



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MEMORANDUM

DATE: September 20, 2002
TO: Montgomery County Board of Appeals
VIA: John Carter, Chief, Community-Based Planning *MC*
FROM: Judy Daniel, AICP, Team Leader, Rural Area *JD*

REVIEW TYPE: **Special Exception**
APPLYING FOR: **Telecommunications Facility**
CASE NUMBER: **S-2526**

APPLICANT: Sprint PCS and Realty Equipment Company
ZONE: RDT
LOCATION: 23612 Woodfield Road, Woodfield Community
MASTER PLAN: Damascus
MCPB HEARING: October 3, 2002
BOA HEARING: October 11, 2002

STAFF RECOMMENDATION: APPROVAL with the following conditions:

1. The applicant is bound by all submitted statements and plans.
2. The monopole must be removed at the cost of the applicant when the telecommunication facility is no longer in use by any telecommunication carrier.
3. Approval of a Tree Protection Plan by the Environmental Planning staff prior to release of sediment and erosion control or building permit, as appropriate. An M-NCPPC inspector must be contacted for pre-construction inspection of tree protection measures and authorization to begin any tree clearing.
4. The flagpole must follow approved United States regulations governing the flying of the United States flag.

PROJECT DESCRIPTION: Surrounding Neighborhood

This is an application for a cellular communications tower for Sprint PCS to be located on the property of the Wesley Grove United Methodist Church on Woodfield Road, in the Woodfield community. This is a rural residential area with a linear residential character along Woodfield Road approximately three miles south of Damascus.

PROJECT DESCRIPTION: Site Description

The applicant proposes to lease a 2500 square foot portion of Parcel 763, one of the three adjoining properties owned by the church that are a part of this application. The church is a co-applicant for this special exception. The church property consists of adjoining Parcels P760 and P763 and Parcel "B" on Tax Map FW 63, comprising 7.27 acres in the RE-2 Zone. The structure is to be located on Parcel 763.

The property is generally level, sloping slightly as it falls away from the road. The site contains structures (sanctuary, education building, and home) related to the church use. Existing trees and shrubs surround the home, scattered trees are around the other church buildings, and larger stands of trees are located at the rear of the properties. The specific location is adjacent to the parking lot and the house on the property.

PROJECT DESCRIPTION: Proposal

Sprint PCS is requesting a special exception to construct a telecommunications facility on the property in the form of a 100-foot tall "flagpole" monopole, with six equipment cabinets enclosed in a wooded board-on-board fenced compound. The "flagpole" design was chosen because of the residential character of the surrounding area. Sprint's three antennas will be hidden inside the structure, which will daily fly the American flag. There will be capacity for at least two additional carriers to use the structure.

The fence enclosure for the equipment cabinets is 15 feet wide x 40 feet long x 8 feet high and set on a concrete pad. The pole diameter will be 21 inches at the top, and 41 inches at the base; anchored to a concrete and steel foundation 5 feet in diameter and 15 feet deep. The facility will be freestanding, and able to accommodate at least 2 additional carriers.

The site of the structure is approximately 102 feet from Woodfield Road (to the east), 174 feet from Kimblehunt Drive (to the south), 197 feet to the west property line, and 194 feet from the north property line. The structure will be located approximately 45 feet from the house on the property, but the compound will be buffered from the view of the house by an area of existing trees. The site adjoins the Church's parking lot, and beyond that is the church education building and sanctuary. Access will be via the existing drive and parking lot used by the Church.

As with most cellular monopolies there will be only periodic visits of one to two times per month to check or repair the equipment.

The location of the structure is 25 feet from the lot line between two of the properties owned by the church. Although a setback of 100 feet is required in 59-G-2.43(d) and 59-G-2.43(j)(2)(a), that distance is defined in 59-G-2.43(j)(2)(c) to be a perimeter of the property that is included in the special exception. In this instance, that is the 7.27-acre cumulative size of the three properties owned by the church. As noted above, the proposed location for the structure easily meets that requirement.

The application has been reviewed by the Telecommunications Transmission Facilities Coordinating Group (the Tower Committee [TC]), which recommended approval of the facility. The applicant stated in the petition that the proposed site is necessary to provide "seamless coverage" for its Personal Communications Services (PCS) system.

ANALYSIS

Telecommunication facilities are an allowable special exception within the RE-2 zone. A telecommunications facility is defined in Section 59-A-2.1 as "*Any facility established for the purpose of providing wireless voice, data and image transmission within a designated service area. A telecommunication facility must not be staffed. A telecommunication facility consists of one or more antennas attached to a support structure and related equipment...*"

Master Plan

The Damascus Master is silent on special exceptions. The RE-2 Zone allows certain special exceptions including public utility structures.

Transportation

The proposed use is located along Woodfield Road, which is designated as an Arterial Road with an 80-foot right-of-way. There are no major transportation issues related to this special exception since there will be no on-site personnel and only periodic visits to check or repair the equipment. Access to the site will be from the private driveway off Woodfield Road shared by the co-applicant, the Wesley Grove Church.

Environmental

This application is exempt from the Forest Conservation Law. The Natural Resources Inventory (#4-02211E) has been approved. However a Tree Protection Plan must be approved before release of building permits so that nearby trees will be protected from construction equipment. A tree protection fence must be

provided to keep construction equipment and vehicles off the critical root zones. The limits of disturbance must be indicated on the tree save plan.

Historic Preservation

The Maryland Historic Trust has determined that there will be no adverse impact from the proposed monopole at this location. However the M-NCPPC Historic Preservation staff has noted while it will have an adverse visual impact on this location at the south edge of the Woodfield Historic District, the proposed use of the “stealth” flagpole will offset that impact.

Required Findings for Special Exception

As outlined in the attached full review, the application meets the standards for a telecommunications public utility use in the zoning ordinance.

Community Concerns

As of the date of this report, the staff has received no comments regarding this application. Notices were sent to a number of adjoining and confronting property owners, and several area civic groups.

Inherent and Non-Inherent Effects

Section 59-G-1.2.1 of the Zoning Ordinance provides that:

“A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.”

