

**STANDARD APPLICATION**  
**Harford County**  
**Board of Appeals**  
 Bel Air, Maryland 21014

RECEIVED HARFORD COUNTY COUNCIL  JUN 14 2022  ZONING BOARD OF APPEALS HARFORD COUNTY, MD	Case No. <u>5970</u>
	Date Filed <u>6/14/22</u>
	Hearing Date _____
	Receipt _____
	Fee <u>\$5160.00</u>
Type <u>57</u>	

**Information to be Submitted with Application**

1. A plot plan drawn to scale indicating all pertinent data.
2. A list of all adjoining property owners with mailing addresses.
3. Names and addresses of all persons having legal or equitable interest in the property.
4. All required supporting documentation or additional studies as may be required; including traffic and environmental studies, etc.

**NOTE:**

All applicants **MUST** schedule a pre-application meeting with the Department of Planning and Zoning **prior** to filing any application to the Board of Appeals.

To schedule please call 410-638-3119.

*Shaded areas for Office Use Only*

**Nature of Request and Section(s) of Code**

CASE 5970 MAP 57 TYPE Expansion of a Non-Conforming Use  
ELECTION DISTRICT 01 TAX ID 01-048430  
LOCATION 2606 Carsins Run Road, Aberdeen 21001  
BY MCI Telecommunications Corporation  
Appealed because an expansion of a non-conforming use  
pursuant to Sec. 267-21 of the Harford County code to allow an  
expansion of a non-conforming Communication  
Station/Data Center in the AG District requires approval  
by the Board.

**Owner (please print or type)**

Name MCI Telecommunications Corporation\* Phone Number 732-395-0249

Address P.O. Box 2379, Spokane, WA 99210-2379  
*Street Number Street City State Zip Code*

Co-Applicant McKinstry Essention, LLC Phone Number 509-590-1227

Address 5005 3rd Avenue South, Seattle, WA 98134  
*Street Number Street City State Zip Code*

Contract Purchaser N/A Phone Number \_\_\_\_\_

Address \_\_\_\_\_  
*Street Number Street City State Zip Code*

Attorney/Representative Snee Lutche Helmlinger & Spielberger PA  
Joseph F. Snee, Jr., Esq. Phone Number 410-893-7500

Address 112 S. Main St., Bel Air, MD 21014  
*Street Number Street City State Zip Code*

\*Please see attached information regarding the Owner Entity.

**Land Description**

Address and Location of Property 2606 Carsins Run Rd., Aberdeen, MD 21001

Subdivision N/A Lot Number 0  
Acreage/Lot Size 34.50 AC+/- Election District 1 Zoning AG Tax ID # 01-048430  
Tax Map No. 0057 Grid No. 0002F Parcel 0137 Water/Sewer: Private \_\_\_\_\_ Public

List ALL structures on property and current use: Data Center, telecommunication tower

Estimated time required to present case: 1.5-2 hours

If this Appeal is in reference to a Building Permit, state number Unknown

Would approval of this petition violate the covenants and restrictions for your property? Yes \_\_\_\_\_ No

Is this property located within the County's Chesapeake Bay Critical Area? Yes \_\_\_\_\_ No

If so, what is the Critical Area Land Use designations: N/A

Is this request the result of a zoning enforcement investigation? Yes \_\_\_\_\_ No

Is this request within one (1) mile of any incorporated town limits? Yes \_\_\_\_\_ No

**Request**

Expansion of a non-conforming use for less than 50% for communication station/data center.

**Justification**

- 1. The proposed extension or enlargement does not change to a less-restricted and more-intense use.
- 2. The enlargement or extension does not exceed 50% of the gross square footage in use at the time of the creation of the nonconformity.
- 3. The enlargement or extension does not violate the height or coverage regulations for the district.
- 4. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.

*If additional space is needed, attach sheet to application. In answering the above questions, please refer to the Requirements that pertain to the type of approval request. (Special Exception, Variance, Critical Area or Natural Resource District (NRD) Variance, etc.)*

## Zoning Code Requirements

### Appeal from Administrative Decision/Interpretation Requirements (Article 267-7A)

- (6) Render a final written determination, within 45 calendar days of the written request, of whether a proposed use is permitted in a particular zoning district, or whether a proposed use is a legal nonconforming use upon written request of any person. The Director of Planning may determine a materially similar use exists, based on the North American Industrial Classification System (NAICS). The final written determination of the Director of Planning shall be subject to appeal to the Board by the applicant within 20 calendar days of the date of the decision.

