

MCPB  
Item #2 & #3  
04/15/04**MEMORANDUM-SPECIAL EXCEPTION MODIFICATION**

**DATE:** April 9, 2004  
**TO:** Montgomery County Planning Board  
**VIA:** John A. Carter, Chief, Community Based Planning *JAC*  
**FROM:** Kathleen A. Reilly, AICP Zoning Analyst *KAR*

**SUBJECT: Special Exception and Case Number: S-2596**  
Washington Gas for a new public utility building adjacent to Rock  
Creek Regional Park, Upper Rock Master Plan

**FILING DATE:** November 17, 2003  
**PUBLIC HEARING:** April 23, 2004

**RECOMMENDATION: Approval with conditions**

1. The applicant is bound by all submitted plans and statements.
2. Coordinate with staff regarding the sight distance adequacy at the proposed gate station access road intersection with Beach Drive.
3. Submit a final Forest Conservation Plan (FCP) to the M-NCPPC Environmental Planning staff prior to issuance of sediment and erosion control permits.
4. If the access road's alternative alignment is constructed, the applicant must submit a revised FCP and detailed Tree Save Plan, prepared by an ISA certified arborist. This alternative alignment shall be realigned to preserve two-thirds or more of the 57 inch Tulip Poplar tree critical root zone.
5. An acceptable land lease agreement between Washington Gas and the M-NCPPC, for all property affected by the project must be finalized before construction of the gate station begins.
6. The access road for ingress and egress to the gate station site from Beach Drive will be located as shown on the submitted plan. The "alternate access alignment" as shown on the submitted plan will be used only if the applicant demonstrates to the M-NCPPC's satisfaction that the preferred alignment is not workable from a construction and engineering perspective recognizing that specialized construction measures are likely

to be required within the preferred alignment that passes through an area previously used as a landfill.

7. The applicant agrees to relocate, at its cost and expense, and in a timely manner, any or all portions of the established access road to the gate station, as may be required in the future, to accommodate approved facility plans for the future redevelopment of Rock Creek Regional Park Maintenance Yard.
8. Prior to any commencement of construction, the applicant must submit detailed design plans for the project and obtain approval by the Park Development Division through the Park Permit Technical Review and Construction Permit process. Following approval of the detailed design plans, the Park Development Division will issue a Permit for Construction on Park Property which will itemize and detail conditions and requirements that must be met by the applicant.

The project cannot proceed to construction without first finalizing an acceptable land lease agreement between Washington Gas and the property owner, M-NCPPC, for all property affected by the project.

## **PROJECT SUMMARY**

The applicant, Washington Gas, is requesting a special exception to establish an easement consisting of approximately 2.07 acres to allow construction of a public utility building. The easement will be located on a 15.9-acre parcel that is owned by M-NCPPC. This parcel is adjacent to Rock Creek Regional Park and the Park's maintenance yard. The public utility building will house a gate station. Washington Gas proposes to obtain a perpetual easement from M-NCPPC for the 2.07 site and additional easements for access. The area for access easements will consist of approximately 49,920 square feet.

**Site Description** - The subject site is zoned RE-2 and contains 15.9 acres of land. The area of the special exception easement will consist of 2.07 acres for the gate station and 49,920 square feet for access easement. This 15.9-acre site owned by M-NCPPC and located adjacent to the Rock Creek Maintenance Yard Facility (RCMY), is landlocked and rectangular in shape. It is a meadow with gentle rolling terrain and trees and vegetation along its perimeter. Environmental features include a stream valley buffer and several steep slopes in the southeastern portion of the property. Existing easements for gas lines run east to west and are located in the southeastern portion of the site. There are additional easements for fiber optic lines and gas lines that run north to south are also located in the eastern portion of the site. Evidence of a significant deer population was found throughout the site. Access to the proposed gate station is via a proposed asphalt easement road at the RCMY entrance driveway on Beach Drive. A portion of the proposed Intercounty Connector (ICC) Rock Creek Option "A" right-of-way crosses along the northern portion of the site.

