

## COUNTY OF FAIRFAX, VIRGINIA

### SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

T-MOBILE NORTHEAST LLC & COMMONWEALTH SWIM CLUB, INC., SPA 79-A-075-03 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 79-A-075 previously approved for a community pool and tennis courts to permit addition of a telecommunications facility. Located at 9800 Commonwealth Blvd. on approx. 5.49 ac. of land zoned R-2. Braddock District. Tax Map 069-3 ((5)) B. (In association with SE 2009-BR-020 and 2232-B08-7) (Indefinitely deferred from 2/10/10) (Reactivated from indefinite deferral on 11/16/10) (Indefinitely deferred from 4/20/11 at appl. req.) (Reactivated on 5/9/11) Mr. Hart moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 2011; and

WHEREAS, the Board has made the following findings of fact:

1. Telecommunications applications are difficult anyway, and in recent years with the proliferation of electronic devices, the need for increasing coverage and bandwidth for people to have these devices in their homes has meant that the locations for these telecommunication facilities increasingly are going into residential areas.
2. It is difficult to find places to put them.
3. It is difficult to put them in a location where they are not going to have a negative effect.
4. In this situation, the Board has a staff report recommending approval, and the Board adopts the rationale in the staff report.
5. The Planning Commission has already looked at the 2232 application and found that it met the criteria and also recommended approval to the Board of Supervisors of the special exception, which they are going to hear in a few weeks.
6. With respect to the special permit standards, the applicant has presented testimony that those have been met.
7. The pole itself is going to be a tree pole instead of some kind of a lattice tower or something else that would be more visible and maybe less compatible with what is around it.
8. From the photograph simulations in the staff report, there are locations where you cannot see it from the surrounding streets, and there are other locations where the top of it is partly visible above the tree line; however, with respect to experience with other tree poles in the county, unless you are really looking for it, you do not tend to notice it.
9. The design largely camouflages it.
10. If there is going to be a facility like this, putting it in the middle of a space like this where it is like a tree and among many trees largely hides it and mitigates that impact.
11. With the development conditions that staff has proposed, with a couple of amendments to be included, the overall situation can be improved for the neighbors.
12. There is difficulty with telecommunications applications.
13. There is another problem in the county with swim clubs that were 40 or 50 years old where the demographics of the neighborhood have changed over time and there maybe are not as many families as there were 40 or 50 years ago with young children or maybe not as much participation in it.

14. It is difficult to keep these facilities going.
15. If the pool goes under, as some pools have, that does not help anybody.
16. The site would probably be even more neglected than it is now.
17. One of the things the Board cannot change with the development conditions is weather.
18. We live in an area where sometimes there are snowstorms and sometimes hurricanes, one extreme or the other.
19. Trees are going to fall over or tree branches are going to be lost or something.
20. This is a site where on one side they put in some landscaping 40-some years ago that over time has deteriorated.
21. It has been learned that certain kinds of trees do not survive as well over time, and hopefully that will be addressed.
22. There are areas where the landscaping is going to be taken out and replaced as shown on the drawings.
23. Addressing the area with the weeds in the photographs, everyone acknowledges it should not look like that, and hopefully that is going to be improved.
24. By putting it in the development conditions, even if it is an Ordinance requirement, it is clearer for the applicant.
25. The conditions will be posted.
26. Everyone will be aware of it.
27. If there are enforcement issues, staff can deal with that.
28. Everyone is on the same page with this. It should be a win-win situation. If the swim club is getting revenue now from the tower, then they have money to maintain the site in a way that is advantageous to the neighbors.
29. With the development conditions, with a couple of modifications, the potential impacts of the facility are satisfactorily mitigated.
30. With this motion, the Board is not reaching any questions about the title to the land or the corporate status or the consequences of if there was a lapse in the corporation somewhere along the way.
31. That is not really an issue for the Board. It is not really a land use issue.
32. Staff has accepted the application for what it was.
33. The Clerk to the Board has accepted the affidavit such as it is.
34. If there is an issue about the ownership of the land or the consequences of some gap in the corporate status as that would affect the title, that is for a judge to decide.
35. That is a separate matter, and it really is not part of the special permit application.
36. The Board cannot reach that in the middle of this proceeding.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This approval is granted to the applicant Commonwealth Swim Club, Inc. and T-Mobile Northeast, LLC or its successors, and is not transferable without further action of this Board,

and is for the location indicated on the application, 9800 Commonwealth Blvd., and is not transferable to other land.

2. This special permit amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Entrex Communication Services, Inc., dated September 18, 2007, last amended May 20, 2011.
3. A copy of this special permit amendment and the Non-Residential Use Permit (Non-RUP) SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use(s).
4. This special permit amendment is subject to the provisions of Article 17. Site Plans, as may be determined by the Director, Department of Public Works and Environmental Services (DPWES). Any plan submitted pursuant to this Special Permit shall be in substantial conformance with the approved Special Permit Plat entitled "Commonwealth Swim Club", prepared by Entrex Communication Services, Inc. consisting of eight sheets dated September 18, 2007, last amended May 20, 2011, and these conditions. Minor modifications to the approved Special Exception may be permitted pursuant to Paragraph 4 of Sect. 8-004 of the Zoning Ordinance.
5. Memberships shall be limited to a maximum of 350.
6. Seventy parking spaces shall be provided on-site.
7. The maximum daily hours of operation shall be as follows:
  - Swimming Pool – 9:00 am to 9:00 pm.
  - Tennis Courts – 7:00 am to 10:00 pm.
  - Basketball Courts – 7:00 am to 9:00 pm
8. After-hour parties for the swimming pool and tennis courts facility shall be governed by the following:
  - Limited to six per season.
  - Limited to Friday, Saturday and pre-holiday evenings.
  - Shall not extend beyond 12:00 midnight.
9. The transitional screening and barrier requirements shall be modified provided the existing vegetation and barriers are retained and provided the supplemental landscaping is planted as depicted on the SE/SPA Plat. The size, type and number of plantings shall be subject to Urban Forest Management Division (UFMD) review and approval. Trees along the existing entrance drive off of Walport Lane and to the rear of the houses along Commonwealth Blvd. shall be re-evaluated by UFMD. A tree assessment to determine the quality and condition of the existing trees shall be done by the applicant. Trees which are found to be in poor condition shall be removed and replaced to the satisfaction of UFMD prior to the issuance of the Non-RUP for the pole. The applicant shall be responsible for maintaining the transitional screening plant material in a good and healthy condition.

10. Light standards shall not exceed twelve feet in height and shall be located as close as possible to the edge of pavement of the driveway. All lighting shall be in conformance with Part 9 of Article 14 of the Zoning Ordinance.
11. The applicant shall be responsible for regularly maintaining the site landscaping, including trimming or removing weeds along fences.

These development conditions incorporate and supersede all previous development conditions. The approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this Special Permit shall not be valid until this has been accomplished.

Pursuant to Section 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, 30 months after the date of approval unless construction has commenced and been diligently pursued. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Ms. Gibb seconded the motion, which carried by a vote of 7-0.