### Variance Requirements (Article 267-11)

- (A) Variances from the provisions or requirements of this Code may be granted if the Board finds that:
- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of the Code would result in practical difficulty or unreasonable hardship; and
  - (2) The variance will not be substantially detrimental to adjacent properties, or will not materially impair the purpose of this Code or the public interest.

*(The Board may impose such conditions as it deems necessary in each particular case. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Code.)*

### Special Overlay District Requirements (Article 267-62)

#### (E) Natural Resources District

Variances. The Board may grant a variance to Subsection C or D upon a finding by the Board that the proposed development has been designed to minimize adverse impacts to the Natural Resources District to the greatest extent possible. Prior to rendering approval, the Board shall request advisory comments from the Director of Planning, the Soil Conservation District and the Maryland Department of the Environment.

### Chesapeake Bay Critical Area Overlay District (Article 267-63)

- (1) Variances from the provisions of this section may only be granted if, due to special features of a site or other circumstances, implementation of this section or a literal enforcement of its provisions would result in unwarranted hardship to an applicant.
- (2) All applications for variances shall be reviewed by the Director of Planning for conformance with applicable provisions of this section, and a written report shall be provided to the Board of Appeals.
- (3) In granting a variance, the Board shall issue written findings demonstrating that the requested approval complies with each of the following conditions:

- (a) That special conditions or circumstances exist that are peculiar to the land or structure within the County's Critical Area, and a literal enforcement of the Critical Area Program would result in an unwarranted hardship.
  - (b) That a literal interpretation of the provisions of this section will deprive the applicant of rights commonly enjoyed by other properties in similar geographic and land use management areas within the Critical Area.
  - (c) That the granting of a variance will not confer upon the applicant any special privilege that would be denied by this section to other lands or structures within the Critical Area.
  - (d) That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.
  - (e) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and the granting of the variance will be in harmony with the purpose and intent of this section.
  - (f) That all identified habitat protection areas on or adjacent to the site have been protected by the proposed development and implementation of either on-site or off-site programs.
  - (g) That the growth allocation for the County will not be exceeded by the granting of the variance.
  - (h) That the variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of the Code or the public interest.
- I. Special exceptions. All projects requiring approval as special exceptions within the Critical Area must meet the standards of this section. The Director of Planning may require such additional information, studies or documentation deemed necessary to ensure that applicable requirements of this district are met. Applications will not be considered complete for processing until all information as required by the Director of Planning has been received.

**Change/Extension of Non-Conforming Use Requirements**

267-20(3) - When authorized by the Board, one nonconforming use may be substituted for another nonconforming use.

267-21(d) - The Board may authorize the extension or enlargement of a nonconforming use, with or without conditions, provided that:

- (A) The proposed extension or enlargement does not change to a less restricted and more intense use.
- (B) The enlargement or extension does not exceed 50% of the gross square footage in use at the time of the creation of the nonconformity.

**Special Exceptions Requirements (Article 267-87)**

(a) Special exceptions require the approval of the Board of Appeals in accordance with 267-9 (Board of Appeals). The Board may impose such conditions limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Code and the public health, safety and welfare.

(b) A special exception grant or approval shall be limited to the Site Plan approved by the Board. Any substantial modification to the approved Site Plan shall require further Board approval.

(c) Extension of any use or activity permitted as a special exception shall require further Board approval.

(d) The Board may require a bond, irrevocable letter of credit or other appropriate guarantee as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.

(e) In the event the development or use is not commenced within 3 years from date of final decision, after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Director of Planning shall have the authority to extend the approval for an additional 12 months or any portion thereof. (See Article 267-88 for specific requirements of Special Exception uses.)

I/We agree to provide additional information as requested by the Department of Planning and Zoning or the Hearing Examiner.

I/We do hereby declare that no officer or employee of Harford County, whether elected or appointed, has received prior hereto or will receive subsequent hereto any monetary or material consideration, any service or thing of value, directly or indirectly, upon more favorable terms than those granted to the public generally in connection with the submission, processing, issuance, grant or aware of the within application or petition.

I/We do solemnly declare and affirm under the penalties of perjury that this petition contains names and addresses of all persons having legal or equitable interest in the property, including shareholders owning more than five percent (5%) of the stock in a corporation having any interest in the property, except those corporations listed and traded on a recognized stock exchange.

I/We do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing affidavit are true and correct to the best of my/our knowledge, information and belief.

I/We agree, upon final action, to comply with all requirements or conditions imposed by the Board.

