

IN THE MATTER OF

ANDREW F. CAMPBELL

Appellant

vs.

**DEPARTMENT OF PLANNING &
ZONING, HOWARD COUNTY, MD**

Appellee

: BEFORE THE
:
: HOWARD COUNTY
:
: BOARD OF APPEALS
:
: HEARING EXAMINER
:
: BA Case No. 707D
: Request for Reconsideration Order

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RECONSIDERATION ORDER

On March 23, 2015, the Howard County Boards of Appeals Hearing Examiner conducted a hearing on the Department of Planning and Zoning's (DPZ) February 19, 2015 Motion, through Senior Assistant County Solicitor Norman Parker, to reconsider paragraphs 3-7 of the Hearing Examiner Decision and Order in Board of Appeals Case No. 707-D, which Order was issued as supported by findings and facts set forth on February 9, 2015. Paragraphs 3-7 of that Order state as follows.

3. It is **FURTHER ORDERED** that the Department shall measure the height of the Replacement Tower from ground level to the top of the Tower, including the mast, with a laser measuring tool.

4. It is **FURTHER ORDERED** that the Department shall measure the distance from the base of the Replacement Tower to the closest adjoining property line with a laser measuring tool.

5. It is **FURTHER ORDERED** that the Department shall map the location of the Replacement Antenna, indicate its distance from the closest property line and add a note indicating its height on a copy of the KCRAC plot plan introduced as AE1.25 or on a similar map. The map shall also include a note indicating the date when these measurements were made and that DPZ took these measurements. This map shall be included in the CE 14-091 case file.

6. If, based on the height and location of the Replacement Tower, DPZ determines the Replacement Tower is in violation of the applicable setback requirements, it is **FURTHER ORDERED** that the Department shall issue the Property Owners of 7308 Silent Bird Court a Notice of Violation and instruct them to abate the violation or seek variance approval.

7. The Hearing Examiner recommends that the Department measure the height and location of any other Tower or mast at 7308 Silent Bird Court to establish base line information about the structures/uses and map this on a second map.

DPZ asks for more flexibility than the Order currently provides regarding how it measures the antenna's height and its location relative to the adjacent property line because a laser measuring tool cannot focus the laser on a target as small as the height of the top of the antenna and DPZ is unable to determine the location of the Property's boundary lines without ordering a survey, which is beyond DPZ staff's capacity to undertake. It therefore requested the deletion of these five paragraphs to be substituted with the paragraphs as follows.

3. It is **FURTHER ORDERED** that the Department shall determine the height of the Replacement Tower from ground level to the top of the tower, including the mast.

4. It is **FURTHER ORDERED** that the Department shall determine the approximate distance from the base of the Replacement tower to the closest property line.

5. If, based on the height and location of the Replacement Tower, DPZ determined the Replacement Tower is in violation of the applicable setback requirement, it is **FURTHER ORDERED** that the Department shall issue the Property Owners of 7308 Silent Bird Court a Notice of Violation and instruct them to abate the violation or seek variance approval.

Appellant Andrew F. Campbell filed a timely response to the motion on February 26, 2015, contending DPZ's proposed substitution language is vague in that it does not state the method DPZ would use to comply with the measurement requirement of the Order, that any Reconsideration Order should require another objective method to measure the amateur radio antenna's actual physical height (including measuring it by removing it) and that paragraphs 5 and 7 should remain because neither requires DPZ to commission a new survey to comply with the Order.

On March 3, 2015, the Hearing Examiner stayed the February 9, 2015 decision and order pending the final decision as to Appellee's Motion for Reconsideration and further determined to hold a hearing on the Motion limited to the matter of DPZ's tower height and setback measurement methodology and the documentation of DPZ's measurements.

The Reconsideration Hearing

At the March 23, 2015 hearing, Zoning Enforcement Inspection Supervisor Anthony LaRose demonstrated the inability of DPZ's laser measuring tool to measure the height of the top of the antenna. He also discussed laying the antenna down and measuring it or using the manufacturer's specifications. The laser-measuring tool can be used or a measuring wheel to measure the approximate distance to a fence post on adjoining property. Zoning Inspector Tamara Frank discussed a meeting with the Property owners and two Department of Recreation and Parks (DRP) employees at the Property, who provided DPZ with GPS instruments and a magnetic wand to take measurements. She measured the distance from the mast to the fence, which sits about six inches off the property line on either side (in reference to a recorded plat). She also took measurements of the mast. Mr. Altschuler provided her with a copy of the manufacturer's specifications for the antenna showing the height as 25 feet 10 inches.

Andrew Campbell believed the fence referenced by DPZ is on his property and that it would be an adequate approximation of the property line and off only by one or two feet if the fence does not sit directly on the property line. He also believes that taking down the antenna and measuring it is the most objective method to determine its height.

On balance, considering both DPZ's discussion of what tools and information is available to it to take accurate measurements of the antenna's height, the mast's height and the location of the antenna and mast relative to the one-foot to one-foot setback required under Zoning Regulations § 128.0.E.2, as well as Appellant Campbell's interest in objective measurements, the Hearing Examiner is revising the controlling Order in BA 707D as follows.

ORDER

Based upon the foregoing, it is this **27th Day of March 2015**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

1. That the appeals of Susan Campbell, Vernon and Wenona Stark and Patricia Banks are dismissed.
2. It is **FURTHER ORDERED** that the Department of Planning and Zoning shall reopen CE 14-091.
3. It is **FURTHER ORDERED** that the Department shall measure the height of the Replacement Tower from ground level to the top of the Tower, including the mast, with the appropriate measuring devices available to it and/or utilizing the Tower (antenna) specifications provided to the Department by the Property owner/s of 7308 Silent Bird Court.
4. It is **FURTHER ORDERED** that the Department shall measure the distance from the base of the Replacement Tower to the closest adjoining property line with the appropriate measuring devices available to it.
5. It is **FURTHER ORDERED** that the Department shall map the location of the Replacement Antenna, indicate its distance from the fence and add a note indicating its height on a copy of the KCRAC plot plan introduced as AE1.25 or on a similar map. The map shall also include a note indicating the date when these measurements were made and that DPZ took these measurements. This map shall be included in the CE 14-091 case file.
6. If, based on the height and location of the Replacement Tower, DPZ determines the Replacement Tower is in violation of the applicable setback requirements, it is **FURTHER ORDERED** that the Department shall issue the Property Owners of 7308 Silent Bird Court a Notice of Violation and instruct them to abate the violation or seek variance approval.

7. The Hearing Examiner recommends that the Department measure the height and location of any other Tower or mast at 7308 Silent Bird Court to establish base line information about the structures/uses and map this on a second map.

HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER


Michele L. LeFaivre

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.