



MCPB
Item #.5
5/26/05

MEMORANDUM: SPECIAL EXCEPTION

DATE: May 20, 2005

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Development Review Chief *RK*
Carlton Gilbert, Zoning Supervisor *CG*

FROM: Joel A. Gallihue, AICP (301) 495-2119 *JAG*
Development Review

SUBJECT: Special Exception No. S-2639: Rooftop wireless telecommunication facility. (Includes Modification of S-1424) Korean Senior Housing Corporation of Maryland and Omnipoint Communications at 440 University Boulevard East.

ZONE: R-60

MASTER PLAN: East Silver Spring Master Plan, Approved and Adopted December 2000

FILING DATE: March 24, 2005

PUBLIC HEARING: June 10, 2005

STAFF RECOMMENDATION: APPROVAL with the following condition:

1. All evidence, testimony and exhibits of record shall bind the petitioners.

Project Summary - The applicants, Korean Senior Housing Corporation of Maryland and Omnipoint Communications CAP Operations, LLC, which is a subsidiary of T-Mobile, USA, are requesting special exception approval to permit the installation of a telecommunication facility on the roof of a building less than fifty feet in height. The existing multi-family building located on 440 East University Boulevard is owned by Korean Community Senior Housing Corporation of Maryland and operates under special exception approval for housing and related facilities for senior adults (S-1424). Consequently this request constitutes a new use and also requires a modification of the existing special exception

use. No tower or monopole support structure is proposed. The request is for installation of antennas only. Proposed rooftop equipment will be disguised within faux appurtenances that look typical for such a building.

Site and Neighborhood Description - The site is approximately two acres in area and has frontage on University Boulevard and Buckingham Drive. The four-story (36' 2") building senior housing on the site has existed for approximately eighteen years. The site is located in an area of residential land uses. Surrounding residential land is zoned R-60 with the exception of the adjacent property to the north, which is zoned RT 15, per G-805. The adjacent parcel to the north has been zoned for town homes but is yet to be developed. To the west is University Boulevard with single-family homes on the opposite side of this divided highway. The property to the south is a single-family dwelling that has been converted to a physician's office. (BAS-1591) Behind and to the east of the property are single-family detached dwellings in the Buckingham Terrace subdivision.

Elements of the Proposal -

Three panel antennas measuring 54" x 12" x 4" are proposed. They will be mounted inside a 16' cylinder that is 36" in diameter and is designed to look like a vent stack. A screened 10' by 20' platform will hold three cabinets that are no taller than 63" in height.

The antennas will transmit radio frequency signals twenty-four hours a day for the T - Mobile network. No lighting or sound will be associated with this activity. The only staffing will be bimonthly service calls.

Appearance – Visual Impact

The antennas and equipment shelter will not be apparent. Extension by walls of the masonry elevator motor enclosure and the addition of a faux 16' "stack" to the rooftop will disguise this equipment. These appurtenances are typical in nature and scale for those normally found on a rooftop for a multi-family structure. Staff concludes that there will be no visual impact from this proposal.

Parking and Vehicular Circulation

The existing residential facility provides 30 parking spaces, which have not been full on various site visits. One parking space is needed for bi-monthly servicing of the facility. Considering the infrequent nature of service visits, no new parking is recommended.

Lighting

No additional lighting is proposed onsite.

Sign

Only the warning signs called for in use requirements are proposed.

Procedure for Approval

A modification of S-1424 is necessary to acknowledge the proposed facility in the record for that application and a new special exception S-2639 is required for the telecommunication use. Both are considered in one application by the Planning Board for recommendation and the Board of Appeals for approval.

In considering the modification to S-1424, The Board of Appeals may approve additional structures on the roof with a finding¹ that the additional height continues to be in harmony with the general character of the neighborhood when considering population density, design, scale and bulk of the existing building with proposed telecommunication facility on roof. This finding may be made having considered the improvement make no change to neighborhood character when considering population and density as no dwelling units are proposed and visual simulations demonstrate negligible change to the design, scale or bulk of the building.

The proposed facility was be reviewed and recommended for approval by the County Telecommunication Transmission Facility Coordinating Group if a special exception is obtained. In considering approval of S-2639, the Board of Appeals and Planning Board must make a separate, independent finding as to need and location of the facility. Staff recommends both bodies make a finding as to the need and location of the facility considering the attached recommendation of the Telecommunications Transmission Facility Coordination Group.

ANALYSIS

Master Plan – Community Planning staff has recommended approval of this special exception. The proposed special exception use conforms the East Silver Spring Master Plan, approved and adopted in December 2000.

Transportation - The Transportation Planning staff has recommended approval of this special exception based upon the negligible traffic impact of two monthly service calls. No specific conditions are requested. APFO is now determined at the time of special exception approval because no subdivision is necessary. Relevant intersections will continue to operate at an acceptable level of service should this proposal be implemented. Access is safe and adequate.