**Neighborhood Description** - The site is located on property owned by M-NCPPC and adjacent to Rock Creek Regional Park at its Rock Creek Maintenance Yard Facility (RCMY). The park is zoned RE-2. The surrounding properties to the north, south and west are zoned RE-2 and are developed as the regional park. The property immediately adjacent to and north of the site is zoned RE-2 has been placed in reservation for the future ICC roadway. The property to the east is also zoned RE-2 and is developed with low-density single-family residential units. The other approved special exception in the area is for a private riding stable (S-266) approved 8/28/04.

Because the subject site is surrounded by Rock creek Regional Park and adjacent to the RCMY, the following describes the RCMY. The RCMY is located on the east side of Beach Drive approximately 900 feet south of its intersection with Needwood Road. The RCMY is developed with several butler type buildings, concrete storage bins, storage area for canoes, and parking lot for employee's vehicles and storage of park vehicles. Access to the maintenance yard is via an asphalt driveway that winds up a steep hill and terminates into a gravel parking lot at the site's highest point. The topography of the site is a rolling terrain with steep forested slopes along its frontage on Beach Drive leading up to the maintenance yard's highest point and then sloping down and gradually becoming level in the middle of the site and connecting to the proposed special exception site.

**Project Description and Elements of Proposal** -The applicant, Washington Gas, proposes to construct a public utility building on a 2.07 acre easement located on property owned by M-NCPPC and adjacent to Rock Creek Regional Park and its maintenance yard. This public utility building will be a gate station. A gate station is a point where a local natural gas distribution company connects into the main transmission line of the natural gas supplier. The gate station measures the amount of natural gas received from the supplier and converts the gas for retail use through a depressurization and odorization process. The gas is transmitted from the gate station through a retail distribution pipeline to the retail customer. According to the applicant, the proposed use is necessary to ensure the continued delivery of natural gas service to the eastern portion of Upper Montgomery County. The existing gate station located one-half east of the site on Muncaster Mill Road that serves this area of the County no longer meets operational requirements.

The proposed gate station will consist of the following equipment 1) an auto-inlet valve, 2) a filter- separator system, 3) a flow measurement controls 4) a process line hearing system, 5) throttling valves and 6) an odorizing system. The new station will be monitored remotely by the applicant's operations center in Springfield, Virginia. A 50-foot high communications tower will be installed to communicate with the Operations Center. A heater line exhaust stack will also be installed at a maximum height of 35 feet. There will be two proposed buildings: one building will be 12 feet, 3 inches. the other building will be

approximately 11 feet, 3 inches in height. The buildings have a metal façade. The entire gate station will be enclosed with an 8-foot high deer fence. Landscaping of evergreen and deciduous trees is proposed around the entire gate station.

Lights will be mounted on poles in 4 locations and will be a maximum of 34 feet height. The proposed use will be lit only in case of an emergency or necessary repairs. The proposed use will be unmanned. Activity to the site will be limited to monthly maintenance and calibration that require one or two service technicians in a single vehicle on site for approximately two hours. Additionally, once a year a tractor-trailer will deliver odorant to the facility and this delivery will take approximately two hours.

Because the Beach Drive is a private park road, the applicant will need to obtain an easement over Beach Drive and through park property to serve the subject use. The proposed easement begins at the intersection of Needwood Road and Beach Drive to the entrance of the RCMY facility this easement consists of 22,760 square feet. At the entrance to the maintenance yard, the asphalt easement road begins and continues east through the RCMY facility to the subject site, this easement consists of 29,160 square feet.

The submitted site plan shows two road alignments serving the gate station. The preferred alignment crosses through a portion of the maintenance yard facility that contained a former landfill. The applicant is also proposing the alternative alignment if information becomes available during the Park's technical review process which would preclude the preferred alignment from being constructed.

## **ANALYSIS**

**Master Plan** – The subject use conforms to the 2004 Upper Rock Creek Master Plan that covers this site and confirms the zone. There is no discussion of or recommendation for the site in the Upper Rock Creek Area Master Plan, which was approved by the Montgomery County Council in February 2004. The proposed use is allowed by special exception in the RE-2 Zone and staff recommends approval of the request.

