

Case No. S.E. 4470

Applicant: APC Realty &
Equipment, LLC
(t/a Sprint PCS)

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

ORDER OF DENIAL

IT IS HEREBY ORDERED, after review of the administrative record, and after hearing argument on the record, that Application No. S.E. 4470, for a special exception for a tower, pole, monopole, or antenna on property described as 13,076 square feet of land in the R-R Zone, part of a 6.7-acre parcel in the same zone, on the east side of Laurel-Bowie Road, 238 feet north of Rustic Hill Drive, identified as 8107 Laurel-Bowie Road, Bowie, is hereby:

DENIED, for the following reasons, which are hereby adopted as the findings of fact and conclusions of law of the District Council in this case:

1. This case concerns a proposed "cell tower," a telecommunications monopole 138.5 feet high, and its associated equipment buildings. The monopole is to be in the rear portion of an occupied residential lot in a residential area of Bowie, Maryland. It will be within a 6.7-acre residential lot, on a partially wooded area of about 0.30 acres behind the dwelling of the property's owners, Mr. and Mrs. Gauthier. The owners will lease or otherwise convey the 0.30-acre unsubdivided parcel to the applicant, APC Realty & Equipment, LLC, trading as Sprint PCS, to allow the lessee operator to construct, maintain, and operate the telecommunications facilities.

2. The application is opposed by the Gauthiers' neighbors, Mrs. Wilson and others, and also by the City of Bowie, whose incorporated areas lie near but do not include the subject property. The City maintains that a large, unsightly telecommunications structure like this one, a monopole over 130 feet in height, should be located away from populated residential areas, because it is not compatible with single-family residential development. For their part the neighbors contend, more directly, that the monopole, which many of them will be able to see from their residences, will lessen their enjoyment of and decrease the value of their properties. As to the last argument, the Council cannot find from this record a diminution in property values, as little testimony was offered on that subject before the Examiner. But the Council does agree, as will be explained, that a massive telecommunications structure like the one proposed here is fundamentally not compatible, visually or aesthetically or in its operations, with a quiet, undisturbed neighborhood of single-family homes.

FINDINGS

3. The District Council agrees with and adopts the Technical Staff Report, in its description of the subject property and its neighborhood.

A. Location and Field Inspection: The subject property, a 2,500-square-foot enclosure to be reached by a 12-foot-wide driveway from Laurel-Bowie Road (MD 197), is located on the east side of MD 197, 238 feet north of Rustic Hill Drive. The site is part of a 6.7-acre "parent parcel" that contains a residence, a garage, and a shed. Most of the parent parcel is wooded, and many trees exceed 50 feet in height.

B. Development Data Summary:

	EXISTING	PROPOSED
Zone(s)	R-R	R-R
Use(s)	None	Telecommunications Monopole
Acreage	0.3±	0.3±
Gross Floor Area	0 square feet	0 square feet

The Council finds from the record that the 6.7-acre parcel is presently used as a single-family residence and that it will be used for both residential and commercial purposes, if the application is approved. Also, it is not clear from the record how large the buildings serving the tower will be, but it appears that their total square footage may exceed 1,000.

C. History: The subject property was retained in the R-R Zone in the 1991 Sectional Map Amendment for Bowie-Collington-Mitchellville.

D. Master Plan Recommendation: The Bowie-Collington-Mitchellville Master Plan recommends Low-Suburban residential land use (1.6-2.6 dwellings per acre) for the site.

4. On the Gauthier's R-R parcel, a monopole with associated buildings must have a special exception, and the structures must meet dimensional requirements in § 27-416 of the Zoning Ordinance. The special exception application must also meet the general requirements in § 27-317, which requires the following proofs:

- (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 Tree Conservation Plan.

CONCLUSIONS

5. Though the subject parcel is wooded and includes 6.7 acres, and though the applicant has shown basic compliance with screening and dimensional standards in the Zoning Ordinance, the District Council concludes that the application should be denied.