Environmental – Environmental staff has reviewed this application and has no issues with the application. An exemption to forest conservation law requirements was granted because modifications will be to an existing building and no new disturbance to the property is proposed.

¹ As required by Sec. 59-G 2.35(c) (2)

Development Standards- The existing special exception is in compliance with the development standards for the R-60 Zone. Conformance to relevant development standards is summarized in Table 1.

Table 1 – Conformance with Applicable Development Standards S-1424		
Development Standard	Requirement	Proposal
Street Setback	25'	Appx. 112'
Side Yard Setback	8' (sum 18')	Appx. 21'
Rear Yard Setback	20'	Appx. 165'
Lot Area	6,000 sq. ft.	Appx. 2 acres.
Building Height per Zone	Up to six stories	Four stories or 46'
Building Coverage	35%	11%
Minimum Green Area (per use)	50%	
Parking	25	37 spaces.

Inherent/Non-Inherent Adverse Effects- The inherent and non-inherent adverse effects of a special exception must be considered on nearby properties and the surrounding neighborhood at the proposed location, regardless of the adverse effects the use might have if established elsewhere in the RE-1 zone. Section 59-G-1.2.1 of the Zoning Ordinance states:

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 are 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.

Analysis of inherent and non-inherent adverse effects considers size, scale, scope, light, noise, traffic and environment. It is understood that every special exception has some or all of these effect in varying degrees. What must be determined during the course of review is whether these effects are acceptable or will create adverse impacts sufficient to result in a denial. To that end, inherent adverse effects associated with the use must be determined.

A telecommunication facility typically may include building mounted equipment that consists of panel antennas and an enclosed equipment shelter. Antennas are often mounted on poles, towers or existing structures although this is not the case of the instant

request. Telecommunication workers periodically service these facilities. Sounds are not typically observed however lighting is sometimes required, depending upon the height and aviation requirements.

The non-inherent characteristics may include the size, height, and visibility of the installation. Lack of screening our outdoor storage of service equipment could cause a non-inherent effect. This proposal will be no taller than sixteen feet in excess of the exiting roof height of 36.8 feet. A faux smokestack and a limited parapet wall are employed to disguise the installation. These features are located adjacent to and incorporated with the existing elevator motor shelter and extend less than ten feet taller than the existing shelter. The combined visual effect is a modest expansion of typical rooftop appurtenances. Consequently, staff finds that the proposed size, height and appearance are compatible with existing and proposed adjacent development.

Staff concludes that there are no non-inherent adverse effects associated with this application that warrant denial.

Community Concerns

Staff is not aware of any letters of concern and notes that the official notice references adjoining and confronting property owners, applicable Homeowner Associations, and applicable Civic Associations. The applicant contacted the adjacent Homeowners Associations but heard no objections.

Compliance with General and Specific Special Exception Provisions

Staff has reviewed the application for compliance with all applicable special exception provisions. As noted in the attachment, all general and specific requirements will be satisfied.

Conclusions

Upon reviewing the petition and visiting the subject property, staff recommends approval of the special exception and special exception modification application subject to the condition that all evidence, testimony and exhibits of record shall bind the petitioners.

Attachments:

1. Zoning Criteria Analysis
2. Vicinity Maps
3. Photo-simulations and equipment specification graphics.
4. Tower committee recommendation.
5. Community Planning
6. Environmental Planning
7. Transportation Planning

Attachment 1.

Sec. 59-G-2.43. Public Utility Building, public utility structure, and telecommunications facility.

Subsections "a" through "d" are not applicable to this application for a telecommunications facility.

- (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, regulators, stationary transformers and other such devices for supplying electric service; telephone offices; railroad, bus, trolley, air and boat passengers stations; radio or television transmitter towers and stations; telecommunication facilities; above ground pipelines. Additional standards for telecommunication facilities are found in subsection (j).

A special exception is required for this use.

- (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.

Conditions of approval may be made.

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

Only one site and one phase are proposed.

- (i) A petitioner under this section is considered an interested person for purposes of filing a request for a special exception if the petitioner states in writing under oath that a bona fide effort has been made to obtain a contractual interest in the subject property for a valid consideration without success, and that there is an intent to continue negotiations to obtain the required interest or in the alternative to file condemnation proceedings should the special exception be granted.

Not applicable. The property owner is a signatory to the application.

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

(1) A support structure must be set back from the property line as follows:

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

Not applicable since antennas to be co-located on a building.

b. In commercial and industrial zones, a distance of one-half foot from property line for every foot of height of the support structure from a property line separating the subject site from commercial or industrial zoned properties, and one foot for every foot of height of the support structure from residential or agricultural zoned properties.

Not applicable since antennas to be co-located on a building.

c. The setback from a property line is measured from the base of the support structure to the perimeter property line.

Not applicable since antennas to be co-located on a building.

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

Not applicable since antennas to be co-located on a building.

(2) A support structure must be set back from any off-site dwelling as follows:

a. In agricultural and residential zones, a distance of 300 feet.