The staff believes that the only significant inherent characteristic for this type of use is that it must provide a means of mounting antennas at a sufficient height to accomplish the job of transmitting cellular telephone signals, and that it must have equipment shelters to protect the transmitting equipment. The means of getting the antennas to the proper altitude to accomplish their job can vary and be visible or hidden, and the altitude to which they must be raised can vary depending on ground elevation and area to be covered. Other impacts are limited as the required mechanical equipment is easily located within screened fenced compounds and employee visits are rare.

The staff does not believe there are any significant non-inherent effects for this use at this location because the proposed “stealth” flagpole design and level of use anticipated will not significantly impact the residential character of this area. The height of 100 feet is lower than often seen for this use. The size of the property and infrequency of maintenance access indicate a use with little potential for non-inherent effects or impacts.

Tower Committee Report

The Telecommunication Transmission Facility Coordinating Group or “Tower Committee” (TC) recommended the application “*on the basis that it is for a telecommunications structure that will require a special exception.*” The reason for this wording (as opposed to the usual “recommended”) relates to their concern that the application did not meet the setback requirements in the zoning ordinance. An extensive TC discussion of this application revolved around two primary issues - the nature of a “flagpole” monopole, and the required setbacks in the zone. The technical sufficiency of the application was not questioned, and the use of the “stealth” structure was found to be appropriate.

The discussion included a specific determination that it is a monopole that looks like a tall flagpole, and not a tall flagpole that happens to function as a monopole. The applicant had hoped to see the structure classified as a flagpole and thus avoid special exception. He cited rulings in the District of Columbia and Calvert County where flagpole/monopoles are considered flagpoles. After consultation with the County Attorney and the Department of Permitting Services (DPS) staff, the Tower Committee determined that the interpretation of the applicant was not applicable in Montgomery County. The DPS staff considers the structure a telecommunications monopole. The M-NCPPC staff fully agrees with this interpretation.

The issue of the proper setback arose because the structure is to be located 25 feet from one of the properties that comprise the application and a 100-foot setback is required. The Wesley Grove Church is a party to the application and its buildings and parking lot are located on three parcels - all a part of the application. Although this is a technical land use issue, the Tower Committee debated the issue in detail. The applicant contended that because both properties were owned by the same entity, the setback requirements applied to the perimeter lot lines only. The Tower Coordinator consulted with the County Attorney’s office, and was advised the setback requirements applied to interior lot lines even when adjoining parcels are owned by the same entity. The applicant stated that he strongly disagreed with the County Attorney’s interpretation. Ultimately the TC decided to support the structure, but to reflect their belief that the structure cannot meet the setback requirement and thus cannot be approved.

In a discussion of the technical merits of the application, the Tower Coordinator stated that the TC has encouraged stealth applications such as tree poles, and concealment in steeples and flagpoles. He said he approved of the structure

flagpole concept, and that the carrier had demonstrated a gap in their service area that this facility would fill.

The TC agreed with this assessment. The TC noted that while the structure will be quite visible to the surrounding community it will appear to be a flagpole, albeit a very large flagpole. Flagpoles of this size are usually only seen at government buildings or office buildings. Regardless of this, the proposed “stealth” design is usually encouraged by the TC to minimize the visual intrusion of the structure in a community. The church’s steeple has been removed for repairs, and could not be used to support the antennas.

CONCLUSION

The staff believes that the proposed special exception can satisfy all general and specific requirements for the use found in Sections 59-G-1.21 and 59-G-2.43 of the Zoning Ordinance. The only criterion that seemed to be at issue with the Tower Committee was the proposed setback.

The standards of 59-G-2.43(c) and 59-G-2.43(j)(2)(a) require one foot of setback for each foot of height for a monopole, thus a 100-foot setback. However, the standard of 59-G-2.43(j)(2)(c) states that “*these location requirements apply to perimeter lot lines and not to interior lot lines.*” Thus, the staff concludes that the proposed structure meets the setback requirement because all of the properties owned by the Church are included as a part of the application, not just the property the structure will sit upon. The application includes the church’s three properties, comprising a 7.27-acre site, and the site of the structure will be well over 100 feet from the nearest perimeter lot line. This is the interpretation of these regulations that has always been used to the best of the staff’s knowledge. In addition, the staff spoke with the County Attorney’s office regarding this matter and they confirmed that this is the proper interpretation, and that the Tower Committee seemed to have misunderstood the situation.

The staff appreciates the effort of the Tower Committee members, but the Planning Board and Board of Appeals should be aware of their increasingly detailed evaluations of technical zoning issues. A subjective evaluation of land use impact is an important part of evaluations in order to assess the community impact of monopoles or other structures. But recent evaluations have included lengthy discussions of essentially technical land use issues, such as setbacks and historic preservation impacts, even when there is full support of the need for the structure and there is no community opposition. The staff requests clarification as to whether this level of review, which was not envisioned as the role of the Telecommunication Transmission Facility Coordinating Group when it was created, is now desired by the Board.

The staff recommends approval of this application. The proposed “flagpole” stealth design is appropriate for the location where it is proposed. Although tall for a flagpole at 100 feet, it is significantly shorter than many monopoles that have been

approved elsewhere, and such stealth designs have been encouraged by the Tower Committee, the Planning Board, and the Board of Appeals.

The staff also recommends that the application must follow approved United States regulations governing the flying of an American flag.

Attachments

General Conditions

Sec. 59-G-1.21 of the Zoning Ordinance (General Conditions) provides:

- (a) A special exception may be granted when the board, the hearing examiner, or the district council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.

The use is so allowed in the RE-2 Zone.

- (2) Complies with the standards and requirements set forth for the use in division 59-G-2.

The use complies with these standards as noted below.

- (3) Will be consistent with the general plan for the physical development of the district, including any master plan or portion thereof adopted by the Commission.

The proposed use is not inconsistent with the Damascus Master Plan, which is silent in regard to special exceptions.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The "stealth" flagpole design proposed in this instance will allow the proposed structure to be more in harmony with the general character of the neighborhood.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood; and will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity.

This use will have a visual impact on the surrounding neighborhood but will not cause objectionable noise, vibrations or other detrimental physical activity. Because it uses the "stealth" flagpole design it will have less detrimental impact to the use, peaceful enjoyment, and economic value of the general neighborhood than similar uses.

- (6) Will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature.

The use will not create a surfeit of special exception uses in the area, and will not alter its predominantly residential nature.

- (7) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area.

The use will not have such adverse impact on the area or its residents.

