane tank. There will also be a 10-foot high board-on-board opaque fence around the equipment area. The existing site and Monopole became a nonconforming use/site upon the District Council's adoption of CB 33-2007 which changed the minimum lot size for the use to 2.5 acres. The existing Monopole will be removed.

(8) Applicant submitted pictures taken at three locations throughout the neighborhood to show what portion of the existing and proposed Monopoles are within view. (Exhibits 22(a)-(f)) The pictures indicate that the relocated Monopole will be fairly unobtrusive at its location.

(9) Applicant explained why it is requesting to construct a new Monopole on site:

> The existing structure was designed for the use of Verizon landline's radio communications for dispatch of service vehicles, and was constructed in 1959.
>
> Verizon Wireless finds the location and height of the existing monopole to be suitable for providing needed coverage to the area. However, this existing structure also lacks the structural integrity to support the Verizon Wireless antenna array. Additionally, we found that the existing structure is located a distance of 77' from the property line to the East. Because there are no other suitable existing structures in the area, this location proves to be the most suitable, least obtrusive solution. Because the existing monopole has been in this location for 55 years, the siting of the Verizon Wireless facility will present negligible visual impact while providing a significant improvement to coverage for the community. Therefore, Verizon Wireless proposes to construct [a] new monopole to replace the existing structure. The new monopole will be located 18' west of the original tower, making

> the distance to the property line equal to the height of the structure at a distance of 95'. The existing monopole will be removed….
>
> In September, 1998 the parcel size was reduced through conveyance of a portion of the property from Bell Atlantic to the Housing Authority. A preliminary plan of subdivision … was filed and approved…. This transfer of property reduced the parcel size from 3.5123 acres to 1.53 acres. At the time of the transfer, the existing monopole remained compliant under then current zoning codes…. In 2007, the adoption of CB-33-2007 which calls for a minimum lot size of 2.5 acres rendered the existing facility a non-conforming use. While the existing facility pre-dates this requirement, the proposed tower replacement requires a new Special Exception that reflects the current boundaries of the parcel and current performance standards….

(Exhibit 16, p. 36)

(10) Applicant submitted maps of the cellular coverage in the area "with", and "without", the Monopole that further support its position that there is an identified need for the Monopole at the requested location. (Exhibits 27 (a)-(d) and 28 (a)-(d))

(11) The proposed Monopole satisfies all setbacks required under the Zoning Ordinance. It is 181 feet from the nearest property line to the north; 95 feet from the nearest property line to the east; 100 feet from the nearest property line to the south; and 129 feet from the nearest property line to the west. (Exhibits 35 (b) and 16, p. 7) Applicable provisions of the Zoning Ordinance, discussed below, require it to be set back from all property lines and dwelling units a distance equal to the height of the Monopole measured from its base (i.e. 95 feet). The closest residence is approximately 125 feet from the Monopole.

(12) The Site Plan includes notes that state the Monopole will be removed if it is not in use for a continuous period of one (1) year, and that the structure will not be used to support lights or signs other than those required for aircraft warning or other safety purposes. (Exhibit 35 (b))

(13) Applicant's engineers determined that the requested use "will comply with Federal Communications Commission (FCC) exposure limits and guidelines for human exposure to radiofrequency electromagnetic fields…. [and] [f]rom the standpoint of RF exposure, the presence of Verizon Wireless would not preclude the future addition of other tenants or licensees including emergency or other municipal services which benefit the public from co-location on this structure…." (Exhibit 16, pp. 59-60; T. 82)) The Monopole can accommodate up to three additional antennas. (T. 59) This co- location of antennae furthers the County's goal to "[p]romote the appropriate and efficient location and co-

location of telecommunications transmission facilities to minimize adverse impacts on other land uses in the County." (Prince George's County Code, Section 5A-153(e)(2))

(14) Applicant met with nearby residents to discuss the Special Exception Application. Although one individual noted an objection to the application with the Planning Staff, no one appeared in opposition to the request.