Not applicable since antennas to be co-located on a building.

b. In all other zones, one foot for every foot in height.

Not applicable

- c. The setback is measured from the base of the support structure to the base of the nearest off-site dwelling.

Not applicable.

- d. The Board of Appeals may reduce the setback requirement in the agricultural and residential zones to a distance of one foot from an off-site residential building for every foot of height of the support structure if the applicant requests a reduction and evidence indicates that a support structure can be located in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street.

Not applicable since antennas to be co-located on a building.

- (3) The support structure and antenna must not exceed 155 feet in height, unless it can be demonstrated that additional height up to 199 feet is needed for service, collocation, or public safety communication purposes. At the completion of construction and before the final inspection of the building permit, the applicant must submit documentation to the Department of Permitting Services as to the height and location of the support structure.

Not applicable.

- (4) The support structure must be sited to minimize its visual impact. The Board may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and adjoining and nearby residential properties. The support structure and any related equipment buildings or cabinets must be surrounded by landscaping or other screening options that provide a screen of at least 6 feet in height.

Not applicable because the antennas are co-located on a building, however, screening and location of the antennas will minimize visual impact.

- (5) The property owner must be an applicant for the special exception for each support structure. A modification of a telecommunication facility special exception is not required for a change to any use within the special exception area not directly related to the special exception grant. A support structure must be constructed to hold no less than 3 telecommunication carriers. The Board may approve a support structure holding less than 3 telecommunication carriers if: 1) requested by the applicant and a determination is made that collocation at the site is not essential to the public

interest; and 2) the Board decides that construction of a lower support structure with fewer telecommunication carriers will promote community compatibility. The equipment compound must have sufficient area to accommodate equipment sheds or cabinets associated with the telecommunication facility for all the carriers.

Not applicable because the antennas are co-located on a building however, screening and location of the antennas minimize visual impact.

- (6) No signs or illumination are permitted on 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.

- (7) Every freestanding support structure must be removed at the cost of the owner of the telecommunication facility when the telecommunication facility is no longer in use by any telecommunication carrier for more than 12 months.

No freestanding support structure proposed.

- (8) All support structures must be identified by a sign no larger than 2 square feet affixed to the support structure or any equipment building. The sign must identify the owner and the maintenance service provider of the support structure or any attached antenna and provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Board of Appeals notified within 10 days of any change in ownership.

Waning signs of the appropriate size are proposed.

- (9) Outdoor storage of equipment or other items is prohibited.

No outdoor storage of equipment is proposed.

- (10) Each owner of the telecommunication facility is responsible for maintaining the telecommunication facility, in a safe condition.

Maintenance will occur approximately twice a month. The location is inaccessible to others.

- (11) The applicants for the special exception must file with the Board of Appeals a recommendation from the Telecommunications Transmission Facility Coordinating Group regarding the telecommunication facility. The recommendation must be no more than one year old.

A recommendation of approval was filed.

- (12) 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 of Appeals and Planning Board must make a separate, independent finding as to need and location of the facility.

Staff recommends both bodies make a finding as to the need and location of the facility considering the attached recommendation of the Telecommunications Transmission Facility Coordination Group.

- (k) Any telecommunication facility special exception application for which a public hearing was held before November 18, 2002 must be decided based on the standards in effect when the application was filed.

Not applicable.

- (l) Any telecommunication facility constructed as of November 18, 2002 may continue as a conforming use.

Not applicable.

Sec. 59-G-1.2. Conditions for granting.

59-G-1.21. General conditions.

- (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 allowed by special exception in the R-60 zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special

exception to be granted.

The use complies with these standards.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The East Silver Spring Master Plan covers the subject property. Staff finds that the proposed special exception is consistent with the recommendations in the approved and adopted master plan.

- (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 use will be in harmony with the neighborhood when considering these criteria.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The use will not have a detrimental effect for any of these reasons.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The use will not have a detrimental effect for any of these reasons.

- (7) 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. Special exception uses in accord with the recommendations of a master or sector plan are deemed not to alter the nature of an area.

Although an additional special exception use is proposed the observed intensity will not change in any perceptible way. The proposed use, when evaluated in conjunction with other existing and approved special exceptions in the area, will not affect area adversely or alter its residential character.

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

The use will not adversely affect the safety of area residents.

- (9) 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.

(i) If the special exception use requires approval of a preliminary plan of subdivision the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception. If the special exception does not require approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Board of Appeals when the special exception is considered. The adequacy of public facilities review must include the Local Area Transportation Review and the Policy Area Transportation Review, as required in the applicable Annual Growth Policy.

(ii) With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will not reduce the safety of vehicular or pedestrian traffic.

The use is adequately served by relevant facilities including public safety services, storm drainage, and transportation. Subdivision is not required therefore the Board of Appeals must make a finding that public facilities are adequate and also determine that the proposal does not reduce the safety of vehicular or pedestrian traffic in approving the special exception.