6. The District Council agrees with Mrs. Wilson and her neighbors, as well as the City of Bowie, that the proposed telecommunications facilities should not be placed on the subject property, zoned and used residentially and situated adjacent to numerous residential properties. At this location, the monopole and other structures will tend to maximize the structure's adverse aesthetic, visual, design, operational, and property-deteriorating effects, while placing a massive commercial device in the middle of a quiet, residential area which now has no major nonresidential uses. In terms of aesthetics and intensity of operation, this proposed monopole will tend to disrupt the tranquility of the neighborhood, and will actually tend to alter its character, for the benefit of just one property owner in that neighborhood.

7. Testimony in the record indicates that the proposed monopole will stand about 420 feet from the residence of the Gauthiers, on whose lot it will be constructed, and who will be receiving rent or other compensation for the facilities. But the tower will be less than 300 feet from one home, on an adjoining lot, and will be close, within 500 feet, of a number of others. Indeed the monopole will be less than 250 feet from adjoining residential land, properties not owned by the Gauthiers. The monopole will be screened from the Gauthier residence by trees, and some forest vegetation, including tall oaks, will screen adjacent homes from sight of the pole and its base building. (The buildings, which will not be manned, house telecommunications equipment necessary for monopole operations.) But the monopole, 138.5 feet high, will tower over the tallest trees and will be clearly visible in all parts of the neighborhood. Moreover, the record presently gives an incomplete picture of all aesthetic and visual effects the monopole will create, indicating a lack of full proof from the applicant of the aesthetic and visual effects and the applicant's response to the issues. The applicant has not shown how much of a view of the pole different nearby properties will have. This record does not support a District Council conclusion that the proposed telecommunications facilities will not be detrimental to the use or development of adjacent properties or the general neighborhood.

8. As to a number of Zoning Ordinance special exception requirements, the evidence does support conclusions favorable to the applicant. The proposed monopole, with associated buildings, is technically approvable as to minimum lot area, setbacks, and other dimensional requirements. Zon. Ord. §§ 27-416, 27-442 (b), (c), (d), (e). The

use also does not substantially impair the applicable Master Plan or present health or safety hazards to residents or workers in the area. § 27-317 (a) (6).

The applicant made an incomplete record, however, on the question of visual, design, and other aesthetic effects from the proposed use. One cannot tell from the applicant's presentation which properties will be able to see the monopole, and how much they will see. But it is clear and not disputed, since the monopole will rise dozens of feet (several stories) above the tallest trees, that the monopole will be visible all around the site, in and beyond the neighborhood, for miles. The screening effect of the trees disappears where the monopole is the highest feature on the landscape. Moreover, as stated, the record (which has photographs) demonstrates that tall trees do not fully screen a view of the monopole from neighboring residential properties.

9. The Zoning Ordinance provides that a special exception may not be approved unless the District Council finds from evidence in the record that the proposed use and site plan will be both "in harmony with the purpose of" the Zoning Ordinance and not "detrimental to the use or development of adjacent properties or the general neighborhood." § 27-317 (a) (1), (5). As to both standards, the application fails, as the applicant's proofs do not meet the burden. The proposed monopole is not in harmony with Zoning Ordinance purposes, and it will be detrimental to the use or development of adjacent properties and the general neighborhood.

10. As to the issue of harmony with the purpose of the Zoning Ordinance, the Ordinance's "purposes" are set out in § 27-102. They include, primarily, protection of the public health, safety, and welfare and implementation of the General Plan and its amendments.

The more general purposes of the powers of land use planning and regulation in Prince George's County are set out in the Regional District Act, in Article 28, Md. Ann. Code. The Act delegates the power to control and direct land use within the Maryland-Washington Regional District in Prince George's County to the County Council, sitting as the District Council. Art. 28, § 8-101, *et seq.* Planning powers and functions, including the power to approve or deny applications for the subdivision of land, have been delegated to the Planning Board under § 7-101, *et seq.*, of the Act. The power to approve and amend the General Plan, the guiding document for the exercise of planning and zoning powers in the County, is delegated to the Planning Board and District Council together, in § 7-110 of the Act.