Agency Comments

(15) The Technical Staff offered the following comment in its review of the request:

> The purposes of the Zoning Ordinance listed in Section 27-102(a) are to promote the health, safety and welfare of County residents by providing for the orderly growth and development of the county and promoting the most beneficial relationship between the uses of land and buildings. The proposed use provides a service that is beneficial to the general public, including emergency service personnel, business operations, and private individuals. The proposed monopole will meet or exceed all setback requirements. The existing topography, woodlands, landscaping, and built environment in the area help screen the monopole from contiguous areas. The applicant has proposed additional landscaping along Landover Road and on the southern property line along the Hawthorne Hill subdivision. A 10-foot-high board-on-board opaque fence is proposed around the equipment area. The proposed monopole is expected to continue to have little visual impact on the surrounding area and is, therefore, in harmony with the purposes of Subtitle 27….
>
> The proposed monopole conforms to the applicable requirements and regulations of the Zoning Ordinance, with the exception that the site size is less than 2.5 acres. The site size was reduced in 1998 … to transfer property to the Housing Authority of Prince George's County for single-family residential development….
>
> A tower or monopole has existed at this location since 1959. The 2014 *Approved Landover Metro Area and MD 202 Corridor Sector Plan and Sectional Map Amendment* does not specifically address monopoles. Care has been taken to ensure appropriate site planning to minimize the adverse impact of visual intrusion on the surrounding area. The proliferation of communication towers across the landscape is a national phenomenon that pits the visual environment, both

> natural and constructed, against the need for modern communication systems. However, there are several factors that mitigate the otherwise negative impacts of a tower of this height at this location. The existing topography, woodlands, landscaping, and build environment in the area help screen the monopole from contiguous areas. The applicant has proposed additional landscaping along Landover Road and on the southern property line along the Hawthorne Hill subdivision, as well as an opaque 10-foot-high board-on-board fence to screen the base of the monopole, equipment cabinets, and generator. The proposed monopole is expected to continue to have little visual impact on the surrounding area….
>
> A tower or monopole has existed at this location for 55 years…. The nearest residentially zoned land is 100 feet to the south of the proposed monopole. The nearest residence is located approximately 125 feet away and was constructed in 2002….
>
> The applicant has submitted an analysis completed by a licensed professional engineer concluding that the proposed communications facility will comply with electromagnetic field safety standards by a substantial margin in all publicly accessible areas … [including] the base of the proposed monopole and any areas in proximity to the proposed monopole….
>
> A special exception use is considered compatible with uses permitted by-right within the zone, as long as specific criteria are met…. Staff believes that the applicant has met their burden of proof in this instance. Therefore, staff recommends APPROVAL….

(Exhibit 16, pp. 14-16)

(16) The Transportation Planning Section noted no objection to the request, reasoning as follows:

> No additional vehicle trips [are] expected from the proposed replacement of the existing structure with a new monopole. No changes are proposed to the existing right in/right out commercial entrance on Landover Road. There should be no impacts on congestion levels or traffic on nearby roads. There will be no impacts on pedestrians or motorists in the area above current levels in terms of health, safety, and welfare.

(Exhibit 16, p. 86)

(17) The Telecommunications Transmission Facility Coordinating Committee ("TTFCC") reviewed the Application but provided no additional comment in the record. (T. 63-64)

APPLICABLE LAW

(1) The instant Application may be approved if it satisfies the requirements of Sections 27-317, 27-384, 27-416 and 27-445.04 of the Zoning Ordinance.

(2) Section 27-317 provides as follows:

(a) A Special Exception may be approved if:

(1) The proposed use and site plan are in harmony with the purpose of this Subtitle;

(2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;

(3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;

(4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;

(5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and

(6) The proposed site plan is in conformance with an approved Type 2Tree Conservation Plan; and

(7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130 (b)(5).

(b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:

(1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or

(2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.

(3) Section 27-384 provides as follows:

(a) The alteration, enlargement, extension, or reconstruction of any nonconforming building or structure, or certified nonconforming use (except those certified nonconforming uses not involving buildings, those within the Chesapeake Bay Critical Area Overlay Zones as specified in paragraph 7, below, unless otherwise provided, and except for outdoor advertising signs), may be permitted subject to the following:

(1) A nonconforming building or structure, or a building or structure utilized in connection with a certified nonconforming use, may be enlarged in height or bulk, provided that the requirements of Part 11 are met with respect to the area of the enlargement.

(2) A certified nonconforming use may be extended throughout a building in which the use lawfully exists, or to the lot lines of the lot on which it is located, provided that:

(A) The lot is as it existed as a single lot under single ownership at the time the use became nonconforming; and

(B) The requirements of Part 11 are met with regard to the extended area.

