

Maryland-National Capital Park and Planning Commission
Prince George's County Planning Department
Development Review Division
301-952-3530



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SPECIAL EXCEPTION APPLICATION NO. 4447

Application	General Data
Project Name Capital Court Apartments	Date Accepted10/25/01
	Planning Board Action LimitN/A
	Tax Map & Grid073 D-3
Location Northeast corner of Walker Mill Road and Karen Boulevard, known as 6958 Walker Mill Road	Plan Acreage9.53
	ZoneR-18
	Dwelling UnitsN/A
Applicant Nextel Communications of the Mid-Atlantic 12510 Prosperity Drive, Suite 200 Silver Spring, Maryland 20904	Square FootageN/A
	Planning Area75A
	Council District06
	MunicipalityNone
	200-Scale Base Map202SE06

Purpose of Application		Notice Dates	
Tower, pole, monopole or antenna in accordance with <u>Sections 27-416 and 27-317</u> Nonconforming buildings, structures, and uses; alteration, enlargement, extension, or reconstruction in accordance with <u>Section 27-384</u>		Adjoining Property Owners (CB-15-1998)	01/30/02
		Previous Parties of Record (CB-13-1997)	11/02/01
		Sign(s) Posted on Site	N/A
		Variance(s): Adjoining Property Owners	N/A
Staff Recommendation		Staff Reviewer: Tom Lockard	
APPROVAL	APPROVAL WITH CONDITIONS	DISAPPROVAL	DISCUSSION
	X		

February 6, 2002

TECHNICAL STAFF REPORT:

TO: The Prince George's County Planning Board
The Prince George's County District Council

VIA: Arie Stouten, Zoning Supervisor

FROM: Tom Lockard, Senior Planner

SUBJECT: **Special Exception Application No. 4447**

REQUEST: Tower, pole, monopole or antenna in accordance with Sections 27-416 and 27-317
Nonconforming buildings, structures, and uses; alteration, enlargement, extension, or
reconstruction in accordance with Section 27-384

RECOMMENDATION: **APPROVAL, subject to conditions**

NOTE:

This application is on the agenda for the Planning Board to decide whether or not to schedule a public hearing. If the Planning Board decides to hear the application, it will be placed on a future agenda.

Any person may request the Planning Board to schedule a public hearing. The request may be made in writing prior to the agenda date or in person on the agenda date. All requests must specify the reasons for the public hearing. All parties will be notified of the Planning Board's decision.

You are encouraged to become a person of record in this application. The request must be made in writing and sent to the Office of the Zoning Hearing Examiner at the address indicated above. Questions about becoming a person of record should be directed to the Hearing Examiner at 301-952-3644. All other questions should be directed to the Development Review Division at 301-952-3530.

FINDINGS:

- A. Location and Field Inspection: The site is located in the northeast quadrant of the intersection of Walker Mill Road and Karen Boulevard in Capitol Heights. It is developed with a 200-unit garden apartment complex known as Capital Court Apartments.
- B. History: The subject apartment complex was constructed in 1968. In 1984, the apartment complex was certified as a legal nonconforming use via Permit No. 3850-84-U. The property was retained in the R-18 Zone by the 1986 *Sectional Map Amendment (SMA) for Suitland-District Heights and Vicinity*.
- C. Master Plan Recommendation: The 1985 *Master Plan for Suitland-District Heights and Vicinity* recommends the site for development at an urban density (12.0-16.9 dwellings/acre) for multifamily residential use.
- D. Request: The applicant seeks permission to erect a cellular telephone antenna on the roof of one of the existing four-story apartment buildings. The antenna would be attached to a ten-foot-high brick building which would enclose related telecommunications equipment. Because the site has been certified as a nonconforming use, the applicant also seeks a concurrent special exception to modify the nonconforming use.
- E. Neighborhood and Surrounding Uses: The site is surrounded by the following uses:

North: Apartments in the R-18 Zone and townhouses in the R-T Zone.

East: The John H. Bayne Elementary School in the R-55 Zone.

South: Condominiums, townhouses and single-family houses in the R-T Zone.

West: Apartments in the R-18 Zone.

The neighborhood is defined by the following boundaries:

North: Central Avenue (MD 214)

East: Shady Glen Drive

South: Walker Mill Road

West: Addison Road

The neighborhood contains a mixture of uses. The interior consists of residential development, including a significant number of apartments and townhouses. Commercial and employment uses are found along the major roads that make up the neighborhood boundaries.

- F. Specific Special Exception Requirements

1. Section 27-416. Tower, pole, monopole, or antenna:

- (a) A tower, pole, monopole, or 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);

Finding: The support structure for this antenna will be a ten-foot-high brick equipment building which will be constructed on the roof of the four-story apartment building. There will be no tower, pole or monopole structures involved.