Megan West 4/28/22  
Signature of Owner Date

[Signature] 4/28/22  
Signature of Co-Applicant Date

[Signature] 5/3/22  
Signature of Attorney/Representative Date

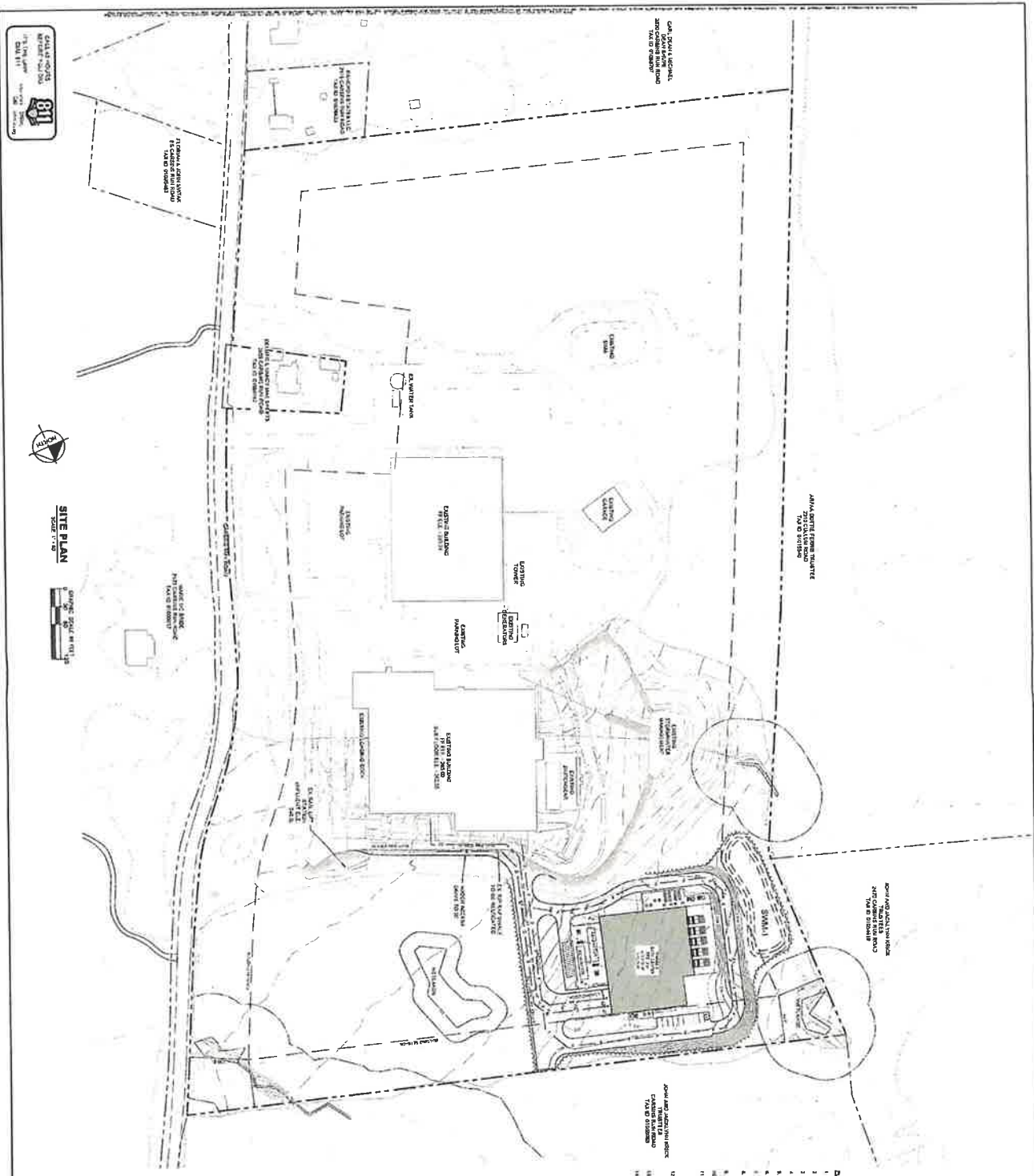
[Signature] 6/14/22  
Director of Planning and Zoning Date

[Signature] 4/28/22  
Witness Date

[Signature] 4/29/22  
Witness Date

Maryanne Shuler 5/3/22  
Witness Date

\_\_\_\_\_  
Zoning Staff Date



DATE: 01/05/10  
 DRAWN BY: [signature]  
 CHECKED BY: [signature]  
**811**  
 CALL BEFORE YOU DIG  
 1-800-4-A-DAWG