(3) A certified nonconforming use may be reconstructed, provided that:

(A) The lot on which it is reconstructed is as it existed as a single lot under single ownership at the time the use became nonconforming;

(B) Either the nonconforming use is in continuous existence from the time the Special Exception application has been filed through final action on the application, or the building was destroyed by fire or other calamity more than one (1) calendar year prior to the filing date;

(C) The requirements of Part 11 are met with respect to the entire use; and

(D) The Special Exception shall terminate unless a building permit for the reconstruction is issued within one (1) calendar year from the date of Special Exception approval, construction in accordance with the building permit begins within six (6) months from the date of permit issuance (or lawful extension), and the construction proceeds to completion in a timely manner.

* * * * * * * * *

(4) Section 27-416 provides as follows:

(a) A tower, pole, or Monopole for the support of an antenna (electronic, radio, television, transmitting, or receiving) may be permitted, subject to the following:

(1) In the Commercial and Industrial Zones, and for land in a Residential Zone owned by a public entity, the structure shall generally be set back from all property lines and dwelling units a distance equal to the height of the structure (measured from its base). The District Council may reduce the setback to no less than one-half (1/2) the height of the structure based on certification from a registered engineer that the structure will meet the applicable design standards for wind loads of the Electronic Industries Association (EIA) for Prince George's County. In the Residential Zones, on privately owned land, the structure shall be set back from all property lines and dwelling units a distance equal to the height of the structure (measured from its base);

(2) On privately owned land, the structure shall not be used to support lights or signs other than those required for aircraft warning or other safety purposes;

(3) Any tower or Monopole which was originally used, but is no longer used, for telecommunications purposes for a continuous period of one (1) year shall be removed by the tower or Monopole owner at the owner's expense; and

(4) Any related telecommunication equipment building shall be screened by means of landscaping or berming to one hundred percent (100%) opacity.

(5) Section 27-445.04 provides as follows:

(a) Antennas, monopoles, and related equipment buildings permitted (P) in the Table of Uses shall be subject to the following requirements:

(1) The antenna shall comply with the following standards:

(A) Unless otherwise prohibited below, it shall be concealed within the opaque exterior of a structure or be attached to a public utility, radio, television, or telecommunications broadcasting tower/monopole; a light pole; a multifamily dwelling at least five (5) stories in height; a structure owned by a municipality, the Board of Education for Prince George's County, or by Prince George's County; or a structure owned and primarily used by a government agency that is exempt from the requirements of this Subtitle;

(B) It shall not extend more than fifteen (15) feet above the height of the tower or structure to which it is attached;

(C) It shall not exceed the following dimensions:

(i) Twenty (20) feet in length and seven (7) inches in diameter for whips;

(ii) Ten (10) feet in length and two (2) feet in width for panels;

(iii) Seven (7) feet in length and one (1) foot in diameter for cylinders; or

(iv) Seven (7) feet in diameter for parabolic dishes; and

(D) On privately owned land, it shall not support lights or signs unless required for aircraft warning or other safety reasons.

(2) The related telecommunications equipment building or enclosure shall comply with the following standards:

(A) It shall not exceed five hundred sixty (560) square feet of gross floor area or twelve (12) feet in height;

(B) The building or enclosure shall be screened by means of landscaping or berming to one hundred percent (100%) opacity from any adjoining land in a Residential Zone (or land proposed to be used for residential purposes on an approved Basic Plan for a Comprehensive Design Zone, or any approved Conceptual or Detailed Site Plan);

(C) When attached to an existing building, it shall match the construction material and color(s) of that building;

(D) When constructed as a freestanding building, it shall be constructed of brick and its design shall coordinate with the design of any existing main building on the same lot or on an adjoining lot; and

(E) The building or enclosure shall be unmanned, with infrequent (four (4) or fewer per year) visits by maintenance personnel, and with access and parking for no more than one (1) vehicle.

