



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MEMORANDUM

DATE: October 4, 2002
TO: Montgomery County Hearing Examiner
VIA: John Carter, Chief, Community-Based Planning *JAC*
FROM: Judy Daniel, AICP, Team Leader, Rural Area *JD*

REVIEW TYPE: **Special Exception**
APPLYING FOR: **Telecommunications Facility**
CASE NUMBER: **S-2535**

APPLICANT: Sprint PCS/APC Realty and Equipment Company and Melvin and C.M. Paisley
ZONE: RDT
LOCATION: 5600 Sundown Road/Laytonsville Vicinity
MASTER PLAN: Preservation of Agricultural and Rural Open Space
MCPB HEARING: October 10, 2002
BOA HEARING: October 25, 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. The flagpole must follow approved federal regulations governing the flying of the United States flag.

PROJECT DESCRIPTION: Surrounding Neighborhood

This is a rural area along Sundown Road approximately one and one-third mile east of Laytonsville. The entire area along Sundown Road is in the Rural Density Transfer (RDT) Zone. South and west of the property is an area in the Rural Cluster Zone containing the Montgomery Country Club. The adjacent property to the south is federal property used for the Federal Emergency Management Agency's (FEMA) Olney Federal Support Center. FEMA maintains a number of broadcasting towers on this property. The property to the

northeast is a part of the Rachel Carson Conservation Park, and more directly to the east (almost 1000 feet from the facility location through a large stand of trees) are homes along Ripplemead Drive in a subdivision located off Riggs Road in the RDT Zone.

PROJECT DESCRIPTION: Site Description

This is an application for a cellular communications tower in the guise of a flagpole for Sprint PCS to be located on the property of Melvin G. and Cherie M. Paisley, co-applicants for the special exception. The applicant proposes to lease a 2,500 square foot portion of this 26-acre property located at 5600 Sundown Road, known as Tewksbury Manor. The property is legally known as Lot 28 of the Fairhill Subdivision, Tax Map HV 122. The property, consisting of 25.16 acres, contains the Paisley's home and horse stable/barn. The lot shares a common driveway with Lot 29 for a short distance. At this time there is an agricultural structure but no dwelling on Lot 29. Structures on Lot 28 includes the applicants home, a barn, a shed and dumpster (for manure) located on the rear of the property. The property is primarily open field and pasture, with woodland along the stream tributary at the southeast rear of 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 155-foot tall "flagpole" monopole, with six equipment cabinets enclosed in a 7-foot high wooden "board on board" fence. The "flagpole" design was chosen because of the rural-residential character of the surrounding area. Sprint's three antennas will be inside the structure, which is to daily fly the American flag. There will be capacity for at least two additional carriers to use the structure. Sprint proposes to rent a 2,500 square foot area near the barn and dumpster for the facility. Access will be via an existing paved and gravel driveway off Sundown Road. The gravel portion will be extended slightly to access the equipment area.

The fence enclosure for the equipment cabinets is 44 feet x 56 feet set on a concrete pad. The cabinets will be no more than 6 feet high x 3 feet wide x 3 feet deep. The pole diameter will be 20 inches at the top, and 39 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 1,300 feet from Sundown Road with the following residual setbacks from property lines: 156 feet to the rear, 804 feet to the east, and 528 feet to the west. The structure will be located approximately 400 feet from the house on the property. Access will be via the existing driveway on the property. As with most cellular monopoles, there will be only periodic visits of one to two times per month to check or repair the equipment. The 156-foot setback is from the U.S. government property.

The applicant stated that this site was selected following an evaluation of other available locations in the area. 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 RDT Zone. A telecommunication 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 Agricultural and Rural Open Space Master Plan is silent on special exceptions. The RDT Zone allows certain special exceptions including public utility structures. No aspects of cellular monopoles are detrimental to the primary intent of the RDT Zone to promote a sustainable agricultural economy in the Agricultural Reserve.