**Transportation** - The Transportation Planning staff has reviewed the subject special exception application for the required adequate public facilities (APF) review. Staff recommends the following condition for this special exception application.

Coordinate Park and Planning staff regarding the sight distance adequacy at the proposed gate station access road intersection with Beach Drive.

The proposed use will be an unmanned station with only monthly maintenance by one or two technicians traveling in the same vehicle. The proposed station will

not generate peak-hour vehicular trips during the weekday morning peak period (6:30 a.m. to 9:30 a.m.) and the evening peak period (4:00 p.m. to 7:00 p.m.). Therefore, staff finds that the proposed gate station satisfies the Local Area Transportation Review and Policy Area Transportation Review tests and will have no adverse effect on area roadway conditions.

The proposed gate station easement is located southwest of Muncaster Mill Road (MD 115) and southeast of Needwood Road. The vehicular access to the gate station is via a new proposed access road from Beach Drive. The access road through the RCMY property was aligned to minimize any environmental impacts with a preferred alignment. If construction problems occur an alternative alignment is also shown on the submitted plan. The proposed special exception use will not adversely affect the existing pedestrian access.

Local Area Transportation Review is not required because the special exception land use for a gate station modification does not generate any peak-hour vehicular trips generated during the weekday morning and evening peak periods. The Rock Creek Policy Area is one of the five rural policy areas with no assigned staging ceilings for jobs or housing units in the Annual Growth Policy.

According to the *Upper Rock Creek Area Master Plan*, the master plan roadways and bikeways are as follows:

1. The master-planned Intercounty Connector alignment is an east-west six-lane, divided freeway with a transitway facility, F-9, with a 300-foot right-of-way and a Class I bike path.
2. Needwood Road is designated as an east-west two-lane primary residential street, P-8, with a 70-foot right-of-way and a Class II or III bike path.
3. Muncaster Mill Road (MD 115) from Redland Road to North Branch of Rock Creek is designated as a north-south two-lane arterial, A-93, with an 80-foot right-of-way and a Class I bike path.
4. Beach Drive is a two-lane north-south park road.

Finally, The Maryland State Highway Administration (SHA) is currently preparing the Draft Environmental Impact Study for the Intercounty Connector (master-planned) Corridor 1 and (northern alternative) Corridor 2 alignments. Only the Rock Creek Option "A" alignment in Corridors 1 and 2 impacts the proposed gate station location within the Rock Creek Regional Park. Corridor 1 and Corridor 2 are the same between I-370 and Georgia Avenue (MD 97). The Rock Creek Option "A" alignment crosses the northern border of the subject site. The Rock Creek Option "C" north of the subject site does not impact it. As submitted, the proposed gate station is located outside of SHA's footprint for the Rock Creek Option "A" alignment.

**Development Standards** - The application conforms to the Development Standards for the RE-2 Zone set forth in the Zoning Ordinance. The following table summarizes the conformance with applicable standards

Comparison of Development Standards:

Item	Required	Proposed
Lot Area	2 acres	15.9 acres
Minimum Building Setback from Street	50 feet	800+ feet
Minimum Building Setback from Rear of Site	35 feet	160 feet
Maximum Coverage	25 percent	0.1 percent
Maximum Building Height	50 feet	13 feet

**Environmental** -The Environmental Planning staff recommends approval of the Preliminary Forest Conservation Plan for subject special exception request with the following conditions:

- Submit a final Forest Conservation Plan (FCP) to M-NCPPC Environmental Planning staff prior to issuance of sediment and erosion control permits. This plan must demonstrate full compliance with the requirements of Forest Conservation Law Section 22A-12.
- Realign the alternative access road, if used, to preserve two-thirds or more of the 57" specimen Tulip Poplar critical root zone.
- Submit a revised FCP and detailed Tree Save Plan, prepared by an ISA certified arborist and that fully meets the directives of M-NCPPC Forest Conservation Regulations #1-01, Section 109B, if the alternative alignment of the access road is used.

