

**MEMORANDUM – Special Exception**

DATE: February 23, 2006

TO: Montgomery County Planning Board

VIA: Rose Krasnow, Chief, Development Review Division *RKX*

FROM: Carlton W. Gilbert, Zoning Supervisor *CW Gilbert*
(301) 495-4576

SUBJECT: **Special Exception No. S-2662:** New Cingular Wireless PCS, LLC, applicant, - requests installation of an unmanned wireless telecommunications facility consisting of antennae and related equipment on the rooftop of an existing building; R-60 zone; located at 10313 Georgia Avenue, Silver Spring, MD – 1989 Kensington-Wheaton Master Plan.

PUBLIC HEARING: March 20, 2006

STAFF RECOMMENDATION: APPROVAL with the following conditions:

1. All evidence, testimony and exhibits of record shall bind the petitioner.
2. A maximum number of nine (9) panel antennae shall be permitted on the rooftop of the existing building.
3. The unmanned equipment proposed to be located on the building must not occupy more than 560 square feet and 14 feet in height.
4. There shall be no signs or illumination placed on the antennae.
5. The screen walls constructed to shield the equipment cabinets and allow for the mounting of antennae on the rooftop must be painted to blend with the exterior of the building.

PROJECT SUMMARY

The applicant is requesting a special exception to install up to nine (9) wireless telecommunications antennae and related equipment on the rooftop of an existing building located at 10313 Georgia Avenue in Silver Spring at the southeast intersection of Georgia and Dennis Avenues. The property consists of approximately 2.1 acres of land and is zoned R-60. On November 12, 1980, the Board of Appeals approved a special exception (S-684) to construct a 3-story building to house medical-dental clinics. In August 1983, the Board granted a modification to S-684 to allow a pharmacy in the first floor of the building. Currently, the 3-story building contains approximately 43,600 square feet of space and is surrounded by on-site parking.

Section 59-A-6.14 of the Montgomery County Zoning Ordinance states that an antenna and related unmanned equipment building or cabinet may be installed on a rooftop as a matter of right provided that the building is greater than 50 feet in height in any one-family residential zone. In this case, the commercial building is approximately 31 feet in height. Therefore, the proposed antenna attachment will require special exception approval because the building is less than the 50-foot minimum height required in the R-60 zone.

Neighborhood Description - The subject property is located in the Forest Glen neighborhood at the intersection of Georgia and Dennis Avenues. The property abuts Dennis Avenue Elementary School to the east and the Medical Park Associates building to the south. The surrounding neighborhood is primarily single-family detached homes in the R-60 zone. The residential properties located across Georgia and Dennis Avenues contain large trees. The general boundaries of the property are defined as Evans Parkway to the north and east, Medical Park Drive to the south and Douglas Avenue to the west.

Project Description

The applicant, Cingular Wireless, proposes to install up to nine (9) wireless panel telecommunications antennae and related equipment on the rooftop of the existing building. The property is developed with a brick building used for commercial office space and related parking spaces. The rooftop of the building on the subject property has existing air-conditioning / utility equipment and television antenna as shown on the attached photographs. The applicant proposes to place the equipment cabinets on a 22.8-foot by 21.8-foot steel platform to be constructed on the roof. The equipment platform will be screened from view by a 12-foot high wall constructed to resemble a rooftop penthouse and will be painted to blend with the building exterior. Six (6) 22" antennae will be attached to the wall at approximately the 45-foot level. At the southeast corner of the building, the applicant proposes to construct a second screen wall frame (9 feet in height) in order to flush mount three (3) antennas at the 40-foot level. According to the applicant, this wall will also be painted to blend with the exterior of the building. As shown on the attached site plan, 3 antennae will be installed on the south elevation of the screen wall that is located closest to the school. The remaining 6 antennae (3 facing west & 3 facing north) will be placed on the larger screen wall that

encloses the equipment shelter. The antennae will not generate any noise, dust, fumes, odors, lights, glare or vibrations.