Transportation

The proposed use is located along Sundown Road, which is designated in the 1996 Rustic Roads Functional Master Plan as a Country Arterial (CA-14) 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 Sundown Road shared by the property owners who are co-applicants.

Environmental

This application is exempt from the Forest Conservation Law. The Natural Resources Inventory (#4-02354E) has been approved. No tree protection plan is required.

Historic Preservation

The Maryland Historic Trust has determined that there will be no adverse impact from the proposed monopole at this location. The MNCPPC Historic Preservation staff notes that while the use will be visible from the Fair Hill Master Plan Site (#23/29) at 5929 Sundown Road, the use of the flagpole design will mitigate the visual 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 17 adjoining and confronting property owners and area civic groups registered with the M-NCPPC. For safety and economic reasons, the Agricultural Advisory Board continues to support the installation of sufficient cellular towers to provide reliable coverage in rural areas.

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 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 character of this area. The visibility of the structure will be mitigated by its distance from the road. The size of the property and infrequency of maintenance access indicate a use with little potential for other non-inherent effects or impacts.

Tower Committee Report

The Telecommunication Transmission Facility Coordinating Group or "Tower Committee" (TC) recommended approval of this application. They noted that the structure will be visible from homes currently being constructed to the east, as are the existing FEMA towers nearby. Sprint had been negotiating to co-locate on one of the FEMA towers, but due to recent security concerns, that opportunity was rejected by FEMA. The Tower Committee agreed that other contemplated locations in the vicinity do not offer reliable coverage that meets Sprint's service requirements.

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 staff recommends approval of this application.

The proposed "flagpole" stealth design is a creative alternative to a standard monopole. Although tall for a flagpole at 155 feet, the "stealth" flagpole design and its distance from Sundown Road, as well as its location behind the existing barn on the property mitigate its impact. Also, the Tower Committee, the Planning Board, and the Board of Appeals have encouraged stealth designs. The structure will be visible from the homes along Ripplemead Drive to the east, but the impact of the view will be mitigated by the distance, intervening trees, the "flagpole" design, and the existing tower cluster on the federal property.

However, the staff also notes that there are federal rules for flying the flag, and unless the flag is lighted at night, someone will have to raise and lower the flag daily. Unless the property owners (who are co-applicants) have agreed to perform that function, there may eventually be a concern about following proper procedures for display of the United States flag. Thus, the staff recommends a condition that the use must follow approved United States regulations governing the flying of an American flag. If that cannot be guaranteed, the staff would prefer to see a standard monopole design that will not require these procedures. In this instance, that might not be as visually objectionable as in other locations because there are already a group of lattice towers on the adjacent FEMA site.

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 RDT 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 Master Plan for the Preservation of Agricultural and Rural Open Space, 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 area.
 - (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 "non-stealth" 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 surrounding area is rural in nature, not predominantly residential.
 - (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.

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 and distance from the public road it will have less detrimental impact on neighboring properties than many similar uses without a "stealth" design.

- (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 use is not located in a residential zone. However, the base of the proposed facility will be adequately screened by a proposed board-on-board fence and shielded by the barn structure.

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

The height limit of the RDT Zone is 50 feet. Approval of the proposed 155-foot tall "flagpole" monopole is recommended. The proposed stealth design is appropriate for this location adjacent to a large barn. The surrounding area is not residential.

- (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 will provide setbacks in excess of 155 feet from all property lines.

- (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 of over 26 acres owned by Melvin and Cherie Paisley, co-applicants for the special exception. The structure will be setback a minimum of 155 feet from all perimeter lot lines.

(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.

The proposed structure 155-foot structure will be setback a minimum of 155 feet from all perimeter lot lines.

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.

(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 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.