The Environmental Planning staff also recommends approval of special exception with conditions stated above for approval of the Final FCP.

**Discussion of Environmental Issues**

**Gas lines cross stream and bisect unforested stream valley buffer.**

This site is located in the northeast corner of Lake Needwood Park in Rock Creek Regional Park. A small unnamed tributary of Lake Needwood, with no evidence of undercutting, runs along the eastern border of the property. This tributary requires a stream valley buffer varying from 150 feet wide, where slopes are steep, to 125 feet in width. The stream valley buffer is unforested, except for a 0.24-acre forest stand, along the southern property line. Washington Gas proposes to bisect the unforested portion of the stream valley buffer with three

gas lines contained in a 65 feet wide easement. The proposed gas lines will connect a gate station, which services the gas lines, to existing gas lines located on the east side of the stream.

The applicant plans to use an open cut method of construction across the stream to install the new gas lines. The new gas lines will be placed approximately 4 feet to 6 feet below surface for the length of the installation and 4 feet to 6 feet below the streambed at the crossing. The applicant has submitted a plan to M-NCPPC Environmental Planning staff detailing the construction of the stream crossing. This plan includes specifications for construction activities and stream repair indicating replacement of the substratum with solid material similar to or the same as what was removed from the stream. The Final FCP shall indicate a native grass meadow to stabilize soil disturbed by construction within the easement area. Reforestation to fulfill Forest Conservation Plan requirements is proposed for the unforested portion of the stream valley buffer outside the easement area.

Washington Gas has a *Maryland State Programmatic Permit* from the U.S. Army Corps of Engineers allowing activities disturbing 0.25 ac. for stream crossings and in wetlands providing there is no change in preconstruction contours. The applicant also has a *Regional Letter of Authorization* and a *General Waterway Construction Permit* from the Maryland Department of the Environment authorizing disturbance activities in floodplains and waterways.

**New access road aligned over landfill, alternative road potentially impacts specimen tree.** A road to access the gate station traverses Rock Creek Maintenance Yard on M-NCPPC property. The access road is aligned along the southern border of an uncontrolled landfill. Washington Gas will be required to comply with Maryland Department of the Environment (MDE) regulations with regard to the landfill prior to building the road. In the event that engineering or construction measures are not feasible to construct the road over the landfill, an alternative alignment for the access road is shown on the submitted plan. The alternative alignment potentially impacts a 57-inch Tulip Poplar tree field verified by staff and the applicant. If the alternate access road is selected, a new alignment should be designed to reduce impacts to the specimen tree and a Tree Save Plan is required if the new road alignment encroaches on the critical root zone of the specimen tree.

The subject exception application has an approved Natural Resource Inventory/Forest Stand Delineation (NRI/FSD). The applicant has submitted a Preliminary FCP that complies with the Forest Conservation Law. The applicant proposes to clear .25 acres and to retain 1.47 acres of forest. Planting requirements include .5 acres of reforestation and .94 acres of afforestation. The Preliminary FCP indicates 1.99 acres of reforestation provided in the stream valley buffer, a high priority reforestation area.

This property is not located within a Special Protection Area or Primary Management Area. A stream valley buffer varying in width from 125 feet to 150 feet where steep slopes are present. Wetland soils are indicated on the NRI/FSD, but wetlands have not been found in the field. A wetland delineation has not been performed. All necessary wetlands permits will be required prior to issuance of the park permit.

The Department of Permitting Services has approved a Stormwater Management Concept request for this site. Water quality control for the gate station will be provided through a biofiltration facility on the easement site. Water quality control for the access road will be achieved by grading the road to disperse runoff in a sheet flow in order to prevent erosion. Water quantity control is not required for this proposal.

This site is located in the Lake Needwood tributary of the Upper Rock Creek watershed. Upper Rock Creek south of Muncaster Mill Road is classified as a Use IV watershed by MDE. A Use IV classification means that the waters are capable of supporting put and take trout populations.

