



JUL 11 2012

MCPB No. 11-88
Subdivision Regulation Waiver No. SRW 201202
White's Farm - Germantown
Date of Hearing: September 22, 2011

RESOLUTION

WHEREAS, on July 6, 2011, T-Mobile, Northeast, L.L.C., ("Applicant"), filed an application for approval of a subdivision regulations waiver request to allow for the issuance of a building permit for an approved cellular facility on an outlot, located at 22525 Wildcat Road in Germantown, Maryland, and further identified as Outlot "A," White's Farm, Plat No. 23172, ("Property" or "Subject Property"), in the Agricultural and Rural Open Space master plan area ("Master Plan"); and

WHEREAS, the provisions for approval of minor subdivisions are contained in Chapter 50 of the Montgomery County Code, the Subdivision Regulations ("Subdivision Regulations") and the Montgomery County Planning Board ("Planning Board" or "Board") has the authority to administer this chapter; and

WHEREAS, pursuant to Section 50-20(b) of the Subdivision Regulations a building permit must not be issued for any structure to be located on an outlot shown on a record plat; and

WHEREAS, the Applicant has received approval of a Special Exception (S-2770) to locate a cell unipole and associated structures within a 50 foot by 50 foot fenced compound on the Property; and

WHEREAS, the approved cellular facility includes structures that will require issuance of a building permit, which is otherwise prohibited by Section 50-20(b); and

WHEREAS, Condition No. 3 of the Board of Appeals Opinion, adopted January 19, 2011, requires the Applicant to obtain Planning Board approval of a subdivision review waiver to allow for a building permit to be issued for the approved cellular facility on the Property; and

Approved as to
 Legal Sufficiency:

8787 Georgia Avenue, Suite 200, Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320

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WHEREAS, the Planning Board has the authority to grant such a waiver under Section 50-38(a)(1) of the Subdivision Regulations; and

WHEREAS, Applicant's subdivision regulations waiver request application was designated Subdivision Regulations Waiver No. SRW 201202, White's Farm – Germantown (“Waiver” or “Application”); and

WHEREAS, Planning Board staff (“Staff”) issued a memorandum to the Planning Board, setting forth its analysis, and recommendation for approval, of the Application (“Staff Report”); and

WHEREAS, following review and analysis of the Application by Staff and the staff of other governmental agencies, on September 22, 2011, the Planning Board held a public hearing on the Application (the “Hearing”); and

WHEREAS, at the Hearing, the Planning Board heard testimony and received evidence submitted for the record on the Application; and

WHEREAS, on September 22, 2011, the Planning Board approved the Application on motion of Commissioner Dreyfuss, seconded by Commissioner Anderson, with a vote of 5-0; Commissioners Anderson, Carrier, Dreyfuss, Presley and Wells-Harley voting in favor.

NOW, THEREFORE, BE IT RESOLVED THAT, pursuant to the relevant provisions of Montgomery County Code Chapter 50, the Planning Board hereby approves Subdivision Regulation Waiver No. SRW 201202 to waive Section 50-20(b) of the Montgomery County Subdivision Regulations in order to permit the issuance of a building permit(s) only for the structure(s) that were approved by the Board of Appeals under Special Exception Case No. S-2770; and

BE IT FURTHER RESOLVED, that, having given full consideration to the recommendations and findings of its Staff, which the Board hereby adopts and incorporates by reference, and upon consideration of the entire record, the Montgomery County Planning Board FINDS, with the conditions of approval, that:

1. *Practical difficulties or unusual circumstances exist that prevent full compliance with the requirements from being achieved.*

The Board finds that a practical difficulty will be created for the Applicant if the waiver is not granted. The Subdivision Regulations will not allow staff to release a building permit for the approved structures on the outlot and in a location approved by the Board of Appeals.

- 2. *The Waiver is the minimum necessary to provide relief from the requirements, is not inconsistent with the purposes and objectives of the General Plan, and is not adverse to the public interest.*

The Board determined that by adding language to that recommended by Staff to further restrict the Waiver to apply only to building permits for the structures approved under the Board of Appeals approval for Special Exception Case No. S-2770, the Waiver will be the minimum necessary to provide relief from Section 50-20(b). The Board also finds that the Waiver allows implementation of the approved use in a location that has been found by the Planning Board to be in conformance with the General Plan and the Agricultural and Rural Open Space Master Plan. The location of the structures has minimal impacts on the existing and future agricultural opportunities on the Property. The Waiver is not adverse to the public interest. The location, screening, height and paint color of the pole have been carefully examined to minimize impact to the local neighborhood. The Waiver allows the facility to be constructed in the manner approved by the Board of Appeals after a public process involving the community.

BE IT FURTHER RESOLVED, that the date of this Resolution is JUL 11 2012 (which is the date that this Resolution is mailed to all parties of record); and

BE IT FURTHER RESOLVED, that this Resolution constitutes the written opinion of the Board in this matter and satisfies any requirement under the Montgomery County Code for a written opinion, and any party authorized by law to take an administrative appeal must initiate such an appeal within thirty days of the date of this Resolution, consistent with the procedural rules for the judicial review of administrative agency decisions in Circuit Court (Rule 7-203, Maryland Rules).

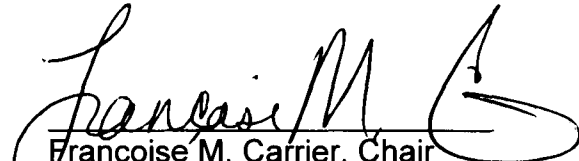
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CERTIFICATION

This is to certify that the foregoing is a true and correct copy of a resolution adopted by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission on motion of Commissioner Presley, seconded by Commissioner Anderson, with Chair Carrier, and Commissioners Anderson and Presley present and

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voting in favor of the motion, and Vice Chair Wells-Harley temporarily absent, and Commissioner Dreyfuss absent, at its regular meeting held on Thursday, June 28, 2012, in Silver Spring, Maryland.



Françoise M. Carrier, Chair
Montgomery County Planning Board