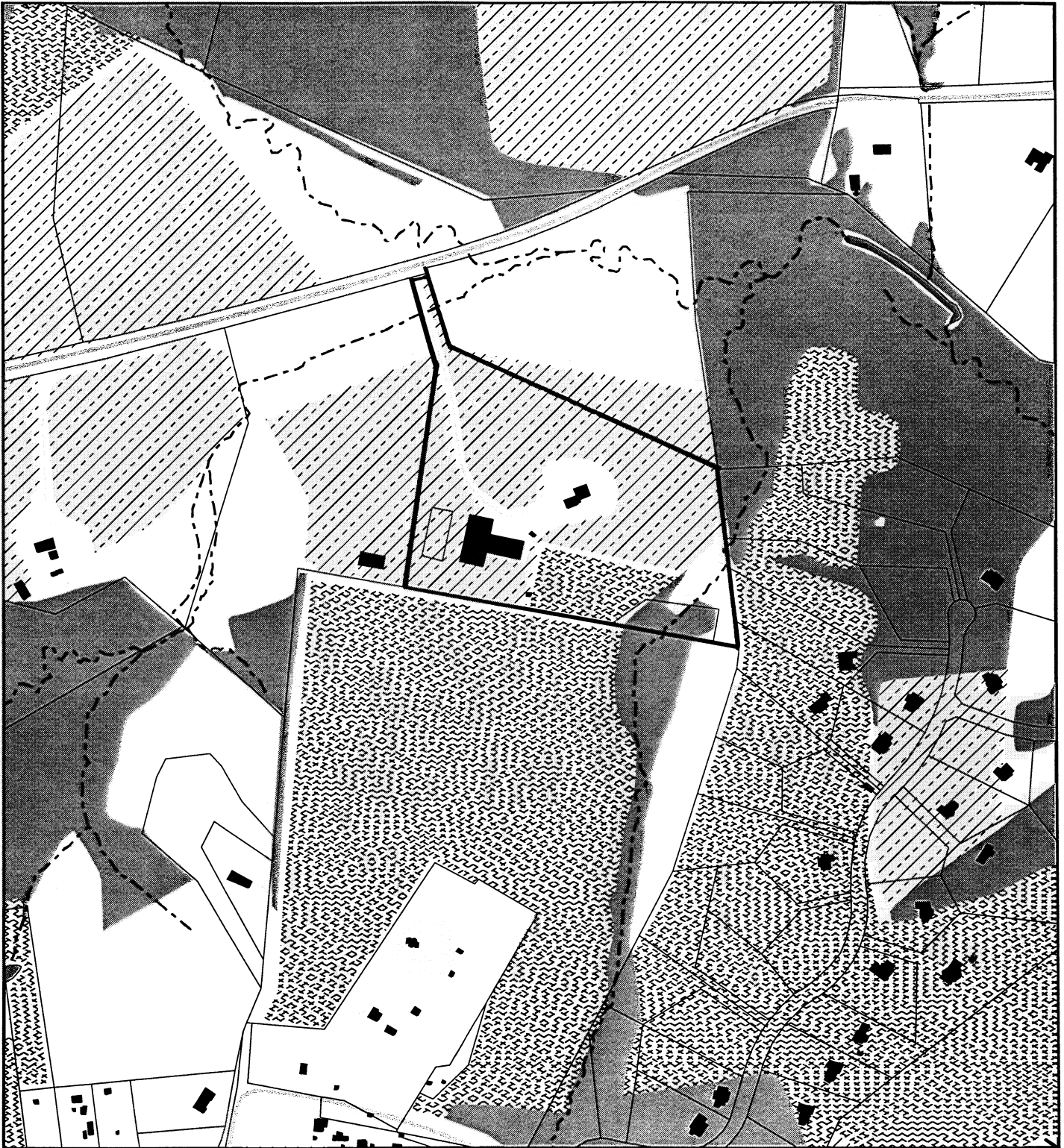
This is a condition of approval that is accepted by the applicant.

(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.

VICINITY MAP FOR

S- 2535 5600 SUNDOWN RD.



Map compiled on October 01, 2002 at 10:37 AM | Site located on base sheet no - 230NW05

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.