**SITE PLAN**  
 SCALE: 1" = 40'



**VICINITY MAP**  
 SCALE: 1" = 1/4 MILE

- LEGEND**
- 1. EXISTING BUILDING
  - 2. EXISTING TOWER
  - 3. EXISTING ANTENNA
  - 4. EXISTING POWER MOUNTING
  - 5. EXISTING LOT
  - 6. EXISTING DRIVE
  - 7. EXISTING UTILITY
  - 8. EXISTING FENCE
  - 9. EXISTING CURB
  - 10. EXISTING DRIVEWAY
  - 11. EXISTING SIDEWALK
  - 12. EXISTING CONCRET
  - 13. EXISTING ASPHALT
  - 14. EXISTING GRAVEL
  - 15. EXISTING SAND
  - 16. EXISTING SOIL
  - 17. EXISTING VEGETATION
  - 18. EXISTING WATER
  - 19. EXISTING EROSION CONTROL
  - 20. EXISTING LIGHTNING ROD
  - 21. EXISTING SIGN
  - 22. EXISTING FURNITURE
  - 23. EXISTING BIOMASS
  - 24. EXISTING LANDSCAPE
  - 25. EXISTING TREES
  - 26. EXISTING SHRUBS
  - 27. EXISTING HERBACEOUS
  - 28. EXISTING GRASS
  - 29. EXISTING SOIL EROSION CONTROL
  - 30. EXISTING SWALE
  - 31. EXISTING DRAINAGE
  - 32. EXISTING FLOOD CONTROL
  - 33. EXISTING FLOOD WALL
  - 34. EXISTING FLOOD GATE
  - 35. EXISTING FLOOD VALVE
  - 36. EXISTING FLOOD CHECK
  - 37. EXISTING FLOOD STOP
  - 38. EXISTING FLOOD BARRIER
  - 39. EXISTING FLOOD WALL WITH GATE
  - 40. EXISTING FLOOD WALL WITH SLUICeway
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**2606 CARNS RUN**  
 PREPARED FOR  
 VERIZON  
 HANFORD COUNTY

**PLAN TO ACCOMPANY BOARD OF  
 APPEALS APPLICATION**

**Kimley»Horn**  
 1100 S. 19th Street, Suite 200  
 Lincoln, NE 68502  
 Phone: 402-478-8800  
 Fax: 402-478-8801  
 Email: info@kimleyhorn.com  
 www.kimleyhorn.com

NO.	DESCRIPTION	DATE	BY
1	DESIGN	01/05/10	[signature]
2	REVISED	01/05/10	[signature]
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COUNTY COUNCIL OF HARFORD COUNTY, MARYLAND

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FRANK J. HUTCHINS  
*District F*

ANGELA MARKOWSKI  
*Secretary of the Council*

Hearing Examiner: L. A. Hinderhofer

Date of Decision: May 5, 1983

NOTIFICATION OF DECISION OF ZONING HEARING EXAMINER

Re: ( ) Zoning Reclassification Petition - Case No. \_\_\_\_\_ Hearing Date: \_\_\_\_\_  
(X) Zoning Appeal Application - Case No. 2945 Hearing Date: 4/13/83

APPLICANT: Robert McGinnis, Agent for MCI Telecommunications Corporation

LOCATION: Northwest side of Carsins Run Road, north of Creswell Road

REQUEST: Special Exception to expand existing communications facility

Enclosed is an official copy of the Hearing Examiner's decision relative to the referenced case.

The Hearing Examiner's decision shall become final twenty (20) calendar days after the date of the decision, MAY 25, 1983, unless a request for final argument before the County Council/Board of Appeals shall be filed before the expiration of the twenty (20) calendar day period by the applicant, or the People's Counsel, or a person aggrieved who was a party to the proceedings before the Hearing Examiner. Any Board Member, upon written notice to the Secretary of the Council, may require final argument before the Council/Board.

Sincerely,

Angela Markowski  
Secretary of the Council

Date: May 5, 1983

Enclosure

cc: Applicant/Attorney (Maurice W. Baldwin, Jr., Esq.)  
Opponents/Attorney (None)  
Adjoining Property Owners  
Registered Hearing Attendees  
Department of Planning and Zoning (3)  
Department of Law  
People's Counsel

RE: SPECIAL EXCEPTION TO EXPAND	*	BEFORE
EXISTING COMMUNICATIONS FACILITY	*	THE ZONING HEARING EXAMINER
se/side Carsins Run Road, north of	*	OF HARFORD COUNTY
Route 543	*	
Applicant: Robert McGinnis, Agent for	*	Case No. <u>2945</u>
MCI Telecommunications Corporation	*	
Property Owner: MCI Telecommunications	*	Hearing Advertised:
Corporation	*	Aegis: 3/3/83 & 3/10/83
Hearing Date: April 13, 1983	*	Susquehanna Publishing Co.:
	*	3/2/83 & 3/9/83
	*	

ZONING HEARING EXAMINER'S DECISION

The applicant is MCI Telecommunications Corporation. The applicant is requesting a Special Exception to expand an existing communications facility in an Agricultural District, pursuant to Section 25-8.3(i) of the Zoning Code.