- (8) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

The existing public facilities are sufficient for the proposed use. Subdivision is not required.

Special Findings for a Telecommunications Facility

Section 59-G-2.43 of the Zoning Ordinance (Public utility buildings, public utility structures, and telecommunication facilities) provides:

- (a) A public utility building or public utility structure, not otherwise permitted may be allowed by special exception. The Board must make the following findings:

- (1) The proposed building or structure at the location selected is necessary for public convenience and service.

The Tower Committee has determined that additional telecommunication service is necessary for public convenience and service and the location is appropriate.

- (2) The proposed building or structure at the location selected will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties.

The use will have a visual impact, but it will not endanger the health and safety of area residents. Because of the proposed "stealth" flagpole design it will have less detrimental impact on neighboring properties than many similar uses.

- (b) Public utility buildings in any permitted residential zone, shall, whenever practicable, have the exterior appearance of residential buildings and shall have suitable landscaping, screen planting and fencing, wherever deemed necessary by the Board.

The base of the proposed facility will be adequately screened by the proposed board-on-board fence.

- (c) The Board may approve a public utility building and public utility structure exceeding the height limits of the applicable zone if, in the opinion of the Board, adjacent residential developments and uses will not be adversely affected by the proposed use.

The height limit of the RE-2 Zone is 50 feet. Approval of the proposed 100-foot tall "flagpole" monopole is recommended. The proposed stealth design will be the most appropriate for this location since no steeple is available.

- (d) Any proposed broadcasting tower shall have a setback of one foot from all property lines for every foot of height of the tower, provided, that any broadcasting tower lawfully existing on September 1, 1970, is exempt from the setback limitations imposed by this subsection...

The proposed site is comprised of three properties under joint ownership of the Wesley Grove Methodist Church, a co-applicant for the special exception. The 100 foot tall monopole is setback well over 100 feet from all perimeter property lines of these properties, as allowed in 59-G-2.43(j)(2)(c) below. It is setback approximately 102 feet from Woodfield Road to the east, 174 feet from Kimblehunt Road to the south, 197 feet from the west property line, and 194 feet from the north property line.

- (e) Examples of public utility buildings and structures for which special exceptions are required under this section are buildings and structures for the occupancy, use, support or housing of switching equipment,..or television transmitter towers and stations; telecommunication facilities. Additional standards for telecommunication facilities are found in subsection (j).

The proposed use is a telecommunications facility.

- (f) Reserved
- (g) In addition to the authority granted by Section 59-G-1.22, the Board may attach to any grant of a special exception under this section other conditions that it may deem necessary to protect the public health, safety, or general welfare.

Recommended conditions are given.

- (h) Petitions for special exception may be filed on project basis.

Not Applicable.

- (i) A petitioner shall be considered an interested person for purposes of filing a request for a special exception if he states in writing under oath that he has made a bona fide effort to obtain a contractual interest in the subject property ... should the special exception be granted.

Not Applicable.

- (j) Any telecommunication facility must satisfy the following standards

- (1) The minimum parcel or lot area must be sufficient to accommodate the location requirements for the support structure under paragraph (2), excluding the antenna(s), but not less than the lot area required in the zone. The location requirement (59-G-2.43d) is measured from the base of the support structure to the property line.

The Board of Appeals may reduce the location requirement to not less than the building setback of the applicable zone if the applicant requests a reduction and evidence indicates a support structure can be located on the property in a less visually unobtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any and visibility from the street.

The proposed site for the use is on a property comprised of three lots owned by the Wesley Grove Methodist Church. The church is a co-applicant for the application. The cumulative size of these lots is 7.27 acres, exceeding the lot size in the zone. The structure will be setback over 100 feet from the perimeter lot lines, as noted in "d" above and "(2)(c)" below.

- (2) A support structure must be located as follows:

- a. In agricultural and residential zones, a distance of one foot from property line for every foot of height of the support structure.

As noted in 59-G-2.43(d) above, the proposed structure 100-foot structure will be setback no less than 102 feet from the perimeter lot line of the submitted application, per "c" below.

- b. In commercial and industrial zones....

Not applicable for this use.

- c. These location requirements apply to perimeter lot lines and not to interior lot lines.

The proposed location meets the setback requirement when the entire proposed site (encompassing three lots) is considered.

- ~~(3)~~ A freestanding support structure must be constructed to hold not less than 3 telecommunication carriers. The Board may approve a support structure holding less than 3 telecommunication carriers...

The proposed tower is designed to hold at least three carriers.

- (4) No signs or illumination are permitted in the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.

No signs or illumination are proposed or required for a structure of this height.

