

Case 3281

**OFFICIAL DECISION
BOARD OF ZONING APPEALS
CARROLL COUNTY, MARYLAND**

APPLICANT: Bell Atlantic Mobile Systems, Inc.
180 Mt. Airy Road
Basking Ridge, N.J. 07920

ATTORNEY: Clark R. Shaffer, Esquire
6 North Court Street
Westminster, Maryland 21157

REQUEST: A conditional use for a cellular mobile telephone
communications tower, including antennae, and an
equipment building

LOCATION: 2300 Harvey Gummell Road in Election District 6

BASES: Article 4, Section 4.11(b), (c), and (d);
Ordinance 1E (The Carroll County Zoning Ordinance)

HEARING HELD: November 28, 1989

The Board heard testimony and received evidence concerning the request for a cellular mobile telephone communications tower with antennae, and an equipment building on property at 2300 Harvey Gummell Road at the public hearing on November 28, 1989. The Board visited the property by viewing it from Harvey Gummell Road on November 24, 1989. The application, testimony and evidence comprising the record of this case are hereby included by reference in this decision. Based on the record, the Board will authorize the request. The pertinent findings include the following facts.

FINDINGS OF FACT

The site of the proposed tower is on a 39 acre farm owned by Norman A. Ruhlman and Grace A. Ruhlman. The farm is located on the southwest side of Harvey Gummell Road, west and north of Bert Fowler Road intersection. The proposed location of the tower is in excess of 1,200 feet from Harvey Gummell Road. (Applicant's Exhibit 1a.) Vehicular access to the site will be by a driveway extending westward from the existing connection to Harvey Gummell Road.

The tower will be visible from adjacent properties to the east, and to a lesser extent from the south, west, and north. (Applicant's Exhibits 5a, b, and c.)

The facility will consist of:

- a leased parcel, 100 feet by 100 feet, surfaced with compacted gravel and enclosed with a chain link security fence
- a 12 feet by 30 feet modular equipment building
- a freestanding 250 feet tower with antennae extending up to 17 additional feet
- an area, identified as the fall area, having a radius of 270 feet surrounding the tower in the event the tower collapse

The self supporting tower will be painted red and white, and equipped with red hazard lights in conformance with Federal Aviation Administration Regulations.

The representative of Bell Atlantic Mobile Systems, Inc., Mr. Fischer, indicated that he was unaware of any electronic inference resulting from similar communications equipment, regardless of the location of the facility.

An expert in real estate appraisal presented testimony and evidence on behalf of the applicant. In the opinion of the expert, establishment and operation of the facility will not diminish the property values of adjacent residential properties, nor will the facility adversely affect the marketability of the adjacent residences.

Opponents of the request objected to the location of the proposed tower. However, no probative evidence was introduced to substantiate any particularly adverse affects that would result from establishment of the facility on the proposed site.

APPLICABLE LAW

The property and surrounding area are zoned "A" Agricultural District as shown on zoning map 32A.

Article 4, General Provisions; Section 4.11, Utility Equipment and Towers (Amended 11-13-86) subsection (b) of Ordinance 1E provides that the buildings, yards, stations or substations where transforming, boosting, or pumping purposes, including telephone exchanges, where the facilities are constructed above ground are conditional uses in all zoning districts.

Subsection (c) specifies that towers in the excess of 200 feet in height are permitted as conditional uses in the Agricultural, Transition, Business and Industrial districts.

Subsection (d) specifies the following standards for freestanding towers:

- "1. Site Plan Approval; An application shall be subject to site plan approval from the Planning Commission pursuant to Section 10.4(d)."
- "2. Multiple Use. It shall be the policy of the Board of Zoning Appeals to encourage the multiple use of towers. All applicants must first represent that they have considered utilizing existing towers prior to making application. Upon approval, all applicants shall consider making excess tower space available to other users."
- "3. Fall Area. The Planning Commission is authorized to require an applicant to own or control by appropriate agreements sufficient land so that a reasonable fall area of the tower may be kept free of structures and uses unrelated to the tower. The fall area may be as much as 100% of the tower height based upon reasonable safety considerations."
- "4. Public Health. The Board of Zoning Appeals (or the Planning Commission if Board approval is not required) is authorized to refer all applications to the County and State Health Departments and to disapprove an application on the grounds that it poses a danger to the public health."

Article 20, Section 20.09 of Ordinance 1E states that conditional uses are subject to Board of Appeals approval following a public hearing. The provision also notes that a conditional use is the same as a special exception under state law.

Article 17, Board of Appeals; Section 17.7, Limitations, guides and standards of Ordinance 1E governs the Board in considering conditional uses.

In addition, the Board is governed by decisions of the courts. In the case of *Schultz v. Pritts*, 291 Md. 1, at 22-23 (1981) the decision reads:

"We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." Citations omitted.

REASONING

The Board finds no probative evidence that establishment and operation of the proposed facility would unduly affect the surrounding properties, or that it would be contrary to the intent and purpose of Ordinance 1E.

CONCLUSION

Accordingly, the Board hereby authorizes the conditional use for the tower, and including antennae, and an equipment building as proposed.

Dec. 13, 1989
Date

John Totura
John Totura, Chairman