The subject parcel is zoned AG, and is located on the northwest side of Carsins Run Road, north of Creswell Road, in the First Election District. The parcel contains 35 acres more or less.

Mr. James Koutris, a civil engineer for MCI Telecommunications Corporation, appeared and testified that the subject parcel is presently improved by a communications tower and two temporary structures. The witness said that the parcel presently contains 35 acres and that the applicant is hopeful of subdividing the parcel and retaining a minimum of 9 acres for their operation. The witness said that the applicant is requesting authority to remove the temporary structures and replace them with a 5,000 square foot masonry building. The witness said that the existing tower will not be affected by the new structure, and that the tower pre-exists the adoption of the 1982 Zoning Code.

Ms. Frances Cree, an adjoining property owner, appeared and asked Mr. Koutris several questions and then testified that she is not opposed to the applicant's request. No opponents appeared and testified in opposition to MCI Corporation's application.

The Staff Report recommends conditional approval.

CONCLUSION:

The Zoning Code, pursuant to Section 25-8.3(i), permits as a Special Exception "Stations, Communications, and Broadcasting." This use may be granted in the AG District provided that:

- a. A minimum parcel area of one (1) acre is established.
- b. The building shall be architecturally compatible with adjacent buildings.
- c. The building shall be set back at least fifty (50) feet from any adjacent resident lot."

The Zoning Hearing Examiner finds that the minimum parcel area of one acre has been exceeded since the applicant is proposing 9 acres for this operation, that the proposed masonry building will be architecturally compatible, and that the building will be a minimum of 50 feet from any adjacent lot line.

The Hearing Examiner also finds Section 25-8.4 is not applicable in this situation due to the fact that the applicant is not modifying the existing tower or its location. The existing tower was constructed approximately 15 years ago and therefore does not fall within the 1982 Zoning Code.

The requested Special Exception is hereby recommended subject to the following conditions:

1. That all necessary permits and licenses be obtained.
2. That any further expansion of this operation/require additional Board of Appeals approval.  
shall
3. That as much of the natural tree barrier as possible be maintained when planning the project.

Date: May 5, 1983

  
\_\_\_\_\_  
L. A. Hinderhofer  
Zoning Hearing Examiner





**COUNTY COUNCIL OF HARFORD COUNTY, MARYLAND**

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*President*

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*District E*

**FRANK J. HUTCHINS**  
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ANGELA MARKOWSKI  
*Secretary of the Council*

**NOTIFICATION OF DECISION OF ZONING HEARING EXAMINER**

**DATE OF DECISION:** February 14, 1986  
**HEARING EXAMINER:** Gregory A. Rapisarda  
**RE:** Zoning Appeal Case No. 3290  
**APPLICANT:** MCI Telecommunications Corporation  
**LOCATION:** Carsins Run Road, Aberdeen  
**REQUEST:** Special Exceptions to locate a communications tower and related buildings in the AG District

Enclosed is an official copy of the Hearing Examiner's decision relative to the above referenced case.

The Hearing Examiner's decision shall become final twenty (20) calendar days after the date of the decision, (**MARCH 6, 1986**), unless a written request for final argument before the County Council/Board of Appeals is filed before the expiration of the twenty (20) calendar day period by the Applicant/Applicant's Attorney, Opponents/People's Counsel, or a person aggrieved who was a party to the proceedings before the Hearing Examiner. In addition, any Board Member, upon written notice to the Secretary of the Council, may request final argument.

COUNTY COUNCIL OF HARFORD COUNTY

Angela Markowski  
Secretary of the Council

AM/des

Enclosure

cc: Applicant/Attorney  
Opponents/Attorney  
Adjoining Property Owners  
Registered Hearing Attendees  
Department of Planning and Zoning  
Department of Law  
People's Counsel

<b>BOARD OF APPEALS CASE NO. 3290</b>	*	<b>BEFORE THE</b>
<b>APPLICANT: MCI Telecommunications Corp.</b>	*	<b>ZONING HEARING EXAMINER</b>
<b>REQUEST: Special Exceptions to locate a communications tower and related buildings; Carsins Run Road, Aberdeen</b>	*	<b>OF HARFORD COUNTY</b>
	*	Hearing Advertised
<b>HEARING DATE: January 20, 1986</b>	*	Aegis: 12/19/85 & 12/26/85
	*	Record: 12/18/85 & 12/24/85
	*	
	*	
	*	
	*	
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**ZONING HEARING EXAMINER'S DECISION**