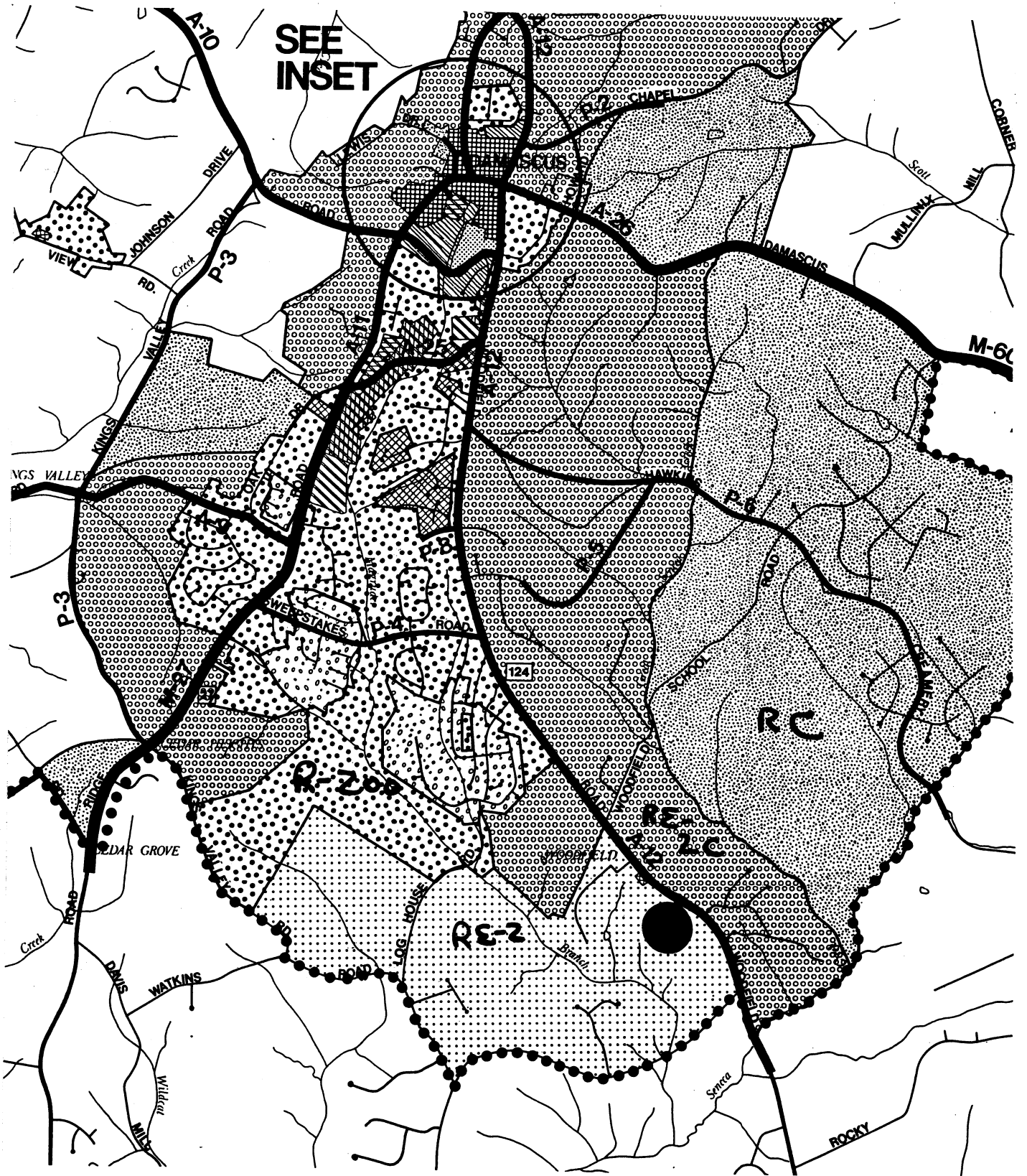
- (5) Every freestanding support structure must be removed at the cost of the applicant when the telecommunication facility is no longer in use by any telecommunication carrier.

This is a condition of approval that is accepted by the applicant.

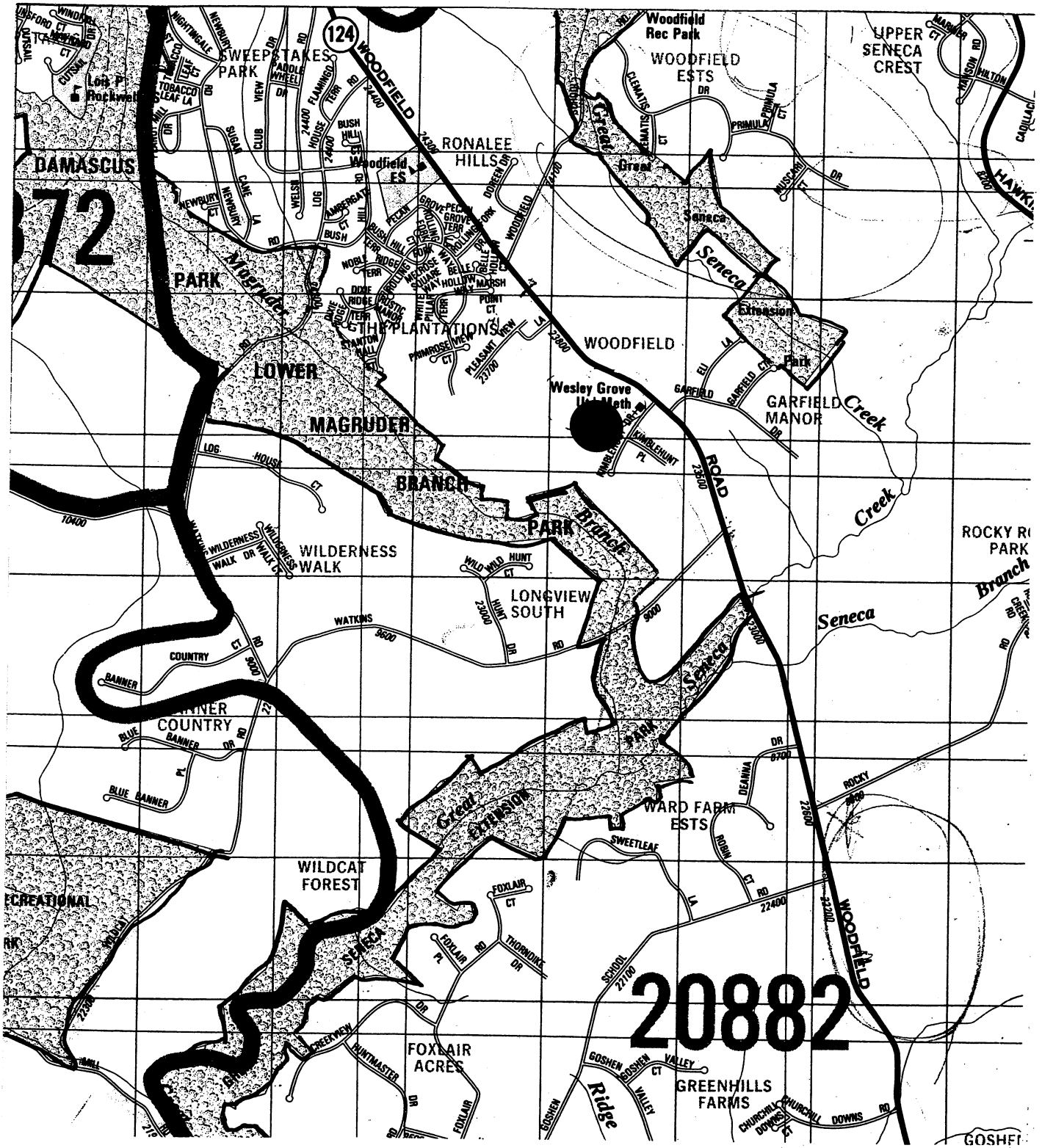
- (6) Prior to the Board granting any special exception for a telecommunication facility, the proposed facility must be reviewed by the County Telecommunication Transmission Facility Coordinating Group. The Board and Planning Board must make a separate, independent finding as to need and location of the facility.