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Key Map



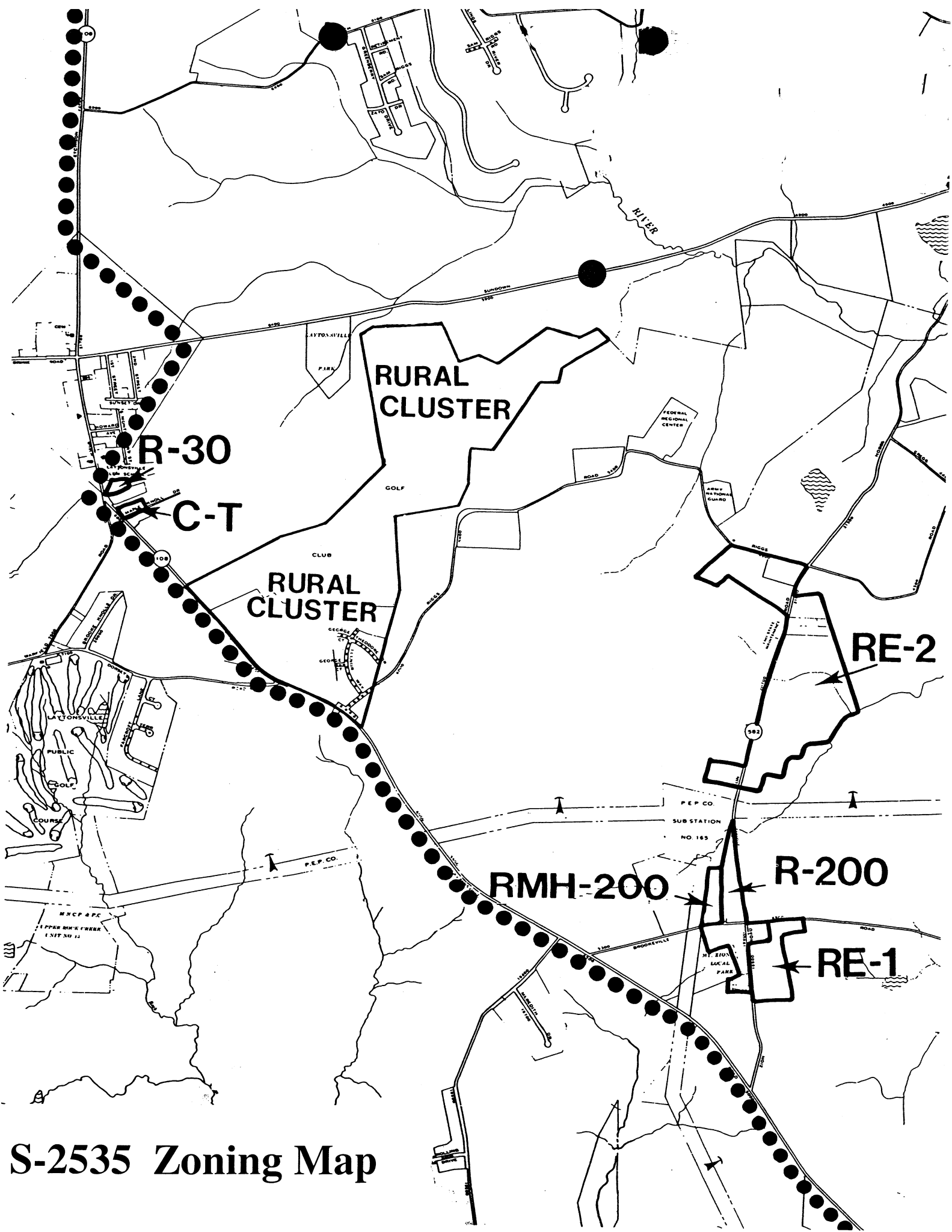