On November 20, 1985, the Applicant, MCI Telecommunications Corporation, filed a request to replace the present guyed tower with a self-supporting tower of the same height, the building of a structure approximately 240 feet by 170 feet, an 80 foot by 40 foot garage, an 8 foot by 10 foot shelter for an auxiliary generator, an LPG tank to serve the generator, and a paved parking area. The application notes that a chain-link fence will enclose the building, the tower, and the related facilities. The application was made pursuant to Section 25-8.3(i)(3) (Stations, Communications, and Broadcasting), (4) (Towers, Communication and Broadcasting), and (5) (Electrical Transmission Lines of 69,000 Killowatts or Greater and Telephone Microwave Facilities). According to the application, the building and facilities "will be used to make this site a major digital radio and fiber-optic cable interconnect junction for the MCI system." The junction would "become a major part of the communication link which permits voice and data communication traffic from the East Coast to be directed in a westerly direction toward Pittsburgh and Chicago." The fiber system will make the site into a "switch" telecommunications computer site which monitors the quality control, determines the best and least expensive routing of calls, and provides essential data for billing purposes. The facility would be manned on a 24 hour a day basis. The hearing was held on January 20, 1986.

No protestants appeared at the hearing.

The Applicant's first witness, James Kelly, testified that he had been employed by MCI since June 1982 as a civil project engineer for telecommunication facilities in the eastern United States. He stated that he was familiar with construction

**Case No. 3290 - MCI Telecommunications Corp.**

and development specifications for microwave towers, junctions, and switching stations. He had participated in the design and construction of approximately 75 towers and 12 junction stations. He noted that the present junction building houses radios and multiple equipment, and that there is presently a 250 foot guyed wire tower. There exists a cleared area of 2.5 acres on the subject site which consists of 35 acres. The balance of the site is wooded. MCI proposes to construct a one-story building of approximately 240 feet by 170 feet. The application was modified from a three (3) story structure to a one (1) story structure to comply with the existing Zoning Code. The tower as proposed would eliminate guyed wires which limit the expansion of the building. The witness described, through an exhibit, the proposed building. He also noted a generator building of approximately 25 by 35 feet, for the housing of three (3) generators which are designed as an emergency if commercial electricity was lost. He noted that the equipment cannot be shut down. There would also be a one-story garage of 64 feet by 25 feet to house restoration equipment. He stated that there will be an additional 2.3 acres cleared out of the total tract. There would be an eight (8) foot security fence provided. The area to the left of the proposed building as described on Exhibit No. 1 will remain heavily wooded. He noted that when the building is completed, there will be approximately 50 employees employed. He estimated that approximately 36-40 employees will work on the day shift, and 5-6 employees on the other two shifts. There will be no sales offices and no accounting or billing offices at the site. The building will comply with existing State Health Department requirements.

Denis Canavan was also called to testify and was accepted as an expert in planning. He described the area and the present requirements of the code. He noted that the tower will be set back approximately 380 feet from the adjacent lot. He reviewed the criteria set forth in Section 25-8.3(i)(5) regarding telephone microwave facilities. He noted that there would be no affect on wildlife, plant life, land surface, or economically recoverable resources or open spaces. He noted that the proposed construction would minimize the visual impact as required in Section 25-8.3(i)(5)(e). He stated that there would be no visual impact on residences and motorists, and noted that if one drove along Carsins Run Road, one would not know that the facility existed. He said that the vast majority of

**Case No. 3290 - MCI Telecommunications Corp.**

the building was not seen on Carsins Run Road. He further stated that Carsins Run Road is a collector road and has a speed limit of 30 miles per hour. He stated that the number of employees would have no adverse impact and would not present a traffic hazard to those using Carsins Run Road. The proposed use would not affect the public health, safety, or welfare and would not violate any of the Limitations, Guides, and Standards set forth in the Zoning Code. He further noted that there would be no adverse traffic conditions and that the proposed use did not conflict with the County Master Plan.

The Department of Planning and Zoning filed a report dated January 20, 1986. The Report noted with regard to Section 25-8.3(i)(5), that requirements a. and b. do not apply to microwave facilities, but only related to electrical transmission lines of 69,000 kilowatts. Accordingly, an economic evaluation with regard to transmission line and the evaluation of the displacement of structures were not required. The Department of Planning and Zoning recommended approval of the Special Exception, with certain conditions. These conditions were not objected to by the Applicant.

The current zoning of the property is AG (Agricultural). Section 25-8.3(i)(3) provides that Stations, Communications and Broadcasting may be granted as a Special Exception in the Agricultural District provided that the minimum parcel area is one (1) acre, that the building is architecturally compatible with adjacent buildings, and that the building is set back at least fifty (50) feet from adjacent residential lots.