The Telecommunication Transmission Facility Coordinating Group reviewed the facility and found a need for the structure and found the location appropriate.

S-2526 Zoning Map



S-2526 Area Map



VICINITY MAP FOR
S-2526 23612 WOODFIELD RD.



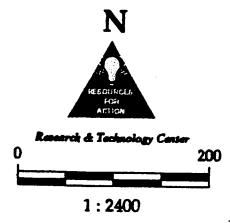
Map compiled on September 11, 2002 at 4:05 PM | Site located on base sheet no - 233NW08

NOTICE

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Property lines are compiled by adjusting the property lines to topography created from aerial photography and should not be interpreted as actual field surveys. Planimetric features were compiled from 1:14400 scale aerial photography using stereo photogrammetric methods.

This map is created from a variety of data sources, and may not reflect the most current conditions in any one location and may not be completely accurate or up to date. All map features are approximately within five feet of their true location. This map may not be the same as a map of the same area plotted at an earlier time as the data is continuously updated. Use of this map, other than for general planning purposes is not recommended. - Copyright 1998



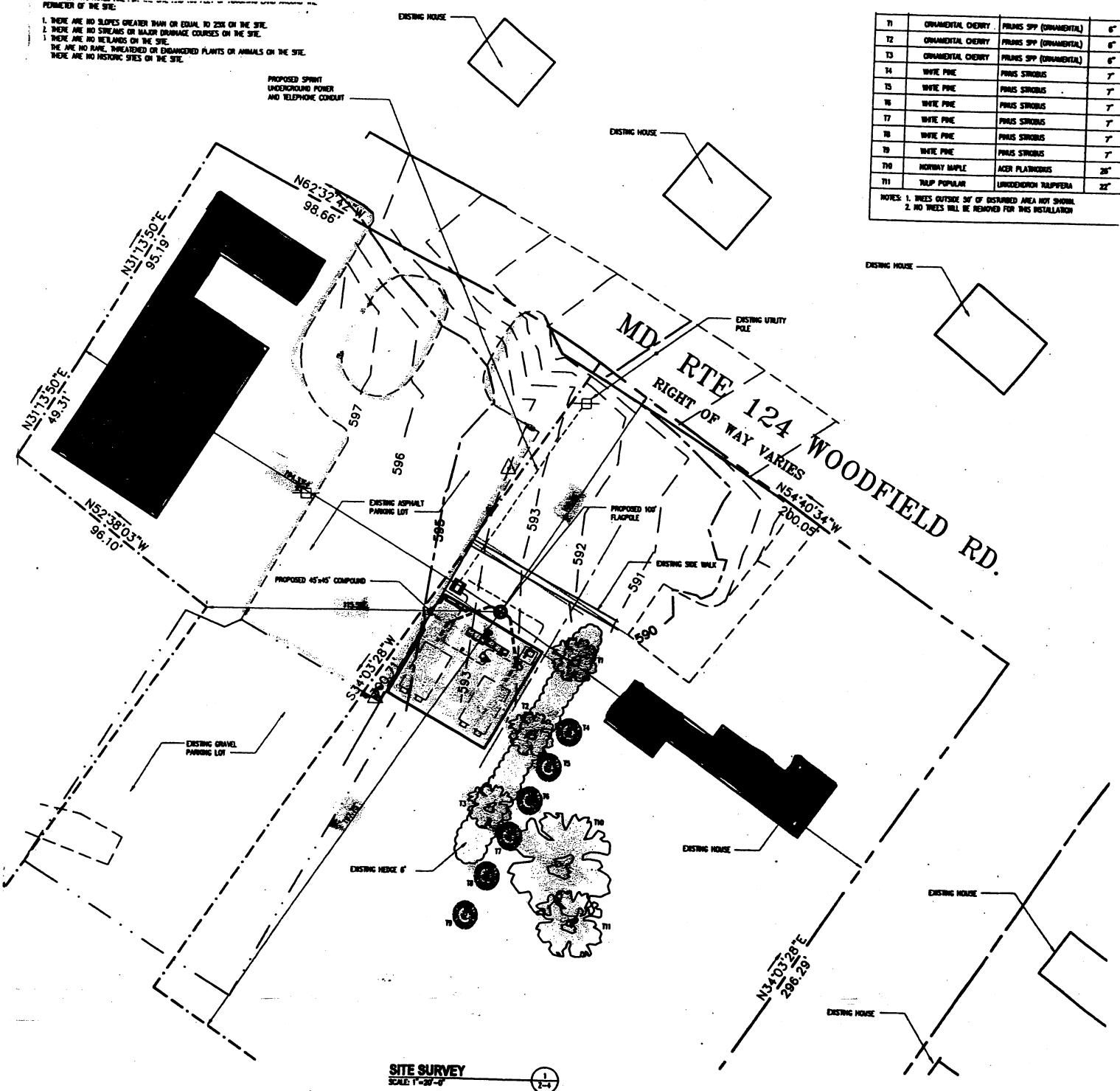
S-2526 Site Plan

FOOTNOTES OF THE SITE:

1. THERE ARE NO SLOPES GREATER THAN OR EQUAL TO 25% ON THE SITE.
2. THERE ARE NO STREAMS OR MAJOR DRAINAGE COURSES ON THE SITE.
3. THERE ARE NO WELLS ON THE SITE.
4. THERE ARE NO RARE, THREATENED OR ENDANGERED PLANTS OR ANIMALS ON THE SITE.
5. THERE ARE NO HISTORIC SITES ON THE SITE.