- (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;

Finding: There will be no lights or signs erected on the equipment building/antenna structure.

- (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

Finding: The applicant is aware of this provision.

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

Finding: The related equipment building will actually serve as the support structure for the antenna. It will be built on the roof of the apartment building, so landscaping or berming would not be appropriate in this instance. In order to blend harmoniously with the existing development, the equipment building should be constructed of the same color brick as the apartment buildings.

2. Section 27-384 - Nonconforming buildings, structures, and uses; alteration, enlargement, extension, or reconstruction:

- (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.**

Finding: The existing height of the apartment building is 36.5 feet above grade. The new equipment structure, at 10.5 feet in height, would bring the new building height to 47 feet. Because it is an unmanned structure, no additional parking spaces are required.

- (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**

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

Finding: The lot has not changed its configuration since the use became nonconforming and has been under single ownership. No additional parking spaces are required for the proposed antenna and equipment structure.

- (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.**

Finding: This section is not applicable because the nonconforming use is not being reconstructed.

- (4) **When not otherwise allowed, a certified nonconforming use may be otherwise altered by the addition or relocation of improvements, such as fencing, landscaping, off-street parking and loading areas, and outdoor trash enclosures, or the relocation of buildings or other improvements within the boundary lines of the lot as it existed as a single lot under single ownership at the time the use became nonconforming.**

Finding: Although the physical locations of the parking areas do not change, the locations of parking spaces within the areas on the submitted site plan do not match those approved when the site was certified in 1985. However, because the lot continues as a single lot under single ownership since it became nonconforming, the parking and loading areas may be altered through this application.

- (5) **Any new, or any addition to, or alteration or relocation of an existing building or other improvement (which is either nonconforming or utilized in connection with a certified nonconforming use), shall conform to the building line, setback, yard, and height regulations of the zone in which the certified nonconforming use is located. The District Council may further restrict the location and bulk of the building or structure where the evidence so warrants. If the use is presently permitted by Special Exception in the zone, the new building, improvement, or addition shall conform to all of the physical requirements of the specific Special Exception use.**

Finding: The proposed equipment building and antenna conform to the requirements of the R-18 Zone.

- (6) **The District Council may grant this Special Exception for property within a one hundred (100) year floodplain only after it has determined that the proposed enlargement, extension, reconstruction, or alteration will:**

- (A) **Not require additional filling in the floodplain;**

- (B) Not result in an increase in elevation of the one hundred (100) year floodplain; and
- (C) Conform with all other applicable requirements of this Subtitle and of Division 2 of Subtitle 4, "Building," of this Code, entitled "Floodplain Ordinance."

Finding: The site is not within the 100-year floodplain.

- (7) In a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted where the existing impervious surface coverage exceeds that allowed by Section 27-548.17, and which would result in a net increase in the existing impervious surface coverage. In addition, a Special Exception shall not be granted which would result in converting a property which currently meets the impervious surface coverage requirements of Section 27-548.17 to a nonconforming status regarding impervious surface coverage, except if a finding of extenuating circumstances is made, such as the necessity to comply with other laws and regulations.

Finding: The site is not within a Chesapeake Bay Critical Area Overlay Zone.

- (b) Applications for this Special Exception shall be accompanied by a copy of the Use and Occupancy Permit for the certified nonconforming use, as provided for in Section 27-241(b).

Finding: A copy of permit number 3850-84-U has been submitted.

- (c) In a Chesapeake Bay Critical Area Overlay Zone, in order to permit the alteration, enlargement, extension, or reconstruction of any nonconforming building or structure or nonconforming use, the District Council shall find that:
 - (1) Special conditions or circumstances exist that are peculiar to the subject land or structure and that a literal enforcement of the Overlay Zone provisions would result in unwarranted hardship;
 - (2) A literal interpretation of the county's Critical Area Program regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Chesapeake Bay Critical Area Overlay Zones;
 - (3) The granting of a Special Exception would not confer upon an applicant any special privilege that would be denied by this Subtitle to other lands or structures within the Chesapeake Bay Critical Area Overlay Zones;

- (4) **The request for a Special Exception is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property;**
- (5) **The granting of a Special Exception would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Chesapeake Bay Critical Area, and that the granting of the variance would be in harmony with the general spirit and intent of the applicable laws within the Chesapeake Bay Critical Area; and**
- (6) **The application for a Special Exception has been made in writing to the District Council or Zoning Hearing Examiner, if applicable, with a copy provided to the Chesapeake Bay Critical Area Commission.**

Finding: The site is not within a Chesapeake Bay Critical Area Overlay Zone.