Section 25-8.3(i)(4) states that communications and broadcasting towers may be granted Special Exception use in the Agricultural District provided that the setback of the tower from all property lines shall be equal to the height of the tower plus ten (10) feet. The current application complies with this requirement.

Section 25-8.3(i)(5) states that Telephone Microwave Facilities may be granted as a Special Exception in the Agricultural District provided that there be a thorough evaluation of the environmental impact of such a use including but not limited to the following: (1) Effect on wildlife, (2) Effect on plantlife, (3) Effect on land surface, (4) Effect on economically recoverable resources, and (5) Effect on open spaces. The Section also requires that an evaluation of the impact upon the cultural resources of the County such as areas of historic or archeological interest,

Case No. 3290 - MCI Telecommunications Corp.

and that such a use be constructed so as to minimize the visual impact and an evaluation of same be presented at the time of the hearing.

The Applicant has met its burden of proof with regard to each of the requirements of the Zoning Code. The Applicant presented design development documents which describe in detail the various requirements and floor plan of the proposed site. Exhibit No. 1 indicates that the communications station is architecturally compatible with adjacent buildings and that it has been constructed to minimize the visual impact. Additionally, the Applicant presented a geotechnical investigation by Kidde Consultants. The Applicant's expert witness testified that there would be no adverse impact upon the cultural resources of the County and no effect on wildlife, plantlife, land surface, economically recoverable resources or open spaces. Plans submitted by the Applicant do not require any variances from any of the provisions of the Zoning Code.

In reviewing applications for Special Exceptions, the Hearing Examiner must consider the "Limitations, Guides and Standards" set forth in Section 25-3.3(i) of the Harford County Zoning Code. In Schultz v. Pritts, 291 Md. 1 (1981), the Court stated:

"The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal."

Case No. 3290 - MCI Telecommunications Corp.

In Lawton T. Sharp Farm v. Simerloch, 52 Md. App. 207 (1982), the Court stated that the test for the granting of a special exception was whether the proposed use would "have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone."

Pursuant to Section 25-3.3(i), the Hearing Examiner finds that the proposed buildings and tower and the uses proposed by the Applicant would not adversely affect the public health, safety, and general welfare, would not result in dangerous traffic conditions, and would not jeopardize the lives or property of people living in the neighborhood.

Accordingly, the Hearing Examiner recommends that, based upon the testimony, evidence, and exhibits presented, the request for Special Exceptions pursuant to Section 25-8.3(i)(3), (4), and (5) be granted, subject to the following conditions:

1. That the Applicant substantially comply with the construction of the structures, the type and design of the building, and the setbacks set forth in Applicant's Exhibit No. 1.
2. That the microwave facility shall not have an adverse impact on wildlife, plantlife, land surface, economically recoverable resources, or open spaces.
3. That the microwave facility, pursuant to Section 25-8.3(i)(5) shall not adversely affect cultural resources of the County.
4. That the color of the exterior of the buildings on the site shall blend into the landscape. The area between the structures and Carsins Run Road, including access roads, shall be landscaped to minimize the view of the facility from the road.

Date February 14, 1986

  
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Gregory A. Rapisarda  
Zoning Hearing Examiner



DORIS POULSEN  
Secretary of the Council

## COUNTY COUNCIL OF HARFORD COUNTY, MARYLAND

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District F

### NOTIFICATION OF ZONING HEARING EXAMINER'S DECISION

DATE OF DECISION: February 27, 1987  
HEARING EXAMINER: Gregory A. Rapisarda  
RE: Zoning Appeal Case No. 3419  
APPLICANT: MCI Telecommunications Corporation  
LOCATION: northwest side of Carsins Run Road, Aberdeen  
REQUEST: Variance to construct a building 51 feet high,  
approved as a Special Exception in Case No.  
3290

Enclosed is an official copy of the Hearing Examiner's decision relative to the above referenced case.

The Hearing Examiner's decision shall become final twenty (20) calendar days after the date of the decision, (**MARCH 19, 1987**), unless a written request for final argument before the County Council/Board of Appeals is filed before the expiration of the twenty (20) calendar day period by the Applicant/Applicant's Attorney, Opponents/People's Counsel, or a person aggrieved who was a party to the proceedings before the Hearing Examiner. In addition, any Board Member, upon written notice to the Secretary of the Council, may request final argument.