The *Countywide Stream Protection Strategy* (CSPS) categorizes this subwatershed as a Watershed Restoration Area. This category is applied to older developed areas of the County where streams are degraded to varying degrees and restoration tools are necessary to stop further degradation. The CSPS rates stream quality fair and habitat conditions good for the Lake Needwood tributary noting that there is low imperviousness overall, but the recreational facilities and upstream land uses have an impact on the eutropic (poor water quality) lake.

This use is not expected to generate a noise disturbance to surrounding uses. A Sound Analysis, performed by the applicant, uses manufacturer's data to predict expected noise levels at sixteen points around the perimeter of the property. Manufacturer's data indicate the maximum noise produced by equipment in the gate station is 75 dBA. When this sound level is projected to the sixteen perimeter points identified by the study, sound levels drop to 55 dBA, as required by the Montgomery County Noise Ordinance for residential properties. This does not account for proposed attenuation measures such as buildings enclosing the equipment, a ten-foot tall fence, and landscaping around the perimeter of the gate station. The Department of Environmental Protection administers Montgomery County Code Chapter 31B Noise Control and will verify compliance with the county code prior to issuance of permits.

Finally, there should be no objectionable fumes, noise or odors resulting from the proposed use. Dust is not expected to be problematic.

**Landscaping and Lighting** –The applicant has submitted a landscape and lighting plan. The landscape plan shows evergreen and deciduous trees. The



trees are medium to fast growing and will adequately screen the proposed use from the surrounding properties. The combination of densely planted material and the existing vegetation with the rolling terrain of the site will also serve to mitigate any visual impacts of this use. Staff finds the submitted landscape plan acceptable as it addresses landscaping and effective screening for this site. As stated previously, the four light poles on site will be lit only during emergency repairs. The submitted lighting plan does not create excessive illumination or glare onto nearby properties. Staff finds the lighting plan acceptable.

**Parks** - The Parks Department staff have reviewed the submitted special exception request recommend approval with the following conditions:

The project cannot proceed to construction without first finalizing an acceptable land lease agreement between Washington Gas and the property owner, M-NCPPC, for all property affected by the project.

The access for ingress and egress to the gate station site from Beach Drive will be generally located as shown and labeled "proposed pavement" on the site plan for the Special Exception. The "alternate access alignment" as shown on the site plan will only be used if the applicant demonstrates to M-NCPPC's satisfaction that the alignment of the "proposed pavement" on the site plan is not workable from a construction and engineering perspective recognizing that specialized construction measures are likely to be required within the alignment of the "proposed pavement" that passes through an area previously used as a landfill.

The applicant agrees that it will relocate, at its cost and expense, and in a timely manner, any or all portions of the established access road to the gate station, as may be required in the future, to accommodate approved facility plans for the future redevelopment of Rock Creek Regional Park Maintenance Yard.

Prior to any construction, detailed design plans for the proposed use must be approved by the Park Development Division through the Park Permit Technical Review and Construction Permit process. After approval of detailed design plans, the Park Development Division will issue a Permit for Construction on Park Property which will itemize and detail conditions and requirements that must be met by the applicant.

The following paragraphs summarize some issues that were raised during review of special exception application by the Parks staff. These issues, while not exclusive, will need to be resolved during technical review of park permits.

Access to the RCMY facility must be maintained throughout construction and impact on ongoing RCMY operations must be minimized. Any temporary restrictions on the use of the facility shall be coordinated fully with the Park Manager well in advance of the actual restriction.

The Beach Drive entry will be shared by the applicant and the RCMY. The design of the entry shall not disturb the western tree buffer that screens the RCMY and will minimize disturbance to the eastern tree buffer. In addition, the future RCMY expansion area lies directly north and uphill of the access road; therefore, retaining wall(s) will be required to reduce grading and maximize usable building space for the RCMY expansion.

A landscape plan of the entry area off Beach Drive will be required.

The existing gravel road along the north edge of the open field should remain accessible and be tied into the new access driveways and bulk storage bins.

If the reconstructed entry eliminates the western existing driveway connection to the RCMY building compound, a new two-way vehicular circulation driveway will be required to provide adequate circulation throughout the upper portion of the RCMY.

