

**DISTRICT COUNCIL FOR PRINCE GEORGE'S COUNTY, MARYLAND  
OFFICE OF THE ZONING HEARING EXAMINER**

**SPECIAL EXCEPTION  
4746**

**DECISION**

Application: Tower, Pole, Monopole or Antenna  
Applicant: Crown Castle/Briesmaster Property  
Opposition: None  
Hearing Dates: August 25, 2016 and October 22, 2015  
Hearing Examiner: Maurene Epps McNeil  
Disposition: Approval

**NATURE OF PROCEEDINGS**

- (1) Special Exception 4746 is a request for permission to use approximately 3,600 square feet of a 24.03 acre parcel of R-A (Rural Agricultural) zoned land located on the southeast side of Livingston Road, approximately 350 feet south of its intersection with Piscataway Road (MD 223), identified as 14200 Livingston Road, Clinton, 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 13) The Planning Board chose not to have a hearing and adopted Staff's recommendation as its own. (Exhibit 14)
- (3) No one appeared in opposition to the Application at either 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. The last of the items was submitted on October 27, 2015 and the record was closed at that time. (Exhibit 33)

**FINDINGS OF FACT**

**Subject Property**

- (1) The subject property is developed with a large single-family detached residence designated as an historic site (St. James Hill Historic Site 84-001) and related accessory structures. The requested Monopole and related equipment pad and cabinet will be located in a square foot enclosure that is reached via a 10 foot wide driveway.

(2) The Planning Director approved Alternative Compliance AC-01035 when the 100 foot Monopole was first constructed, finding that the existing woodlands and the 8 foot tall enclosure was adequate to screen the use from surrounding residential properties. The instant request is exempt from the requirements of the Landscape Manual since no additional square footage is proposed.

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

(4) The site is subject to the requirements of the Woodland and Wildlife Habitat Conservation Ordinance since it is larger than 40,000 square feet and has more than 10,000 square feet of existing woodland. There is an approved Type 2 Tree Preservation Plan for the site. (TCP2-061-99)

### **Surrounding Property/Neighborhood**

(5) The site is surrounded by residential uses in the R-R Zone. To the north, is undeveloped land and a large stormwater pond in the R-L Zone. To the south is undeveloped land in the R-A Zone. To the east are single family residences in the R-L Zone. To the west, across Livingstone Road, is a large farm in the R-A Zone.

(6) The Neighborhood is primarily residential in character. Its boundaries are as follows:

- North - Piscataway Road (MD 223) and Floral Park Road
- South - Unnamed tributary to Piscataway Creek
- East - PEPCO right-of-way/Danville Road
- West - Livingston Road

### **Master Plan/Sectional Map Amendment**

(7) The subject property is located within an area governed by the 2013 Subregion 5 Master Plan and Sectional Map Amendment. This Master Plan recommended a Residential-Low Transition Use for the site, and does not specifically address Monopoles. The Plan 2035 General Plan contains no specific recommendation for the subject property.

### **Applicant's Request**

(8) As noted above, the Monopole is located on 3,600 square feet of a much larger 24 acre parcel. It is accessed via a road from the existing house. (See site sketch in Exhibit 4(e)). Applicant also submitted pictures taken at ten locations throughout the neighborhood to show what portion of the Monopole are within view. (Exhibits 4(g) – 4(o)) The pictures indicate that the Monopole is fairly unobtrusive at its location.

(9) The owner of the subject property leased 3,600 square feet to allow APC Realty Equipment Company, LLC (“APC”) to construct an equipment base station and the

antenna (Monopole) structure. (Exhibit 4(e)) Applicant, Crown Castle, acquired the lease in 2005. (Exhibit 33)

(10) The Monopole was originally constructed pursuant to Permit 21135-2001-CG for a maximum of 100 feet in height. It met all provisions of Section 27-445.04 at that time. Subsequently an additional antenna was added to the Monopole raising the height to 113 feet.

(11) The Applicant seeks permission to validate the 113-foot high cellular telephone Monopole within a 3,600 square foot area of the over 24 acre site, enclosed by a sight-tight 8-foot-tall opaque wood privacy fence. The Monopole is equipped with three antenna designed to accommodate at least three (3) future carriers, thereby furthering the County's goal of co-location.

(12) Applicant submitted a "Location Map" that identifies the site and the Monopole's visibility to surrounding properties. (Exhibit 4(f)) The subject property is heavily wooded, providing further screening of the Monopole.

(13) The Monopole satisfies all setbacks required under the Zoning Ordinance. It is 788 feet from the nearest property line to the north; 202 feet from the nearest property line to the east; 476 feet from the nearest property line to the south; and 563 feet from the nearest property line to the west. The closest residence is the Historic Site on the subject property and it is 422 feet to the northwest.

(14) Subsequent to the first hearing Applicant revised the Site Plan to add 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.

(15) The Monopole meets all applicable provisions of the Zoning Ordinance and does not require the grant of a variance or departure. An analysis was undertaken in 2013 to determine the structural integrity of the Monopole. The engineering company that completed the analysis determined there to be sufficient capacity for existing and reserved and proposed equipment at the Monopole. (Exhibit 4(r))

(16) There is a demonstrated need for the Monopole at this location. Applicant submitted maps of cellular coverage "with", and "without" the Monopole, and more of the surrounding area is covered "with" the structure. (Exhibit 4(q))

(17) Applicant met with nearby residents of the Preserve at Piscataway development to discuss the special exception Application. No one appeared in opposition to the request.