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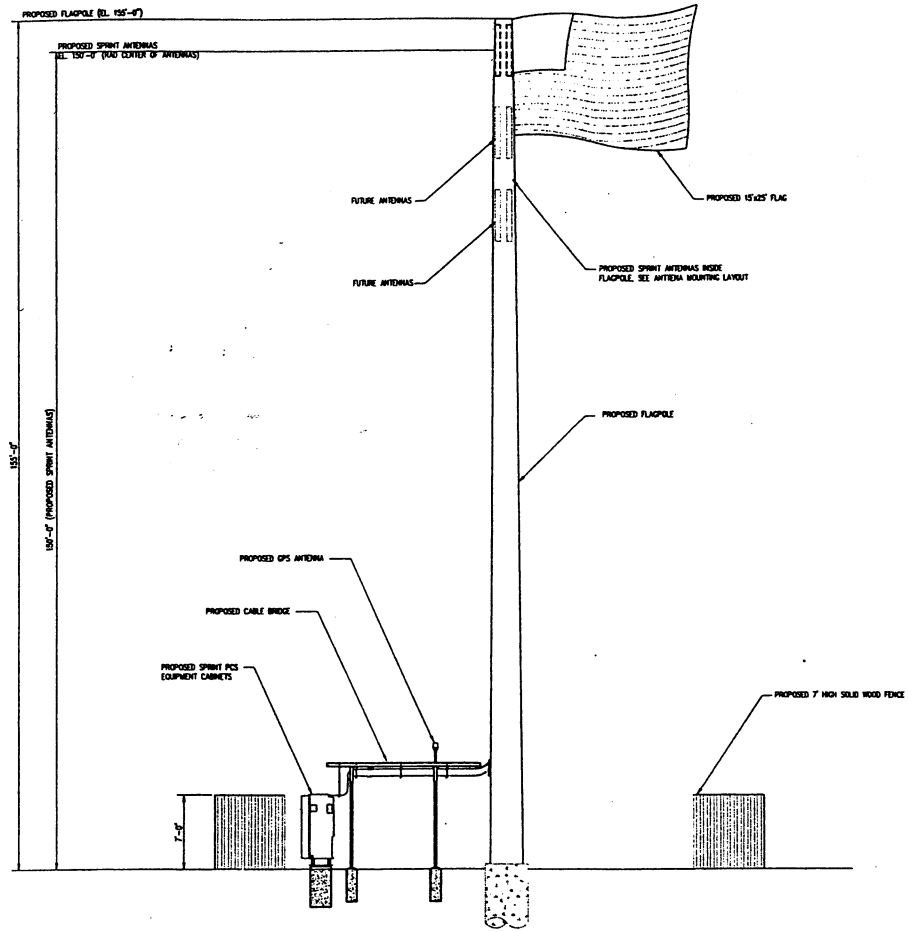
Research & Technology Center



