

Case No.: S.E. 4760

Applicant: CELLCO Partnership
d/b/a Verizon Wireless

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ZONING ORDINANCE NO. 10 – 2017

AN ORDINANCE to conditionally approve Special Exception 4760 for Applicant's request 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, to remove and replace an existing 95-foot-high Monopole,¹ and related equipment pad and cabinet.

WHEREAS, the application was advertised and the property was posted prior to public hearings, in accordance with all requirements of law; and

WHEREAS, the application was reviewed by Technical Staff of the Planning Department, who recommended approval of the application (Exhibit 17(b)); and

WHEREAS, the Planning Board elected not to hold a hearing and adopted the recommendation of approval by Technical Staff (Exhibit 17(b)); and

WHEREAS, the Zoning Hearing Examiner held an evidentiary hearing on March 15, 2017 (3/15/2017, Tr.); and

WHEREAS, at the evidentiary hearing before the Examiner, no one opposed the application in person, by an attorney, or in writing (3/15/2017, Tr., Examiner's Decision, 5/3/2017, Examiner's Document Sheet, S.E. 4760); and

¹ The Zoning Hearing Examiner's decision indicates that the height of the Monopole is 113 feet, which staff confirmed is a typographical error. This Ordinance approves a 95-foot Monopole (as intended by the Examiner), which is based on the Applicant's request and testimony in the administrative record.

WHEREAS, at the close of the hearing before the Examiner, the record was left open to allow the Applicant to submit additional information, (Exhibit 30, 31(a) and (b), 32 and 33(a)-(f)), subsequently reviewed and approved by Technical Staff, (Exhibit 35(a)); and

WHEREAS, on April 7, 2017, the Examiner closed the record after Technical Staff commented on Applicant's revised Site Plan (Exhibit 35(a)); and

WHEREAS, on May 3, 2017, the Examiner issued a decision recommending approval of the application, subject to certain conditions (Examiner's Decision, 5/3/2017); and

WHEREAS, on May 8, 2017, the District Council elected not to review the Examiner's decision recommending approval of the application (Zoning Agenda, 5/3/2017); and

WHEREAS, on June 2, 2017, Alice Robinson, a person of record and President of Landover Revitalization Coalition, filed a letter, with the Clerk of the Council, of opposition to the Examiner's decision recommending approval of the application (Letter from Landover Revitalization Coalition, 6/2/2017); and

WHEREAS, the record does not contain, from the Applicant, a written response to the Coalition's June 2, 2017, letter of opposition; and

WHEREAS, on July 17, 2017, the District Council held a hearing to consider the Coalition's opposition to the application (Zoning Agenda, 7/17/2017); and

WHEREAS, the District Council finds that, for the purposes of S.E. 4760, because the Coalition was a person of record and not represented by an attorney, the Coalition's June 2, 2017, will be liberally construed as an "exception" or "appeal" to the Examiner's May 3, 2017, decision despite its nonconformance with the County Code² and the Land Use Article³; and

² The Coalition's June 2, 2017, letter of opposition does not technically conform as an "exception" or "appeal" in accordance with the County Code. *See* PGCC § 27-131(b)(2) ("Exceptions, appeals, and requests for oral argument shall be numbered in sequence and shall specify the error which is claimed to have been committed by the Examiner. Those portions of the record relied upon to support the

WHEREAS, the District Council finds, having reviewed the record (including but not limited to, the Coalition's June 2, 2017, letter, the Applicant's Amended Statement of Justification, the Amended Site Plan, and the testimony from the Applicant's expert witnesses), that the Coalition's written opposition and oral arguments against the Applicant's request is without factual or legal merit because the Applicant's request is to remove and replace an **existing** 95-foot-high Monopole,⁴ and related equipment pad and cabinet which will enhance cellular coverage to benefit the general public, emergency service personnel and business operations; and

WHEREAS, the District Council finds that there is no evidence in the record that the removal and replacement of an existing 95-foot-high Monopole will have any adverse impact on the neighborhood above and beyond those associated with the existing Monopole use at that location; and

WHEREAS, the District Council finds that the Coalition failed to present or point to any evidence in the administrative record to support its contention that the removal and replacement of the existing 95-foot-high Monopole at the same location in the neighborhood would have any long term effects on the health, safety, welfare, or property values of the residents in the neighborhood; and

claim shall be specified.”).

³ Because no representative of the Coalition appeared in person, by an attorney, or in writing at the evidentiary hearing before the Examiner, standing alone, the Coalition's June 2, 2017, letter does not qualify as a “writing” in order for the Coalition to be an aggrieved person to make a request to the Council to review the Examiner's decision. *See* Md. Ann., Code, Land Use, § 25-212 (a person may make a request to the district council for review of a decision of the zoning hearing examiner only if the person is an aggrieved person that appeared at the hearing before the examiner in person, by an attorney, or in writing).

⁴ A tower or monopole has existed at this location since 1959.

WHEREAS, the District Council finds that the Applicant met its burden to grant the instant request because there is substantial evidence in the record that the application satisfies all criteria of approval for the use in the County Code; and

WHEREAS, as the basis for this final decision, the District Council adopts and incorporates by reference, except as otherwise stated herein, the findings of fact and conclusions of law within the Examiner's May 3, 2017, decision recommending approval of S.E. 4760.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED:

SECTION 1. S.E. 4760, 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 95 feet, and related equipment pad and cabinet, is hereby conditionally approved.

SECTION 2. To protect adjacent properties and the general neighborhood, and in order to ensure overall compatibility of land use types within the proposed development and with surrounding land uses, S.E. 4760 (certifying the Special Exception Site Plan (Exhibit 35(b))), is 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).]

SECTION 3: This Ordinance shall take effect on the date of its enactment.

ENACTED this 18th day of July, 2017, by the following vote:

In Favor: Council Members Davis, Franklin, Glaros, Harrison, Lehman, Patterson, Taveras, Toles and Turner.

Opposed:

Abstained:

Absent:

Vote: 9-0

COUNTY COUNCIL OF PRINCE GEORGE’S COUNTY, MARYLAND, SITTING AS THE DISTRICT COUNCIL FOR THAT PART OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT IN PRINCE GEORGE’S COUNTY, MARYLAND

By: _____
Derrick Leon Davis, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council