11. The making and amending of the General Plan under § 7-110 are to be for the purposes of "guiding and accomplishing a coordinated, comprehensive, adjusted, and systematic development of the regional district, the coordination and adjustment of this development with public and private development of other parts of the State of Maryland and of the District of Columbia, and the protection and promotion of the health, safety, morals, comfort, and welfare of the inhabitants of the regional district." By these provisions of the Regional District Act, exercise of planning powers and functions by Planning Board and Council are for general police power purposes, protection of public health, safety, and welfare, and more specifically to produce well-guided development, both public and private.

Planning and zoning powers are closely related, particularly in the Maryland-Washington Regional District. The General Plan and its amendments, in the Biennial Growth and Policy Plan and in area and functional master plans, are to be for general

police-power purposes, with the specific aims of "guiding" and "accomplishing" the development of the Regional District in a "coordinated, comprehensive, adjusted, and systematic" way.

12. To be valid, the County's zoning regulations must be rationally related to legitimate police-power purposes, and must be intended to implement the County's General Plan, as amended. The General Plan's purposes are to guide and accomplish Regional District development which is "coordinated," "comprehensive," "adjusted," and "systematic." Art. 28, § 7-110. The regulations therefore must be drafted and administered in a way which results in development required by the Regional District Act.

The enumerated purposes in the County's Zoning Ordinance are intended to cover all general purposes for land use planning and regulation within the Regional District. Among those in § 27-102 are the general police-power purposes, protection of the public health, safety, and welfare; implementation of the recommendations in the General Plan; promotion of "conservation . . . of communities"; guiding "orderly" growth and development; promoting the "most beneficial relationship between the use of land and buildings"; protecting property owners "from adverse impacts of adjoining development"; and insuring "social" and "economic" stability, in all parts of the County. Another purpose, articulated throughout the Ordinance -- in the site plan review provisions, in the sign regulations, in various special exception requirements for different uses -- and also in the General Plan is promotion of good design, in building and site design, the conservation of aesthetic and visual features in properties and in communities. The underlying purposes here are to encourage high-quality

development, preserve property values, and generally create more livable communities. A use of land, public or private, which contravenes or works against accomplishment of these purposes cannot be said to be in "harmony" with the purpose of the Zoning Ordinance, for purposes of § 27-317 (a) (1).

13. The District Council finds from the evidence and concludes, as to the harmony requirement in § 27-317 (a), that the applicant has not proved compliance with subsection (1). Both the Zoning Ordinance and the General Plan emphasize that, at a minimum, proposed new development should not detract from the present and future development in a neighborhood. That is particularly true where, as in this case, the neighborhood has a set and definite character, single-family residential on suburban-sized lots, and is in the process of completing its development on various vacant residential lots, many within sight of or a short distance away from the subject property. As the Examiner found, the proposed monopole will be "surrounded" by residential properties, and the pole will be visible from most of them.

The proposed monopole will rise up in the midst of this neighborhood -- almost as did the monolith structure in the Kubrick film, *2001* -- where it obviously does not fit, where it does not conform in any way to its surroundings. This large 21st century structure is, in the words of the Chief Justice in the *Euclid* decision, a "pig in a parlor," a use not a nuisance in itself which should be located elsewhere. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926). As a matter of design, aesthetics, and visual arrangements within a developing residential neighborhood, the proposed monopole and associated buildings simply detract from the neighborhood and add

nothing to the "coordinated, comprehensive, adjusted, and systematic development" of this Bowie neighborhood in the Regional District. Art. 28, § 7-110.

To prove harmony with Zoning Ordinance purposes, the applicant at a minimum was required to show that at the present time or at full neighborhood development the proposed monopole and associated buildings would be a use of the land which relates, in function or usability or design or visual effect, to the other uses in the neighborhood, particularly the suburban homes existing and to be built there. The applicant tried to show, at best, that the use would be screened by large trees and other vegetation, so that residents would not be able to see it. In that effort the applicant failed. The monopole will rise above the tree cover, will be seen from many properties in the neighborhood, and will be visible for miles beyond the neighborhood. Moreover, a use of land which cannot be found "compatible" unless it is completely screened from view is not compatible with a residential neighborhood.