1 : 7200



S-2535 Zoning Map



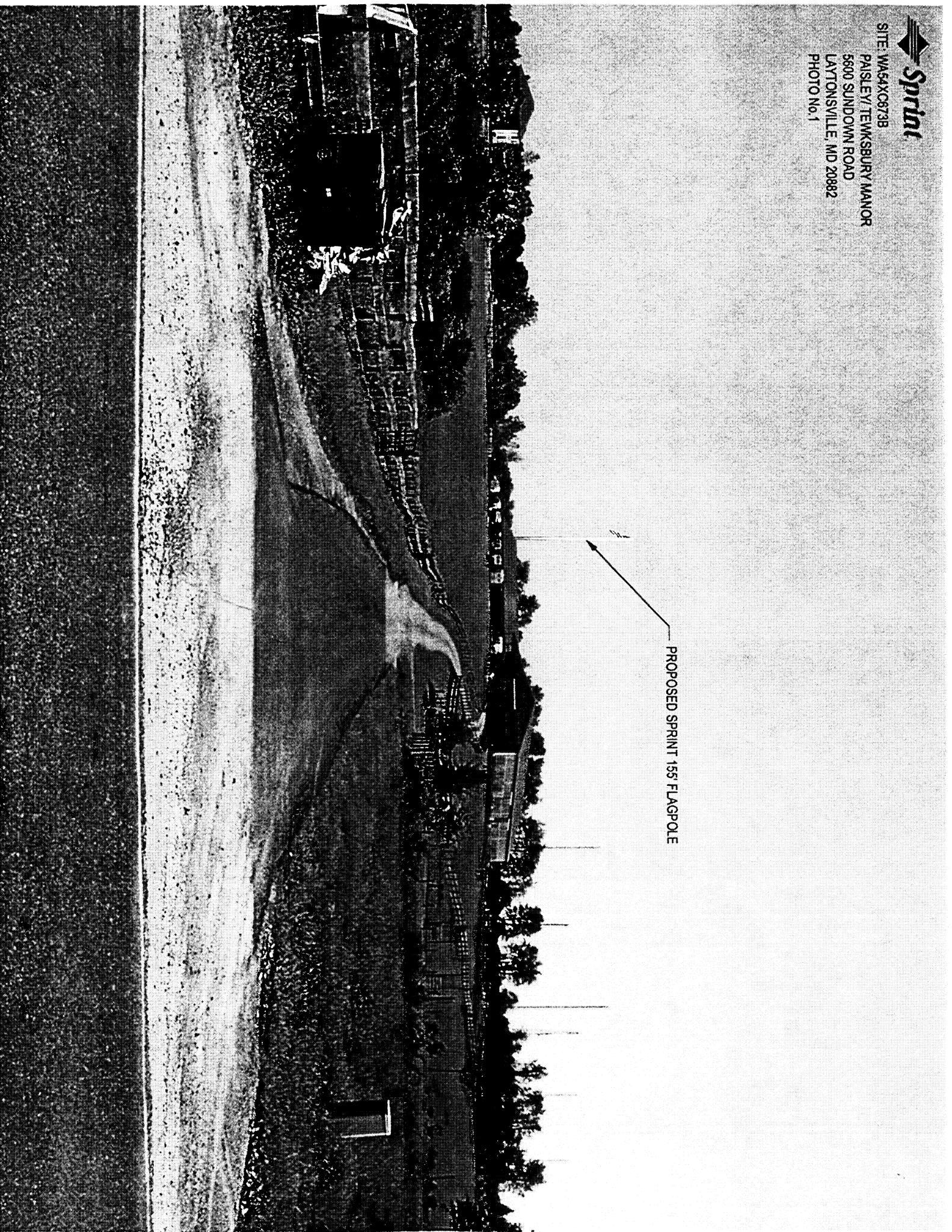
FLAGPOLE ELEVATION
SCALE: 3/16"=1'-0" (1/2")