The preferred alignment will require a portion of the existing bulk storage bins to be relocated in order to avoid the white pine hillside and to minimize disturbance of the existing deciduous tree hedgerow northeast of the existing bulk storage. WG will be required to relocate affected bulk storage bins and ensure adequate access is maintained.

Portions of the access driveway will be built over a former landfill area, which may require coordination by the applicant with Montgomery County Department of Permitting Service (MCDPS) and Maryland Department of Environment (MDE). M-NCCPC will assist the applicant to the extent possible in providing information on the existing landfill and working with MDE to ensure the preferred alignment is ultimately acceptable.

The applicant has specifically requested that the access road be constructed with an asphalt surface in order to ensure all-weather access. M-NCCPC agrees with that request provided that additional stormwater BMPs are provided along the access driveway to minimize environmental impacts.

The applicant will be responsible for any driveway reconstruction or realignment necessitated by the future RCMY facility plan renovation and expansion project. Any requirement to relocate the driveway access by the future RCMY facility plan will be at the expense of the applicant and may include redefinition of the access easement.

M-NCCPC has identified the future RCMY Facility Plan as a "green building" project that will strive to achieve a Silver Rating from the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) accreditation program. To the extent possible, the applicant should incorporate LEED criteria

into the design of the proposed use and submit the LEED checklist, identifying credits that can be achieved.

The detailed design for the gate station and access road must minimize impacts to existing features (i.e. forested edges, tree removal, cut/fill, increase runoff, etc.) to the extent possible. Replacement of impacted trees will be reviewed during the park permit technical review process.

Visibility of the communications tower and exhaust stack from recreational areas must be considered and its appearance must blend into the natural environment. The applicant has proposed using a timber utility pole for the communications tower, which staff believes is appropriate.

If identified as an industrial activity through MDE, WG must fully comply with NPDES (National Pollution Discharge Elimination System) program requirements, acquire the proper permits, provide any required improvements, and maintain the Gate Station to those standards.

The applicant will confirm with the Fire Marshal whether their office will have to approve the site application, including the access road width and design.

**Inherent and Non-Inherent Effects-** Section 59-G-1.21 of the Zoning Ordinance (Standard for Evaluation) states the following with respect to Inherent and Non-Inherent Effects.

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 inherent and non-inherent characteristics associated with the proposed use, are the asphalt access road, buildings, equipment, lights, fencing, and communications tower. The proposed buildings (both under 13 feet) are well below the 50-foot height requirement and will be fenced and surrounded by substantial landscaping and screening. The lights will be used only during emergencies or necessary repairs and will not create excessive illumination onto*

*nearby residential properties. The communications tower will be constructed to resemble a wooden telephone pole to be compatible with the low density undeveloped character of the surrounding area. Visibility of this pole to the surrounding area is expected to be minimal. The setbacks and landscaping will mitigate the non-inherent impacts of height and location of structures. There are no non-inherent effects that require a denial.*

**Additional Review Process** –A park permit will be required to construct the proposed public utility building and associated access road on park property. Issues related to the park permit are found in the parks section and will be addressed at time of issuance of the park permit.

**Community Concerns** -To date, no community comments have been received on the requested application.

### **CONCLUSION**

Staff finds that the proposed exception meets all the general and specific requirements for this use found in Sections 59-G-1.21 and 59-G-2.43 of the Zoning Ordinance. Staff recommends approval of the requested special exception for a public utility building with conditions stated on page 1 of this report.

### **Attachments:**

General Special Exception Provisions  
Specific Special Exception Provisions  
Location Map/Vicinity Map  
Site Plan  
Landscape Plan  
Zoning Map  
Elevations  
Environmental Staff Memo

**Sec. 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 proposed use is allowed in the RE-2 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 proposed use complies with the standards and requirements for a public utility building under Section 59-G-2.43 of the Zoning Ordinance.*

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny special exception must be consistent with a recommendation in an approved and adopted 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 the 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 subject property is covered by the Upper Rock Creek Master Plan, (2004). The Master Plan supports the existing RE-2 zone for the property and the subject use is allowed by special exception in that zone.*

- (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 surrounding neighborhood contains Rock Creek Regional Park and low density residential uses. . The easement area for the public utility building will be screened and landscaped from the surrounding properties to be more in harmony with the low-density character of the area. The facility will be unmanned and will produce minimal traffic.*

- (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 public utility compound will not be readily visible to the surrounding residential areas due to the intervening rolling terrain and proposed landscaping and screening. Thus, the proposed use will not be detrimental to peaceful enjoyment or economic value and development of the surrounding properties.*

- (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.