- G. Parking Regulations: According to the approved nonconforming use site plan, 303 parking spaces are required to serve the apartment complex. The site plan shows 304 parking spaces.
- H. Landscape Manual Requirements: The application is exempt from the requirements of the *Landscape Manual* because the proposed antennas and equipment structure do not exceed 5,000 square feet or 10 percent of the existing building area, nor are new parking spaces required.
- I. Zone Standards: The existing apartment complex exceeds today's allowable maximum density, but was in conformance when the apartments were built in 1968. It was certified as a legal nonconforming use in 1984 via permit number 3850-84-U. The proposed use otherwise meets the requirements of the R-18 Zone.
- J. Sign Regulations: The site plan should be amended to show the location of the apartment complex identification sign.
- K. Other Issues: The Permit Review Section (M-NCPPC), in their referral dated November 26, 2001, pointed out several minor changes that need to be made to the site plan:
 - 1. A note must be provided on the site plan that states that the antennas shall not be used to support lights or signs other than those required for aircraft warning or other safety purposes in accordance with Section 27-416(a)(2).
 - 2. The parking schedule should indicate the number of dwelling units, the method of calculation, the number of parking spaces required, and the sizes and the types of parking spaces provided. Parking can be calculated at 1.25 spaces required per dwelling unit.
 - 3. The number of one- two- and three-bedroom units should be provided in the site plan general notes.

4. The approved certified site plan for the apartments demonstrates fences around the tennis courts and swimming pool. The height and type of all fences should be indicated on the site plan.
5. Permit No. 4320-90-U was approved September 21, 1990, for a day care center with up to 18 students. If this use still operates on the subject property, it should be indicated in the general notes.
6. All existing ramps/drop curbs or other means of accessible entrance into the building for the physically handicapped should be indicated on the site plan.

L. Required Findings:

Section 27-317(a) of the Zoning Ordinance provides that a special exception may be approved if:

- (1) **The proposed use and site plan are in harmony with the purposes of this Subtitle.**

Finding: The purposes of zoning are many and varied, but can generally be characterized as protecting the health, safety and welfare of the present and future citizens of the county by promoting beneficial land use relationships. The applicant's proposal will do so by providing an increasingly-necessary use (the mobile phone antenna) in a way that is compatible with a residential neighborhood. By placing the antenna on top of a building, the applicant is able to integrate the land uses and avoid the impact of having a monopole or other tower structure.

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

Finding: With few exceptions, the proposal meets the requirements and regulations of the Zoning Ordinance. In those instances where it does not, minor conditions are recommended to ensure conformance.

- (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 Map Plan, the General Plan.**

Finding: The proposed use will not substantially impair the 1985 *Master Plan for Suitland-District Heights and Vicinity*, which recommends the site for development at an urban density (12.0-16.9 dwellings/acre) for multifamily residential use. In fact, if this proposal involved a five-story building rather than the existing four-story building, the use would be permitted without a special exception.

- (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.**

Finding: Special exception uses are those uses which are deemed compatible in the specific zone they are allowed, absent site-specific evidence to the contrary. In the subject case, impacts to adjacent properties and the health, safety and welfare of residents and workers in the area are not apparent. Placing the antenna on top of an existing apartment building will result in less of an impact than would placing the antenna on a freestanding monopole or tower.

(6) The proposed site plan is in conformance with an approved Tree Conservation Plan.

Finding: The site is exempt from this requirement. A letter of exemption, dated May 15, 2001, was issued because the proposed development does not have 10,000 square feet of woodland, and the site does not have a previously approved Tree Conservation Plan.

CONCLUSION:

The applicant has met their burden of proof in this instance. Therefore, it is recommended that SE-4447 be APPROVED subject to the following conditions:

1. Prior to the issuance of permits, the site plan shall be revised to show the following:
 - g. A note must be provided indicating that the antennas shall not be used to support lights or signs other than those required for aircraft warning or other safety purposes in accordance with Section 27-416(a)(2).
 8. The parking schedule should indicate the number of dwelling units, the method of calculation, the number of parking spaces required, and the sizes and the types of parking spaces provided. Parking can be calculated at 1.25 spaces required per dwelling unit.
9. The number of one-, two-, and three-bedroom units should be provided.
10. The approved certified site plan for the apartments demonstrates fences around the tennis courts and swimming pool. The height and type of all fences should be indicated.
11. Permit No. 4320-90-U was approved September 21, 1990, for a day care center with up to 18 students. If this use still operates on the subject property, it should be indicated.
 12. All existing ramps/drop curbs or other means of accessible entrance into the building for the physically handicapped should be indicated.
 13. All apartment complex identification signs shall be shown.
2. The equipment structure/antenna support structure shall be constructed of the same material as the surrounding apartment buildings.