(3) The monopole shall comply with the following standards:

(A) The maximum height shall be one hundred ninety-nine (199) feet when located on public property or Volunteer Fire Department (VFD) property, or one hundred (100) feet when located on all other properties;

(B) For privately owned land, the minimum setback from all adjoining land and dwelling units shall be equal to the height of the structure measured from its base; for publicly owned land or Volunteer Fire Department (VFD) property, the minimum setback shall be one-half (1/2) of the height of the structure measured from the base to the adjoining property lines;

(C) For privately owned land, the minimum area required shall be two and one-half acres (2 ½);

(D) On privately owned land, the structure shall not support lights or signs unless required for aircraft warning or other safety reasons;

(E) The structure shall be designed, galvanized, and/or painted in a manner which is harmonious with surrounding properties;

(F) The applicant shall provide certification from a registered engineer that the structure will meet the applicable design standards for wind loads of the Electronic Industries Association (EIA) for Prince George's County; and

(G) Any monopole which is no longer used for telecommunications purposes for a continuous period of one (1) year shall be removed by the monopole owner at owner's expense.

(6) In Schultz v. Pritts, 291 Md 1, 432 A2d 1319, 1325 (1981) the Court of Appeals provided the following standard to be applied in the review of a special exception application:

> Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the [administrative body] that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect 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 no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

CONCLUSIONS OF LAW

(1) If the conditions noted below are satisfied, this Examiner finds that the instant Application satisfies the following purposes of the Zoning Ordinance, and Section 27-317(a)(1), for the stated reasons:

1. To protect and promote the health, safety, morals, comfort, convenience, and welfare of the present and future inhabitants of the County

Provision of wireless telecommunications service will promote the health, comfort and convenience of County residents since there is increasing reliance on the use of cell phones and reliable, dependable service is appreciated.

3. To promote the conservation, creation, and expansion of communities that will be developed with adequate public facilities.

The instant Application includes an unmanned equipment compound. There will be minimal visits to the site, thus minimal impact on transportation and other facilities.

4. To guide the orderly growth and development of the County, while recognizing the needs of agriculture, housing, industry, and business.

The proposed use will not deter the orderly growth and development of the County but will provide a needed service (wireless communications) for residents and businesses in the area.

13. To protect against undue noise, and air and water pollution, and to encourage the preservation of stream valleys, steep slopes, lands of natural beauty, dense forests, scenic vistas, and other similar features.

The instant Application will not generate any vibrations, noise, odor or other forms of pollution. Similarly, it will have minimal impact on forests since the total disturbed area is de minimis.

(2) There is a presumption that the proposed use is in conformance with the purposes of the R-35 Zone set forth in Section 27-431 of the Zoning Ordinance if it satisfies Sections 27-102, 27-317, 27-416, and 27-445.04. (Anderson v. Sawyer, 23 Md. App. 612 (1974); Futoryan v. Mayor and City Council of Baltimore, 150 Md. App. 157, 819 A.2d 1074 (2003)) Notwithstanding this presumption, this Examiner finds that the use will encourage the preservation of trees and open spaces and residential development as required in Section 27-431 of the Zoning Ordinance.

(3) The proposed use does not require any variances or departures, and is accordingly, in conformance with all the applicable requirements and regulations of the Zoning Ordinance. It, therefore, satisfies the requirements of Section 27-317(a)(2).

(4) The Master Plan recommended a mix of neighborhood-serving commercial uses and residential uses for the subject property. The instant use is not inconsistent with this recommendation since it will not generate traffic and is fairly inconspicuous on this site, and will provide better cell phone coverage for those residing in the area. It will not substantially impair the intent of the Master Plan, and, therefore, satisfies Section 27-317(a)(3).

(5) The proposed use is adequately set back and buffered from surrounding residents, workers and uses by existing trees and additional landscaping. Accordingly, it will not adversely affect the health, safety, or welfare of residents/workers in the area nor be detrimental to the use or development of adjacent properties or the general neighborhood. (Sections 27-317(a)(4) and (5))

(6) The Application is exempt from the requirements of the Woodland Wildlife and Habitat Conservation Ordinance. It, therefore, satisfies Section 27-317(a)(6).

(7) There are no regulated environmental features on site. (Section 27-317(a)(7))

(8) The subject property does not lie within a Chesapeake Bay Critical Area Overlay Zone. (Section 27-317(b))

(9) The request will not generate any additional parking on site. (Section 27-384(a)(1) The lot is under the same ownership as it was at the time CB-32-2007 was enacted. (Section 27-384(a)(3)(A)) The Monopole has been in continuous use on the site since CB-33-2007 was enacted. (Section 27-384(a)(3)(B) The parking requirements for the entire acreage, to include the Verizon dial center exchange building (and its accompanying parking) will continue to be met if the request is approved. (Section 27-384(a)(3)(C)) A condition shall be added to note that the request will be terminated unless

a building permit is issued and building proceeds in accordance with Section 27-384(a)(3)(D).