COUNTY COUNCIL OF HARFORD COUNTY

Doris Poulsen  
Secretary of the Council

ds

Enclosure

cc: Applicant/Attorney  
Opponents/Attorney  
Adjoining Property Owners  
Registered Hearing Attendees  
Department of Planning and Zoning  
Department of Law  
People's Counsel

**BOARD OF APPEALS CASE NO. 3419**

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**BEFORE THE**

**APPLICANT: MCI Telecommunications Corporation**

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**ZONING HEARING EXAMINER**

**REQUEST:** Variance to construct a building 51 feet high, approved as a Special Exception in Case No. 3290; northwest side of Carsins Run Road, Aberdeen

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**OF HARFORD COUNTY**

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Hearing Advertised

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Aegis: 12/31/86 & 1/8/87

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Record: 12/31/86 & 1/7/87

**HEARING DATE:** February 2, 1987

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**ZONING HEARING EXAMINER'S DECISION**

On November 7, 1986, the Applicant, MCI Telecommunications Corporation, filed an application for a height variance in order to permit a building to be constructed to the height of fifty-one (51) feet, in lieu of the thirty (30) foot maximum height requirement of the Harford County Zoning Code, under Section 25-6.3(a)(2). In Case No. 3290, the Applicant was granted a Special Exception to construct a telecommunications building. According to the Applicant, at the time that the initial Special Exception was granted, it was not known that a height variance would be required and the Applicant was not informed by the Department of Planning and Zoning. Subsequent to construction, the Applicant learned that a height variance was required, which prompted the present application.

The hearing was held on February 2, 1987. No protestants appeared at the hearing.

The Applicant's first witness was James Patrick Kelly, a civil engineer for MCI Telecommunications, Inc. He indicated that the first floor of the building is seventy percent (70%) complete. The Applicants are requesting permission to build a three (3) story building to a height of fifty-one (51) feet. According to Mr. Kelly, each floor is required to be fifteen (15) feet, and there will be a six (6) foot parapet wall provided. Future expansion for the second and third stories is expected to be in approximately ten (10) years. He indicated that the cost of the first floor has been approximately \$8,100,000.00, and that the electrical equipment located within the first floor has cost approximately \$100,000,000.00.



Case No. 3419 - MCI Telecommunications Corporation

A normal building would require 11-13 feet per floor, but because of the nature of the equipment used, a 15 foot story is necessary since the equipment must have access from the top and the bottom for cables. The building must be constructed close to the tower since transmission quality is lost if the tower is away from the switching station. These switching stations run phone calls across the United States. The existing tower was built in 1972. The tower is in line of sight for direct transmission. The towers must be at locations which have good elevation and terrain. The elevation of this land is ideal for property communication. The Applicant also indicated its plan for screening the area and presented a screening plan for emphasis, Applicant's Exhibit No. 3. The Applicant indicated that the present building is 240 feet by 170 feet. If the Applicants were required to build another building adjacent to the existing building, they would have to run a cable 480 feet. Mr. Kelly indicated that there would be considerable transmission loss. By building a second floor, the cabling stays at 240 feet and permits better transmission of signal. Additionally, because of the topography of the area, if a new building would be built adjacent to the existing structure, they would essentially have to build two floors. The topography of the area indicates that the building is within the line of sight of MCI Telecommunications. According to Mr. Kelly, it would be an undue hardship if the variance was not granted. The Applicant has expended considerable sums of money with the expectation of expanding it to a three-story building. The cost of relocating the fiber-optic line would be prohibitive. Mr. Kelly also testified that there would be no adverse impact upon the neighborhood. He indicated that the property is served by private water and sewer, that it would not be in conflict with the Master Plan, that it would not be dangerous and would not in any way be a detriment to the community.

The Hearing Examiner finds that the Applicant has provided sufficient evidence with regard to the uniqueness of the property in that it is in the line of sight of other telecommunication towers, that it contains the proper elevation, that it is in close proximity to the tower which was constructed in 1972, that the topography of the property requires a different type of building, and that there would be considerable transmission loss if the Applicant's request for a variance would be denied. The Applicant has met their burden of proof with regard to the granting of a height variance. By reason of the uniqueness of the property and the topographical conditions of the site, the literal enforcement of the Code would

Case No. 3419 - MCI Telecommunications Corporation

result in practical difficulty or unreasonable hardship. In this case, the Applicant has provided sufficient proof that there would be practical difficulty if the variance was not granted. The Hearing Examiner also finds that the granting of the variance would not be substantially detrimental to adjacent properties and will not materially impair the purpose of the Code or the public interest.

Accordingly, the Hearing Examiner recommends that the variance to construct a building to the height of fifty-one (51) feet on the Applicant's property, located on the northwest side of Carsins Run Road and 2,600 feet north of Creswell Road, be granted.

Date February 27, 1987

  
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Gregory A. Rapsarda  
Zoning Hearing Examiner