

IN THE MATTER OF : BEFORE THE  
**AT&T MOBILITY** : HOWARD COUNTY  
Petitioner : BOARD OF APPEALS  
: HEARING EXAMINER  
: BA Case No. 13-021C

.....  
**DECISION AND ORDER**

On October 14, 2013, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of AT&T Mobility for conditional use approval to modify an existing commercial communications facility by enlarging the area of the compound, in an RC-DEO (Rural Conservation-Density Exchange Option) Zoning District. The petition is filed pursuant to Section 131.N.14 of the Howard County Zoning Regulations (the Zoning Regulations).

The Petitioner certified to compliance with the advertising and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Charles Salamone testified on behalf of the Petitioner. No one appeared in opposition to the petition.

At the outset of the hearing, Mr. Salamone agreed with the technical staff report (TSR) and for this reason stated, he would not present additional testimony or evidence.

**FINDINGS OF FACT**

Based upon the TSR, the Hearing Examiner finds the following facts:

1. Property Identification. The 1.8-acre subject property is located in the 4<sup>th</sup> Election on the south side of MD 97 (Roxbury Mills Road) about 1,100 feet north of Roxmill Court. It is referenced as Tax Map 21, Grid 14, Parcel 91 and is also known as 3875 MD 97 (the Property). The Property is zoned RC-DEO ("Rural Conservation-Density Exchange Option).

2. Property Description. The Property is improved with a frame church, the Glenwood Baptist Church. Access is provided by an 18-foot driveway rising up to a small paved parking lot with about 21 spaces on the church's west side, a one-story classroom addition and a detached picnic shelter. Some 30 feet to the east of the church is a cemetery and an existing commercial communications facility approved in BA 01-027C (2001). The fenced communications facility compound is about 15 feet by 25 feet in area.

3. Vicinal Properties. Adjacent properties are also zoned RC-DEO. To the north, across MD 97, is Parcel 132, a 25-acre parcel improved with a single-family detached dwelling. To the east of this Property is the pipestem portion of Lot 4 of the Duvalls Ridge subdivision. The Lot 4 dwelling is sited much further to the southeast of the Property. To the south and west are Lots 4 and 3 of the Roxbury Section 1 subdivision, both of which are improved with a single-family detached dwelling and long driveways extending to Roxmill Court.

4. Roads. MD 97 has two travel lanes and about 40 feet of paving within a variable width right-of way (ROW). Although sight distance from the existing driveway appears to be somewhat limited, the religious facility likely predates the first zoning regulations, based on a 1937 Highways map, according to the TSR. The TSR concludes sight distance is not an issue

because the religious facility has existed for many decades and the AT&T facility generates very little traffic.

5. Water and Sewer. The Property is served by private water and sewer, neither of which is required by the use.

6. General Plan. The PlanHoward 2030 Designated Place Type Map designates the Property as "Rural Conservation" and the Transportation Map depicts Daisy Road as MD 97 as a Minor Arterial.

7. The Proposal. The Petitioner is proposing to enlarge the existing fenced compound with an approximately 7'x12' extension of the fenced compound on the northeast side. The extension would accommodate a new concrete pad for additional equipment and new access gate.

#### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

#### **I. General Criteria for Conditional Uses (Section 131.B)**

##### **A. Consistency with the General Plan**

Section 131.B.1 requires me to evaluate whether the proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district based on in which it is located. In making this evaluation, I am required to consider:

- a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and**

**b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.**

General Plan Land Use Policies. The PlanHoward 2030 Designated Place Type Map designates the Property as "Rural Conservation." Because the Rural Conservation zoning district permits commercial communications towers as a conditional use, the proposed use in and of itself is not inconsistent with the goals and objectives of the General Plan. Further, when a local legislature has determined through its comprehensive plan that a certain use is appropriate in a zone by way of special exception (conditional uses in Howard County), the legislature has effectively declared that such uses, if they satisfy the specific requirements of the use, promote the health, safety and general welfare of the community. See *Anderson v. Sawyer*, 23 Md.App. 612, 624, 329 A.2d 716 (1974).

In this case, the Petitioner is proposing to expand the telecommunication facility with an 84-square foot fenced extension to accommodate new equipment, a low intensity, passive utility occupying a small portion of the Property. The utility would make infrequent use of the compound.