*There are no vibrations, fumes, odor or dust, associated with the proposed use. The physical activity will be limited to monthly routine maintenance visits. The gate station will not be illuminated except if needed during emergencies or necessary repairs. A noise study submitted by the applicant shows that any noise generated by the proposed use can meet the county noise ordinance requirements.*

- (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, and scope of the approved special exceptions 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 on any adverse effects the use might have if established elsewhere in the zone.

*The proposed special exception will not cause any of these effects*

- (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.

*The subject site will be served by adequate 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 granting 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.

*Not applicable.*

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.

*Based on information submitted by the applicant, with an average of one vehicular trips per month, no conflicts with existing traffic or pedestrians are anticipated.*

**Sec. 59-G-2.43. Public utility buildings, public utility structures and telecommunication facility.**

(a) A public utility building or public utility structure, not otherwise permitted, may be allowed by special exception. The findings of this subsection (a) do not apply to electric power transmission or distribution lines carrying in excess of 69,000 volts. For other buildings or structures regulated by this section, 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 applicant has stated that the proposed gate station is necessary to serve customers in the eastern portion of Upper Montgomery County. Presently, an existing gate station is located on Muncaster Mill Road, approximately one-half mile east of the subject site. This station no longer meets the operational requirements necessary to provide its customers with its product. The subject site's proximity to the main transmission lines along the eastern side of the property provides convenience and service for its customers.*

(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 proposed use will not endanger the health and safety of workers and residents in the community. Many of the neighboring properties are owned by M-NCPPC and contain the Rock Creek Regional Park. Given the proposed use's secluded location on park property as well as the proposing landscaping and screening and existing vegetation on the site, the use will not prove detrimental to neighboring properties.*

(b) A public utility building allowed in any residential zone, must, whenever practicable, have the exterior appearance of residential buildings and must have suitable landscaping, screen planting and fencing, wherever deemed necessary by the Board.

*The proposed building will be 12 feet, 3 inches high with a metal façade and a flat roof. The applicant is proposing to fence the entire 2.07 acre easement area. Extensive landscaping will be planted outside the fence and surrounding this easement. The proposed building's limited height coupled with landscaping serve to provide an acceptable residential appearance for the site.*

(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 maximum height in the RE-2 zone is 50 feet. The applicant is not requesting a building or structure in excess of the 50-foot height requirement. The proposed buildings for the subject use will be less than 13 feet in height. The communications tower will be 50 feet in height and is approximately 1,000 feet from the nearest residential property line. The applicant has agreed to construct the communication tower to resemble a wooden telephone pole to appear less visible to the surrounding properties.*

(d) Any proposed broadcasting tower must 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, and may be continued, structurally altered, reconstructed or enlarged; provided further, that any structural change, repair, addition, alteration or reconstruction must not result in increasing the height of such tower above the then existing structurally designed height.

*The proposed communications tower is not a broadcast tower. It is proposed be approximately 50 feet in height. The submitted plan shows it is located approximately 130 feet from the northern (nearest) property line, thereby, meeting the 1:1 setback requirement*

(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 subject application is a special exception 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.

*Recommended conditions of approval are given on page 1 of this report.*

(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.

*The applicant will execute a lease agreement with M-NCPPC to use the subject site. This is a recommended condition of approval for the special exception.*

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

.....

*The above standard (j) (1) through (12) of Section, 59-G-2.43 is not applicable to the subject application as it applies to telecommunication facilities and the proposed request is not a telecommunications facility.*

(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.*