**Agency Comments**

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

The proposed use provides a service that is beneficial to the general public, including emergency service personnel, business operations, and private individuals. The monopole compound is set back from the roadways and surrounding properties. Many of the surrounding properties are wooded. The existing tower is expected to continue to have little visual impact on the surrounding area and is, therefore, in harmony with the purposes of Subtitle 27....

(Exhibit13, p. 7)

(19) Accordingly, it recommended approval with the conditions that the Special Exception Site Plan be revised to include general notes stating that:

- The structure shall not be used to support lights or signs other than those required for aircraft warning or other purposes.
- If the Monopole is no longer used for telecommunications purposes for a continuous period of one (1) year, it shall be removed by the owner at the owner's expense.<sup>1</sup>

(20) The Telecommunications Transmission Facility Coordinating Committee ("TTFCC") reviewed the Application. (Exhibit 4(p)) The Committee recommended approval of the special exception, and offered the following comment:

The TTFCC reviewed an application by AT&T to attach antennas on pole mounts above the top of the then-100'-high Monopole which was permitted in the zoning code, and a permit was issued based on the pole mount design shown on the plans submitted with the application. However, instead AT&T attached an extension atop the Monopole increasing its height to 113', exceeding the permitted height for the zone without approval of a special exception as required. Structural analysis reports for subsequent applications and our related site visits revealed the violation. This application is filed by the Monopole owner to begin the special exception approval process to resolve this application.

(Exhibit 4(p))

(21) The Historic Preservation Section explained that the St. James Hill Historic Site 84-001 is located on the subject property:

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<sup>1</sup> Applicant added these suggested notes to its revised Site Plan.

Built in the 1830's and later, St. James Hill is a three-part house. The central block is a two-and-one-half-story side-gabled brick structure. The principle façade is laid in Flemish bond and fronted by a two-story pedimented portico. It is attached at right angles to an early one-and-one-half-story gable-roof frame building. The main block was built in the 1830's as the home of Dr. Benedict J. Semmes, who served in the U.S. Congress. In the twentieth century the portico was added, and a balcony wing constructed at left....

To bring the monopole into compliance with County regulations, the applicant has submitted a Special Exception proposal to validate the 113' foot height of an existing monopole. The existing monopole is located within the Environmental Setting of the St. James Hill Historic Site (84-001) and is approximately 450' southeast of the house. No structural changes or additions/replacement of equipment are proposed....

The original 100' monopole transmission tower, 20-by-10 foot concrete pad and 50-by-50 foot fenced area located 450' southeast of St. James Hill were approved by Historic Area Work Permit (HAWP) 3-02 on May 7, 2002. HAWP 25-08 for the installation of panel antennas on the existing 100' monopole that would increase the height to a total of 113' was approved by Historic Preservation staff on November 4, 2008. HAWP 33-08 for the installation of three panel antennas on the existing 100' monopole and an equipment cabinet within the 50-by-50 foot fenced area was approved by Historic Preservation staff on January 8, 2009....

The existing 100' monopole transmission tower and existing antennas and equipment within the Environmental Setting of the St. James Hill Historic Site were previously reviewed and approved through the Historic Area Work Permit process. The monopole and all existing equipment was found to have no adverse effect on the historic site....

Historic Preservation staff recommends approval of the subject Special Exception with no conditions.

(Exhibit 13, pp. 29-30)

(22) The Environmental Planning Section found the proposal to be in accordance with the approved Type 2 Tree Conservation Plan for the subject property (TCP2-061-99). Staff also noted that the southern end of the subject property has floodplain and steep slopes but the instant request does not impact that area.

### **APPLICABLE LAW**

(1) The instant Application may be approved if it satisfies the requirements of Sections 27-317 and 27-416 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 2 Tree 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 27-416 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.

(4) 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-A Zone set forth in Section 27-426 of the Zoning Ordinance if it satisfies Sections 27-102, 27-317 and 27-416. 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, therefore, meets Section 27-426 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 residential-low transition land use for the subject property and does not address Monopoles. The instant use is not inconsistent with this recommendation since it will not generate traffic and is fairly inconspicuous on this wooded portion of a site in excess of twenty-four (24) acres. 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. 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. (Section 27-317(a)(4) and (5))

(6) The Application is in accordance with the approved Type 2 Tree Conservation Plan for the subject property. It, therefore, satisfies Section 27-317(a)(6).

(7) The Site Plan demonstrates the preservation of environmental features on site since the Monopole is not located in the portion of the site with floodplain and steep slopes. (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) Section 27-416(a)(1) requires the Monopole be set back at least 113 feet from all property lines and dwelling units. The proposed Monopole is set back more than 200 feet from all property lines and dwelling units, thereby satisfying this requirement.

(10) 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).

(11) 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.

(12) The equipment cabinets will be screened by an 8-foot high opaque fence, and existing woodlands. Accordingly, Section 27-416(a)(4) is met.

## **DISPOSITION**

Special Exception 4746 is Approved.

[Note: The Special Exception Site Plan and attachments are Exhibits 28 (a) –(g)]