The compound would add 84-square feet to the existing 450-square foot compound located on a 1.8-acre site, which can easily accommodate the extension. The TSR reasons, and the Hearing Examiner agrees, that sight distance is not an issue in this case owing to the nature of the proposed use (minimal traffic generation) and the long-time existence of the religious facility without sight distance problems. The proposed extension will be combined with an

existing telecommunications facility and the religious facility there is no evidence that the combination of uses is inappropriate.

## **2. Adverse Impact**

Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in such uses. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in an RC zoning district. The proper question is whether there are facts and circumstances showing that the particular use proposed at the particular location would have any adverse effects beyond those inherently associated with such a use irrespective of its location within the zone. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

Unlike Section 131.B.1, which concerns the harmony or compatibility of a proposed conditional use in relation to the General Plan, the adverse impact of a proposed conditional use is evaluated at the neighborhood level through four "adverse impact" criteria set forth in Zoning Regulations Section 131.B.2: (a) the adverse impact generated by the use's physical conditions; (b) the adverse impact generated by any structures and landscaping; (c) the adverse impact of any parking areas and loading, and; (d) the adverse impact of the proposed access to the use. When evaluating a proposed conditional use under these criteria, the Hearing Examiner may deny the use only when one or more of the four adverse impacts generated by

the use is atypical of or non-inherent to the operational characteristics of the conditional use category and the atypical adverse impact cannot be mitigated (often through conditions of approval.)

For the reasons stated below, the Hearing Examiner concludes the proposed extension will not have atypical adverse effects on vicinal properties beyond those ordinarily associated with a commercial communications facility in an RC Zoning District.

**a. Physical Conditions.** Whether the impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The small extension will not generate inordinate noise or other physical impacts detectable from adjacent properties.

**b. Structures and Landscaping.** The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

The proposed extension will be screened by a fence and existing landscaping. Existing dwellings are some distance away. The Hearing Examiner concludes the extension will not discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

**c. Parking and Loading.** Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

Due to the limited vehicle trips associated with the use, the longstanding egress-egress will provide safe access. The telecommunications facility is unmanned and the use generates only about one vehicle trip per month, with the current parking area can accommodate. There is no evidence of adverse impact from the location of the parking area and driveway, in accordance with Section 131.B.2.(c).

**II. Specific Criteria for Communications Towers or Antennas (Commercial) (Section 131.N.14)**

Section 131.N.14.a provides for the use in an RC Zoning District subject to compliance with the criteria in Section 131.N.14.b.

**(1) An applicant for a new communication tower shall demonstrate that a diligent effort has been made to locate the proposed communication facilities on a government structure or, on an existing structure or within a non-residential zoning district, and that due to valid considerations, including physical constraints, and economic or technological feasibility, no appropriate location is available. The information submitted by the applicant shall include a map of the area to be served by the tower, its relationship to other antenna sites in the petitioner's network, and an evaluation of existing buildings taller than 50 feet, communication towers and water tanks within one-half mile of the proposed tower.**

This section is inapplicable, owing to the existing commercial monopole.

**(2) New communication towers shall be designed to accommodate antennas for more than one user, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons. Unless collocation has been demonstrated to be infeasible, the conditional use plan shall delineate an area near the base of the tower to be used for the placement of additional equipment buildings for other users.**

This section does not apply to the enlargement.

**(3) Ground level equipment and buildings and the tower base shall be screened from public streets and residentially-zoned properties.**

The ground level equipment and tower base are currently screened and the fence for the extension will also provide the requisite screening, in accordance with Section 131.N.14.b.(3).

**(4) Communication towers shall be grey or a similar color that minimizes visibility, unless a different color is required by the Federal Communications Commission or the Federal Aviation Administration.**

This section does not apply to the enlargement.

**(5) No signals or lights shall be permitted on a tower unless required by the Federal Communications Commission or the Federal Aviation Administration.**

No additional signals or lights are proposed, in accordance with Section 131.N.14.b.(4).



**ORDER**

Based upon the foregoing, it is this **21<sup>st</sup> day of October 2013**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of AT&T Mobility for conditional use approval to modify an existing commercial communications facility by enlarging the area of the compound with a 7'x12' fenced extension in an RC-DEO (Rural Conservation-Density Exchange Option) is **GRANTED;**

**Provided**, however that;

The Conditional Use shall be conducted in conformance with and shall apply only to the proposed enlarged fenced compound as described in the petition and as depicted on the Conditional Use Plan and not to any other activities, uses or structures on the Property.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
\_\_\_\_\_  
Michele L. LeFavre

**Date Mailed:** \_\_\_\_\_

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 calendar days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.