14. The Examiner concludes that the applicant met the harmony requirement in § 27-317 (a) (1). Her first and third observations, as to purposes (a) (1) and (a) (4) of § 27-102, are that cell phone use is on the increase and that therefore this use will serve the public, and that the proposed monopole will add "a needed service (wireless communications)" for persons in the area. Beyond that, as to purposes (a) (3) and (a) (13) of § 27-102, the Examiner says that the proposed telecommunications facilities will involve minimal site visits, will "not deter" from orderly growth and development of the County, and will not generate noises, odors, vibrations, or other forms of pollution.

15. The Examiner's point that telecommunications facilities are generally of benefit to the public at large is of no help to this applicant, however, and in fact is not

even a relevant consideration in the case. The question is not whether this use will benefit the public -- most nonresidential uses will meet that test -- but whether this use is appropriate at this location. This proposed monopole is intended to serve an area of the County where the applicant says there is a gap in relay facilities, but it was not shown that there are not other, nearby sites which will bridge the gap as effectively but have fewer detrimental effects on a residential neighborhood. Ordinance purposes (a) (1) and (a) (4) are not advanced by this proposed use, and the applicant did not prove otherwise.

16. The Examiner's other observation, that the proposed telecommunications facilities will have minimal detrimental impacts on nearby properties, also does not tend to show harmony with Zoning Ordinance purposes. The fact of minimal impact does not show that this use is appropriate at this location or that it will not have adverse effects greater than those normally to be anticipated, regardless of the use's location in the R-R Zone. The Examiner's minimal-impact observations could apply to virtually any property on which this monopole were placed.

17. In short, neither Examiner nor applicant demonstrated at all that placing a huge telecommunications monopole and associated equipment buildings in an established residential neighborhood will be in harmony with the purposes of the Zoning Ordinance. The monopole will not meet express Ordinance purposes or enhance the coordinated, comprehensive, adjusted, and systematic development of the Regional District. Art. 28, § 7-110, Md. Code Ann.; Pr.Geo.Co.Code, §§ 27-102, 27-317 (a) (1).

18. For largely the same reasons, the Council concludes that the applicant did not meet the requirement in § 27-317 (a) (5), to show that the proposed special exception use "will not be detrimental to the use or development of adjacent properties or the general neighborhood." The applicant -- and also the Examiner, in her conclusions -- did not show that this monopole would not discourage quality residential development or deter new residents from moving into the area, to occupy the vacant parcels in the neighborhood. That failing is particularly apparent at the vacant properties near or within sight of the proposed monopole.

19. Area residents, supported by the City of Bowie, argued at length that the proposed monopole would be highly visible, would detract from the character and quality of the neighborhood, would discourage new residents from locating there, and would be detrimental to property values. Though no proof was offered to compare what property values would be with and without the proposed telecommunications facilities, the Council would note that the testimony of area residents, some of whom have lived in the subject property's neighborhood for many years, is probative on the general issue of the desirability of a residence near or distant from a monopole. That is, the record certainly contains testimony from property owners living right next to the Gauthier property that they have lived there for years, that they know the character of the area and the desirability of different kinds of nonresidential development, and that a huge telecommunications monopole visible for miles -- a tower which will rise 60 feet or more above the tallest surrounding trees, and 80 feet above most of them -- detracts from neighborhood character and attractiveness. The Council agrees with that

testimony and concludes that the applicant did not prove that the monopole will not be detrimental to development or use of adjacent properties or the general neighborhood.

20. For the reasons stated above, the District Council must conclude that this applicant did not prove harmony with Zoning Ordinance purposes, as articulated in the Ordinance, in the General Plan, and in the Regional District Act. The Council must conclude further that the applicant did not prove that its proposed use would not be detrimental to use or development of adjacent properties or the general neighborhood. For these reasons, the application must be denied.

Ordered this 12th day of April, 2004, by the following vote:

In Favor: Council Members Knotts, Bland, Dean, Dernoga, Exum, Harrington,
Hendershot, Peters and Shapiro

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: _____
Tony Knotts, Chairman

ATTEST:

Redis C. Floyd, Clerk