(10) Section 27-416(a)(1) requires the Monopole be set back at least 95 feet from all property lines and dwelling units. The proposed Monopole is set back more than 95 feet from all property lines and dwelling units, thereby satisfying this requirement. The Monopole will not be used to support lights or signs and a note has been added to that effect. It, therefore, meets the requirements of Section 27-416(a)(2). Should the structure not be used for telecommunications purposes for a continuous period of one year, the Applicant has agreed to remove it and has added a note to that effect. Thus, Section 27-416(a)(3) will be satisfied. The equipment cabinets will be screened by a 10-foot high opaque fence, and additional landscaping is provided. Accordingly, Section 27-416(a)(4) is met.

(11) The site Plan reveals that the antennas will be mounted the Monopole at a height of 91 feet. (Section 27-445.04(a)(1)(A)) The antenna will not extend beyond the height of the Monopole. (Section 27-445.04(a)(1)(B)) Applicant has included Notes on the Site Plan to ensure that any antenna installed not exceed the dimensions set forth in Section 27-445.04(a)(1)(C), and to ensure that they not support lights or signs unless required for aircraft warnings or other safety reasons. (Section 27-445.04(a)(1)(D)) The equipment pad will be 12-feet by 17-feet, enclosed by an opaque 22-foot by 40-foot fence, and unmanned with access parking for no more than 1 vehicle. (Section 27-445.04(a)(2)) The Monopole will be 95-feet tall. (Section 27-445.04(a)(3)(A)) It will be set back a minimum of 95 feet and maximum of 181 feet from all adjoining properties and dwelling units. (Section 27-445.04(a)(3)(B)) The site does not meet the minimum acreage requirement in Section 27-445-04(a)(3)(C), which is why the instant application is being reviewed. A note has been added to state that any point selected by the owner (as indicated on Exhibit 35(c)) shall be harmonious with surrounding properties. The Site Details include a certification from a registered engineer that the Monopole will meet applicable Building Code design standards for wind loads. (Section 27-445.04(a)(3)(F)) Finally, the Site Plan includes a Note that indicates that the Monopole will be removed if it ceases to be used for telecommunication purposes for a continuous period of one year. (Section 27-445.04(a)(3)(G))

(12) The instant Application is a result of a strange confluence of facts. A 95-foot-tall Monopole is generally permitted by right in the Zone. The District Council's legislation mandated that such uses be located on a site at least 2.5 acres in size. Applicant's site is slightly smaller because it deeded a portion of its acreage to the Housing Authority, which ultimately constructed townhouses thereon.[1] The Applicant did not certify the existing Monopole as a nonconforming use since it wishes to raze the structure. (T. 59-62) Instead it filed the instant Special Exception to alter a nonconforming use. The new Monopole will be constructed in compliance with modern Code requirements and will meet, or exceed, all setback requirements. I find that all applicable provisions of the Zoning Ordinance are met, and the request satisfies the Schultz test, discussed above.

[1] Accordingly, the facts present a case more akin to a nonconforming lot than a nonconforming structure, and there is no certified Use and Occupancy permit for the Monopole that will be removed.

DISPOSITION

Special Exception 4760 is Approved, certifying the Special Exception Site Plan (Exhibit 35(b) subject to the following conditions:

(1) Prior to the issuance of permits, the Special Exception Site Plan shall be revised as follows:

(a) The following Notes shall be added:

(1) The Special Exception shall terminate unless a building permit for the reconstruction is issued within one (1) calendar year from the date of Special Exception approval, construction in accordance with the building permit begins within six (6) months from the date of permit issuance (or lawful extension), and the construction proceeds to completion in a timely manner.

(2) The Monopole shall be painted or galvanized in a manner harmonious with surrounding properties.

(b) The Special Exception Site Plan shall be revised to add the words “Special Exception” in the title prior to the “Site Plan”.

(2) Prior to the issuance of permits the revised Special Exception Site Plan shall be submitted to the Office of the Zoning Hearing Examiner for approval and inclusion in the record.

[Note: The Special Exception Site Plan, Site Detail and Landscape Plan are Exhibits 35(b)-(d).]

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