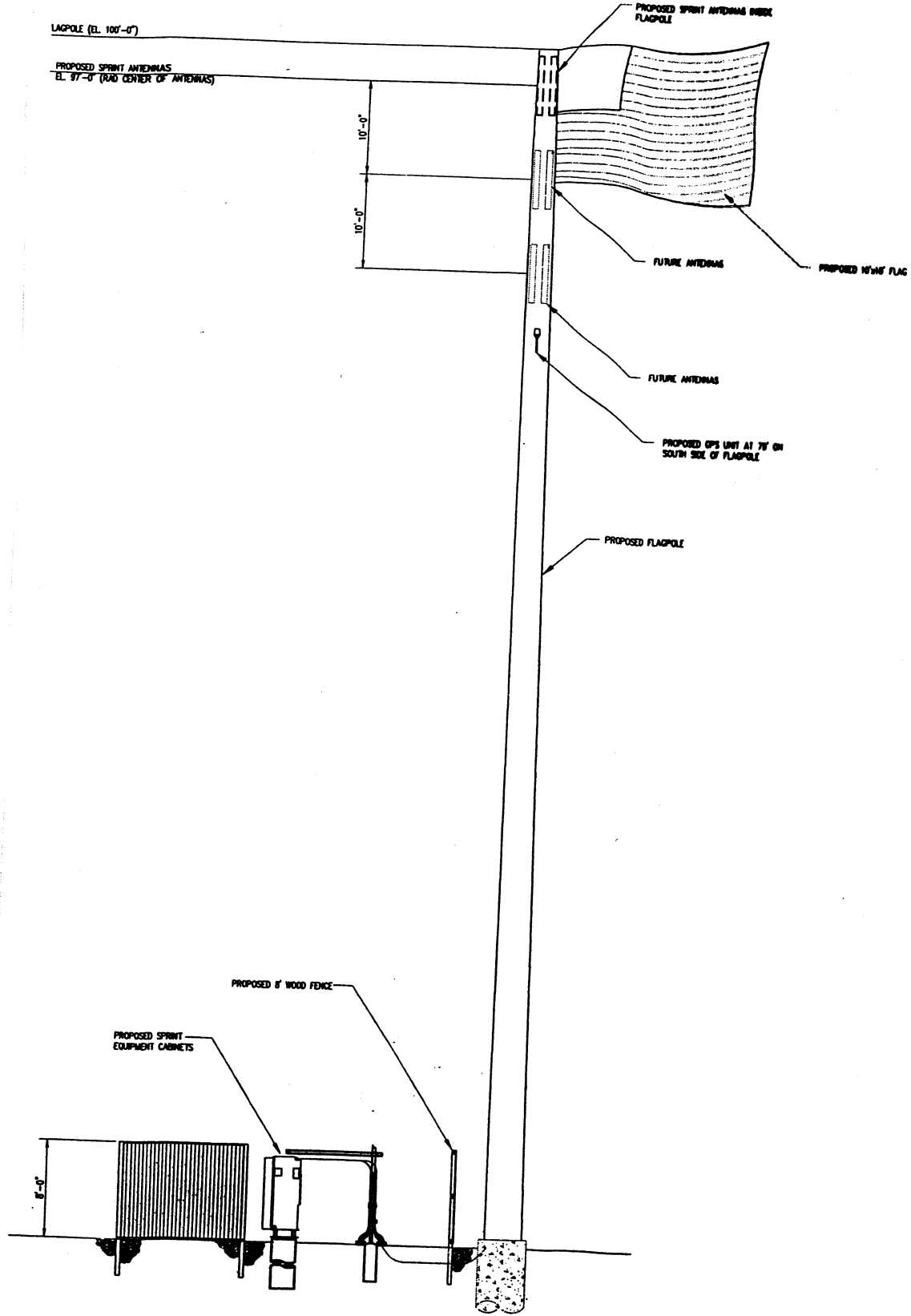
T1	ORNAMENTAL CHERRY	FRAX SPP (ORNAMENTAL)	6"
T2	ORNAMENTAL CHERRY	FRAX SPP (ORNAMENTAL)	6"
T3	ORNAMENTAL CHERRY	FRAX SPP (ORNAMENTAL)	6"
T4	WHITE PINE	PIRUS STROBUS	7"
T5	WHITE PINE	PIRUS STROBUS	7"
T6	WHITE PINE	PIRUS STROBUS	7"
T7	WHITE PINE	PIRUS STROBUS	7"
T8	WHITE PINE	PIRUS STROBUS	7"
T9	WHITE PINE	PIRUS STROBUS	7"
T10	NORWAY MAPLE	ACER PLATANIFOLIA	28"
T11	TRUMP POPULAR	LIRIODENDRON TRUMPETERA	22"

NOTES: 1. TREES OUTSIDE 30' OF DISTURBED AREA NOT SHOWN.
2. NO TREES WILL BE REMOVED FOR THIS INSTALLATION.



SITE SURVEY
SCALE: 1"=30'-0"

S-2526 Rendering



FLAGPOLE ELEVATION
SCALE: 3/16"=1'-0"