In light of the existing uses on and surrounding the subject property, staff believes that the proposed installation of the wireless communications facility at the subject property is not likely to create adverse visual impacts, particularly since the applicant proposes to shield its installation by constructing screen walls to shield the equipment cabinets and allow for the mounting of antennae on the rooftop. The screen walls will match the existing building façade color. The unmanned equipment proposed to be located on the rooftop of the existing building will occupy a total area measuring 495 square feet. As proposed, the size of the equipment area is less than the 560 square feet maximum permitted by the Zoning Ordinance.

According to the applicant, the coverage objective of the wireless telecommunications facility is to serve the areas surrounding the intersection of Georgia and Dennis Avenues, as shown by the attached radio frequency propagation maps. These maps reflect the present deficiency in coverage in the area and the forecasted coverage after installation.

ANALYSIS

Master Plan:

Upon reviewing the proposal for Master Plan consistency, the Community-Based Planning Division has provided the following comments:

The Special Exception application, S-2662, proposes installation of up to nine wireless telecommunication antennae and related equipment on the rooftop of an existing building located at 10313 Georgia Avenue (at the southeast corner of Georgia Avenue and Dennis Avenue), in the R-60 Zone. The site is located in the 1989 Master Plan for the Communities of Kensington-Wheaton.

The Master Plan does not have any specific recommendations or comments about this site or the proposed use. The application states that up to nine wireless antennae will be installed on the rooftop of the existing medical office building. The proposed antennae will be mounted on a screen wall, which will also shield the related equipment cabinets on the rooftop. The screen wall and the antennas will be no more than 12'-0" high above the roof of the existing building, as shown on the attached site plan.

Based on the review of the application and the exhibits, Community-Based Planning staff concludes that the proposed installation of up to nine wireless telecommunication antennae on the rooftop of an existing building at this location will not have a significant visual impact on the surrounding neighborhood and, therefore is consistent with the goals and objectives of the Master Plan.

Transportation

Transportation Planning staff recommends no transportation-related conditions to support granting of the subject special exception case. The proposed use will not have an adverse effect on the transportation network within the immediate local area.

DISCUSSION

Site Location and Access

The subject site is located in the southeast quadrant of the intersection of Georgia Avenue (MD 97) and Dennis Avenue. Vehicular access remains via the driveway off of Dennis Avenue. Pedestrian access is provided via a lead-in sidewalk from the existing sidewalk along Georgia Avenue and Dennis Avenue.

Master Plan Roadway and Pedestrian/Bikeway Facilities

The Kensington/Wheaton Master Plan classifies Georgia Avenue as a six-lane divided major highway, M-8, with a recommended minimum right-of-way of 120 feet. Dennis Avenue is classified as an arterial street, A-59, with recommended minimum right-of-way of 80 feet. Dedication along Dennis Avenue has **not** been met. Were this a subdivision case and not a special exception, the applicant would be required to show the centerline of the ROW on filed plans and dedicate 40' from that centerline.

Available Transit Service

Bus service is currently available along Georgia Avenue with the following scheduled transit routes: Metrobus routes Q2, Y5, Y7, Y8, Y9

Local Area Transportation Review

A traffic study was not needed for the subject special exception case to satisfy Local Area Transportation Review because the proposed unmanned telecommunication facility would not add any peak-hour vehicular trips from this existing apartment building. The proposed telecommunication facility would be unmanned and would only require routine inspections or service once or twice a year. Thus, the intersection congestion levels would not be increased during the weekday morning (6:30 to 9:30 a.m.) and evening (4:00 to 7:00 p.m.) peak periods.

Policy Area Transportation Review/Staging Ceiling Condition

Under the FY 2005 Annual Growth Policy, Policy Area Transportation Review is no longer required. This unmanned telecommunication facility would not increase the non-residential development pipeline or “jobs” the Kensington/Wheaton Policy A

Environmental – According to the applicant, the antenna emissions comply with all applicable emission requirements of FCC and the Environmental Protection Agency (EPA).

Community Concerns

Staff has not received any comments from the community. There is no evidence of concern or objection from adjoining neighbors regarding the use and operation of the subject facility.

Conclusion

Staff recommends that the special exception to allow for nine (9) panel antennae located on the rooftop of the existing 3-story medical office building be approved with the conditions as outlined earlier in the report.