S-2535 Rendering



SITE: WA64XC673B
PAISLEY, TEMKSBUYR, MANOR
5600 SUNDOWN ROAD
LAYTONSVILLE, MD 20882
PHOTO No. 1

PROPOSED SPRINT 155' FLAGPOLE





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MONTGOMERY COUNTY, MARYLAND
TOWER COORDINATOR
RECOMMENDATION

APPLICATION NUMBER: 200206-01

DATE: 5 June 2002

Application Information:		
Applicant:	Sprint PCS	
Description:	Construct a new 155' monopole.	
Site Location:	Tewksbury Manor 5600 Sundown Road, Gaithersburg	
Property Owner:	Melvin & Cherie Paisley	
Classification in accordance with Zoning Ordinance: RDT		
Private Property:	<input checked="" type="checkbox"/>	By right: <input type="checkbox"/>
Public Property:	<input type="checkbox"/>	By right: <input type="checkbox"/>
		Special Exception: <input checked="" type="checkbox"/>
		Special Exception: <input type="checkbox"/>
		Mandatory Referral: <input type="checkbox"/>
Impact on land-owning agency: Minimal		
Existing or future public safety telecommunications facilities and plans: None		
Co-location options: This monopole is designed to accommodate 2 additional carriers. Last year Nextel was seeking to place antennas in this vicinity as well.		
<p>Implications to surrounding area: This monopole is a stealth design monopole disguised as a flagpole that may serve to minimize the potential for controversy over siting a structure this tall at the location proposed. Although this monopole is designed to look like a flagpole, flagpoles of this size are more typically found at commercial facilities or municipal buildings.</p> <p>This site is also adjacent to an equestrian easement, users of which may object to this monopole.</p> <p>The monopole will be plainly visible from many new homes (starting from the six to seven hundred thousand dollar price ranges according to the builder). Although some of the homes already view several guyed and one lattice tower at the FEMA compound, all of which appear to be shorter than the proposed monopole, there may be objection to the addition of another taller structure on the horizon. The existing FEMA towers are adjacent to the new subdivision. See photos attached to this recommendation.</p> <p>This is the third stealth monopole/flagpole which Sprint has recently sited in the County.</p>		
Attachments: Application		
<p>Comments: This application is in lieu of application #200108-12 recommended by the TTFCG for Sprint to co-locate on the FEMA tower. FEMA has retracted its approval for Sprint to attach to its existing lattice tower for security reasons.</p> <p>Sprint submitted RF plots with its application in support of its claim that there are areas around the</p>		

proposed location of this monopole which do not meet its service requirements. We reviewed the plots and agree that around the proposed site there are areas where there is less than reliable coverage which does not meet Sprint's service requirements. The RF plots submitted which show the site turned on verifies that the proposed location of Sprint's antennas meet its coverage requirement for those underserved areas.

Based on our site visit, we did not see any other existing structures which could accommodate the antennas other than the tower at the FEMA site which has now been ruled out for security reasons.

We recommend this application conditioned on approval of the Special Exception.

Tower Coordinator Recommendation:

Recommended:

Not recommended:

Signature

Blumenthal 6/26/02

Date

Excerpts from July 3, 2002 IFFCG Minutes
Sprint PCS/Tewksbury Manor
Application #200206-01
Page 1 of 1

Action Item: Sprint PCS application to construct a new 155' monopole on Tewksbury Manor property located at 5600 Sundown Road in Gaithersburg (Application #200206-01).

Kamal Johari summarized the application. He noted that this site was in lieu of a previous application to attach to a FEMA tower in the same area. He stated that FEMA had withdrawn its approval for Sprint to attach to its existing lattice tower because of security concerns since the September 11 attacks. Bob Hunnicutt reminded the group that Nextel had originally proposed a new monopole at the Ace Nursery before the Tower Coordinator and Jane Lawton worked with FEMA to reconsider use of its tower as a site for private carriers to co-locate. He had spoken with FEMA representatives, and FEMA had agreed to let carriers attach to its facility in lieu of constructing a new monopole in the community. He added that since the September attacks, this facility has very tight security and will not permit outside parties to use its facilities.

Jane Lawton asked how far the proposed monopole was from the nearby residence. David Primeau stated he thought it was approximately 400 feet. Bob Hunnicutt referred the group to the site plan in their packet, noting that there was a setback of approximately 700' from the rear lot line, and it appeared as though the residence was halfway between the monopole and the rear lot line, so it appeared that 400' was a reasonable estimate of that distance.

Eric Carzon asked if RF maps had been submitted by the carrier and reviewed by the Tower Coordinator. Bob Hunnicutt stated that RF maps had been submitted and reviewed, and that the maps illustrated a gap in coverage that this site appeared to fill. Eric Carzon noted that there did not appear to be any community outreach on this application, either.

Jane Lawton commented that she liked the stealth approach for this siting, although a flagpole of this great height and size was out of character with the area. Michael Ma asked how far this monopole was from the Laytonsville community. Bob Hunnicutt stated it was approximately 1.6 miles.

Motion: Eric Carzon moved the application be recommended conditioned on approval of a Special Exception. Pat Hanehan seconded the motion and it was unanimously approved.

(Sundown's home on the subject property)