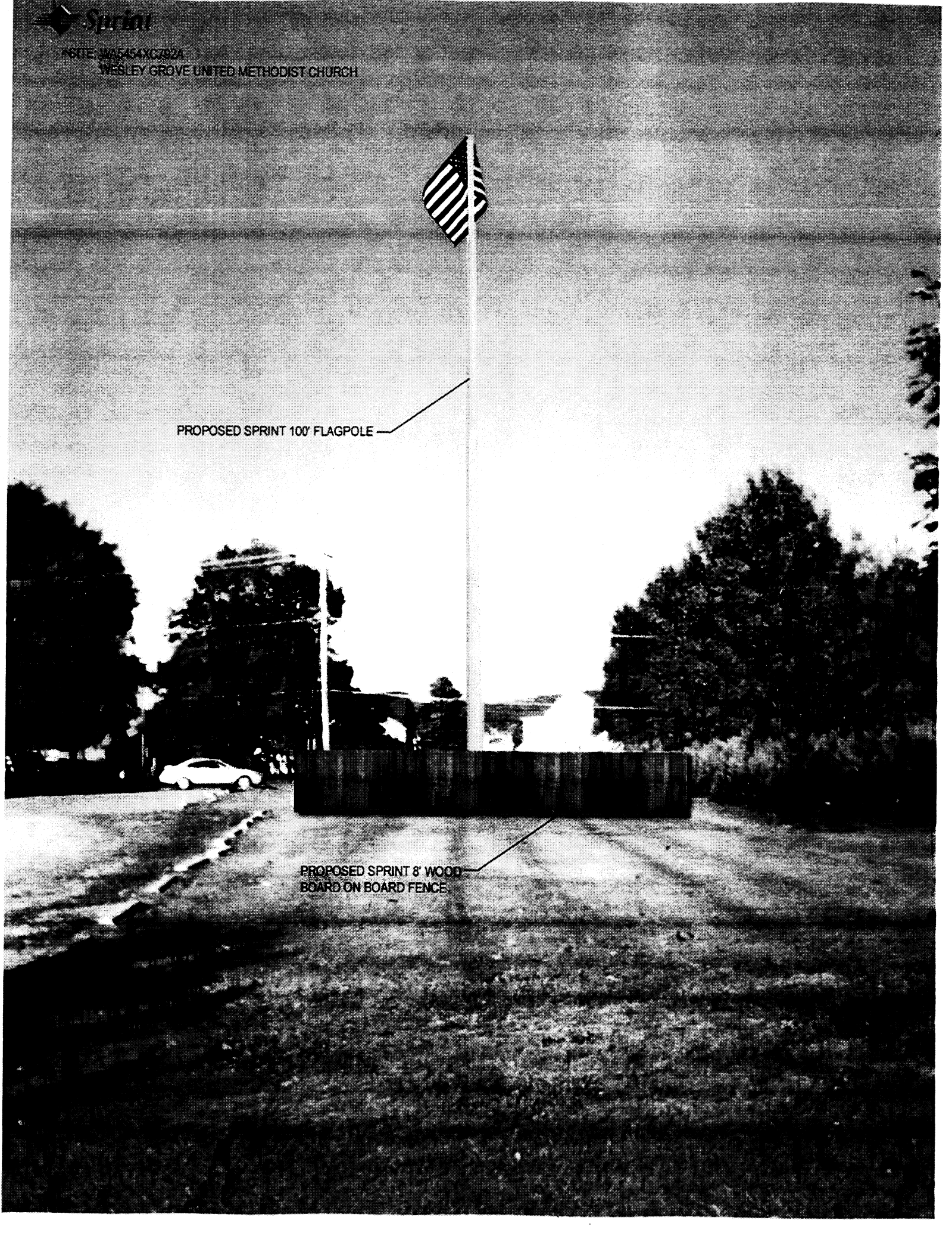
16 SITE: WA5454XC792A
WESLEY GROVE UNITED METHODIST CHURCH



PROPOSED SPRINT 100' FLAGPOLE



PROPOSED SPRINT 8' WOOD
BOARD ON BOARD FENCE





DEPARTMENT OF INFORMATION SYSTEMS AND TELECOMMUNICATIONS

Douglas M. Duncan
County Executive

MEMORANDUM

Alisoun K. Moore
Chief Information Officer

April 12, 2002

TO: Distribution

FROM: Robert P. Hunnicutt, Tower Coordinator
Telecommunications Transmission Facility Coordinating Group (TTFCCG)

SUBJECT: Notification of Action

At its meeting of April 10, 2002 the Montgomery County TTFCCG recommended the following application:

- AT&T Wireless application to attach antennas at the 170' level of an existing 226' lattice tower located at 6300 Damascus Road in Laytonsville (Application #200203-03).
- Maryland Department of Budget & Management application to attach State of Maryland 700 MHz public safety radio antennas at the 296' level on a 50' extension to an existing 250' lattice tower, bringing the tower total height to 300' AGL. The tower is located at Montgomery College - Germantown at 20200 Observation Drive in Germantown (Application #200203-02).
- VoiceStream Wireless application to install one omni-directional receive-only antenna and one GPS antenna at all existing VoiceStream telecommunications facilities to comply with the Federally mandated E-911 system (Application #200203-04).

Application recommended on the basis that it is for a telecommunications structure that will require a Special Exception:

- Sprint PCS application to construct a new 100' flagpole/monopole and flush mount 3 panel antennas inside the pole to be located at the Wesley Grove United Methodist Church at 23612 Woodfield Road in Gaithersburg (Application #200202-02).

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Minutes of TTFCG Meeting
held April 10, 2002
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Motion: Dave Niblock moved the application be recommended. Pat Hanehan seconded the motion and it was approved with Eric Carzon abstaining.

Action Item: VoiceStream Wireless application to install one omni-directional receive-only antenna and one GPS antenna at all existing VoiceStream telecommunications facilities to comply with the Federally mandated E-911 system (Application #200203-04).

Jane Lawton summarized the application and asked how many sites were involved with this application. Bill O'Brien said that approximately 75 sites would be receiving these antennas. He added that since the application had been filed, a final determination regarding the exact nature of the antennas had been made, and they are much shorter than expected. He said the current antenna height would be 4 inches and there may be a need for 2-3 at each location. Eric Carzon asked if this had to go to the Park & Planning Commission for their review, and felt it may be inappropriate for the TTFCG to review a blanket application for this many sites, when some of the sites may be there by Special Exception. Bob Hunnicutt stated that he did not believe that these would need to go before the Board of Appeals or the Park & Planning Commission as they were simply attaching small antennas to the existing structure. Bill O'Brien stated he believed these would be considered accessory use at the sites and that these were also being added to the facilities pursuant to FCC requirements for 911 enhancements of cellular systems. He noted that Permitting Services had already determined that they would not need a permit to add these small antennas. Jane Lawton suggested that the TTFCG simply send a letter to the Board of Appeals to advise them of its action on this application and to bring the matter to their attention. That way, in the event any Board of Appeals action was necessary, they would at least have notice of these additional attachments.

Motion: Willem Van Aller moved the application be recommended. Dave Niblock seconded the motion and it was unanimously approved.

Action Item: Sprint PCS application to construct a new 100' flagpole/monopole and flush mount 3 panel antennas inside the pole to be located at the Wesley Grove United Methodist Church at 23612 Woodfield Road in Gaithersburg (Application #200202-02).

Bob Hunnicutt summarized the application and noted that there was discussion with the applicant regarding whether this was a flagpole or a monopole and he had determined that it was a monopole made by a tower manufacturer and would require a Special Exception. He stated that the applicant also believed that since the two separate parcels were owned by the same entity, setback requirements applied to perimeter lot lines. Mr. Hunnicutt stated that upon checking with the County Attorney, he was advised that setback requirements applied to interior lot lines in cases where adjoining parcels are owned by the same entity. He added that this monopole, as presently proposed, was approximately 25 feet from the interior lot line, and because this does not meet zoning setback

WASHERC-PC

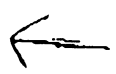
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requirements, he did not recommend this application.