DIVISION 59-G-1. SPECIAL EXCEPTIONS – AUTHORITY AND PROCEDURE.

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

59-G-1.2.1 Standard for evaluation.

A special exception must not be granted without 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 inherent adverse effects, are a sufficient basis to deny a special exception.

While height and visual impact tend to be inherent adverse effects commonly associated with telecommunications facilities, the proposed facility minimizes any such concerns because of the use of the existing building, and the installation of antennae on screen walls, with the equipment cabinets behind the walls. Since these screen walls will be designed to match the color of the existing building, there is an even lesser likelihood of an adverse impact due to the proposed installation.

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 subject property is located in an R-60 zone. The Table of Uses shown in Section 59-C-1.3 of the Zoning Ordinance permits telecommunications facilities in the R-60 zone, without special exception if in compliance with the requirements of Section 59-A-6.14, and with a special exception otherwise. Since Section 59-A-6.14 requires a building on which facilities are installed to be at least 50 feet tall, a special exception approval is required in this instance because the building is approximately 31 feet tall.

(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.

Staff finds that the application does meet all the requirements of 59-G-2.43.

(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 1989 Kensington-Wheaton Master Plan does not have any specific recommendations or comments about this site or the proposed use. Community-Based Planning staff concludes that the installation of up to 9 wireless telecommunication antennas on the rooftop of an existing building at this location will not have a significant visual impact on the surrounding neighborhood and, therefore is consistent with the goals and objectives of the 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 proposed use will be in harmony with the general character of the neighborhood as it will not generate any noise, vibration, dust, odors, or fumes. The facility is unmanned and will not generate any traffic other than occasional routine maintenance visits once or twice per year. No detectable emissions will emanate from the facility. Most significantly, the rooftop location and camouflaging material use virtually eliminates any potential adverse impact.

- (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 proposed use as a rooftop wireless telecommunications facility will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

- (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 facility and its use as proposed will not create any noise, vibrations, fumes, odors, dust or objectionable illumination or glare at the subject site.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The proposed use will not increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the nature of neighboring areas. The existing special exceptions granted for installation of the building and pharmacy are unrelated to the proposed use. The facility is an unmanned operation and there is no impact on traffic or parking in the area.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The proposed use will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the site.

- (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.

There are no on-site utility, water, sewer or septic systems proposed with this activity. The site would be unmanned and does not require utilities except electric and land telephone line service. Access to the proposed site will be via the existing access drive to the property off of Dennis Avenue which will be used to access the building for occasional maintenance visits once to twice per month.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

The applicant must comply with all requirements to obtain a building permit or any other authorization or approval required by law to install the proposed facility.

- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

Staff finds that the applicant has met the burden of proof through the materials submitted with the special exception application.

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).

The table of uses shown in Section 59-C-1.3 of the Zoning Ordinance allows telecommunications facilities in the R-60 zone, but a special exception is required where the height of the building upon which the installation is proposed is less than 50 feet. Accordingly, since the subject building is approximately 31 feet tall, the applicant seeks a special exception for the installation of its antennae/equipment on the rooftop of the building.

- (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.

Not Applicable.

- (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.

Applicant agrees to comply with the above requirement.

- (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. The applicant agrees to maintain the facility in compliance with all applicable Federal, State, and local laws and regulations.

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

A recommendation of approval was filed. Copies of the TTF CG application and related approvals were also included.

- (12) Prior to the Board granting any special exception for a telecommunication facility, the proposed facility must be reviewed by the County TTF GC. 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 TTF GC.

- (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.

LIST OF ATTACHMENTS

1. Vicinity Map
2. Photographs of Site
3. Site Plan
4. Radio Frequency Coverage Maps
5. Radio Frequency Justification Statement
6. Photo-simulations
7. Approval by and Application to the Montgomery County
TTFCG
8. Zoning Map
10. Transportation Planning Memo
11. Community-Based Planning Memo

S-2662 (SPECIAL EXCEPTION)



Map compiled on February 23, 2006 at 2:03 PM | Site located on base sheet no. 213NW02

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MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING
 THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
 2001 George Annas - Silver Spring, Maryland 20904-7700