Jim Michal stated that he disagreed with the Tower Coordinator's finding. He stated that in the District of Columbia and in Calvert County, flagpole/monopoles had been ruled to be a flagpole, and he wanted it reflected in the minutes that he strongly disagrees with this finding. He added that he also strongly disagrees with the County Attorney's interpretation regarding setback from interior lot lines, and that the County Attorney ignores a court case citation provided to him by Mr. Michal regarding this matter. He said that he would do whatever was necessary to pursue this application, and, if it included going before the Board of Appeals, he would argue his case there. He also said he was very concerned that the Tower Coordinator is going beyond his authority in addressing zoning issues. He stated that the TTFCG should only consider the technical issues involved in these applications. Bob Hunnicutt noted that the Executive Regulation requires the Tower Coordinator to develop a siting recommendation to the TTFCG based, in part, on zoning standards.

Jane Lawton commented that there does not appear to be any way that this application could meet the proposed text amendments, either. Mr. Van Aller stated that if one of the lots were sold, then there would be a non-conforming structure which had been permitted by the County to be placed there. Dave Niblock stated that is why the Department of Permitting Services had not issued a building permit for a flagpole at this location, as had been requested by Mr. Michal. Eric Carzon stated that he did not believe that the TTFCG could approve an application that did not comply with the zoning ordinance. Michael Ma asked for clarification as to whether or not Mr. Michal believed that this siting would require a Special Exception. Mr. Michal replied that he did not believe that this facility does require a Special Exception.

Jane Lawton noted that apparently the applicant disagrees that this siting: 1) requires a Special Exception, 2) does not meet zoning requirements, 3) is a monopole. She noted that if the zoning text amendments are adopted as presently written, there would be a fourth level where this application could not go forward. Dave Niblock stated that the Director of the Department of Permitting Services, Ron Hubbard, agreed with him that they would not issue a permit for this facility without a Special Exception because they view it as a telecommunications monopole.

Ed Donohue asked the Tower Coordinator to comment on the stealth and coverage aspects of this application. Bob Hunnicutt stated that clearly the TTFCG had encouraged stealth applications such as tree poles, use of concealment of antennas in steeples as well as flagpoles. He said he approved of the flagpole concept and that the carrier had demonstrated a gap in their service area which this facility appeared to fill. 

Mr. Donohue added that in the AT&T application in the District of Columbia, it was determined that this type of facility was a flagpole and, as such, it was a permitted use. Jim Michal added that if the

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held April 10, 2002
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concern over the siting was the size of the flagpole, it was possible to design it to be a smaller facility, but it would mean that it could not accommodate additional carriers. Michael Ma asked how many other carriers this facility could accommodate. Mr. Michal stated that two other carriers could attach to this facility using a similar antenna configuration at its current height.

There was general discussion among the group members as to how to approach this application given the circumstances. Eric Carzon suggested that they could recommend the application conditioned on the carrier obtaining a waiver for the setback requirements.

Jane Lawton asked if the group believed this siting merited recommendation, setting the zoning issues aside. The group agreed that it did because it was a stealth application and met the carrier's coverage objectives. Dave Niblock agreed that he could vote for recommending this application subject to meeting Special Exception and zoning requirements. Jane Lawton stated that she believed that the recommendation should indicate that the group agreed with the Tower Coordinator's information provided in the recommendation. Eric Carzon was concerned this might set a precedent if it violates zoning and the TTFCG ignored that issue. Jane Lawton agreed. Mr. Van Aller said he did not believe it was necessary for the TTFCG to address the issue of whether it was a flagpole or a monopole. Ms. Lawton stated that she agrees that it is a telecommunications facility. Michael Ma and Pat Hanehan stated that they believed that if the group voted to recommend this application, they should not mention anything about obtaining a variance. Dave Niblock stated that the Board of Appeals could grant a variance as part of a Special Exception. Ms. Lawton said that this kind of issue could be added to the list of proposed text amendments.

* [**Motion:** Willem Van Aller moved that the application be recommended on the basis that it is a telecommunications structure and that it needs a Special Exception. Pat Hanehan seconded the motion and it was approved with Jane Lawton and Dave Niblock abstaining.

Discussion Item – Park & Planning Commission Determination of Need: Jane Lawton stated that there was discussion at the Park & Planning Commission that it was unclear as to how the final resolution of some of the issues raised in their comments would be resolved. She noted that there were several recommendations that were not addressed in the discussions with either the Park & Planning Commission or with the Council's FED Committee. She was concerned because the issue of whether or not the Park & Planning Commission would have to find the necessity of need for telecommunications facilities had not been discussed. She stated that the TTFCG conducts a technical review of applications, but had been advised by the Park & Planning Commission that it believed it had to make a determination of need for a telecommunications facility. But she noted, the Board later reversed their opinion on that matter. She said that presently, however, the comments submitted by the Park & Planning Commission to the FED Committee do not reflect that change in position.



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Governor

Raymond A. Skinner
Secretary

Marge Wolf
Deputy Secretary

January 2, 2002

Mr. Chris G. Kelley, Geologist
Environmental, Health & Safety Division
Apex Environmental, Inc.
15850 Crabbs Branch Way, Suite 200
Rockville, MD 20855

Re: Wesley Grove United Methodist Church, 23640 Woodfield Rd.
Gaithersburg, Montgomery County, MD (Section 106 Review - FCC)

Dear Mr. Kelley:

The Maryland Historical Trust received Apex Environmental's letter December 3, 2001 regarding the proposed 100-foot stealth flagpole for the above-referenced location. We have reviewed the project information in accordance with Section 106 of the National Historic Preservation Act of 1966, as amended, and are writing with our determination of effect.

According to the submission, Sprint PCS is proposing to install a 100-foot stealth flagpole immediately adjacent to and visible from the National Register eligible Woodfield Historic District.

We have reviewed the submission and concur that the proposed undertaking will have no adverse effect to historic properties.

If you have questions regarding this matter, please contact Tania Georgiou Tully at 410-514-7636 or tully@dhcd.state.md.us. The federal preservation requirements for this undertaking have been fulfilled.

Sincerely,

Elizabeth J. Cole
Administrator
Project Review & Compliance

EJC/TGT/200104277

cc: Dan Abeyta, Esq., FCC
Mr. Howard Leger, Sprint PCS
Ms. Gwen Marcus Wright, Montgomery County
Mr. Peter J. Siconolfi, Bruns-Pak

