ADVISORY NEIGHBORHOOD COMMISSION 3C
GOVERNMENT OF THE DISTRICT OF COLUMBIA
CATHEDRAL HEIGHTS • CLEVELAND PARK • MASSACHUSETTS AVE. HEIGHTS
MCLEAN GARDENS • WOODLEY PARK

Single Member District Commissioners
01-Allen Hahn; 02-Kurt Vorndran; 03-Sally MacDonald
04-Richard C. Bartel; 05-John Welsh; 06-Trudy Reeves
07-Sheila Hogan; 08-Nancy Nord; 09-Nancy MacWood

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Testimony on BZA Case No. 17211
Special Exception Application of the National Broadcasting Corporation
October 26, 2004

Submitted by
Nancy J. MacWood, Chair, Advisory Neighborhood Commission 3C

Thank you, Mr. Chairman, for the opportunity to testify today. I am Nancy MacWood, the chair of ANC 3C. At a regularly scheduled meeting of the ANC on October 18, 2004, at which a quorum was present, the commission unanimously approved a resolution opposing this special exception application to continue the use of a broadcast tower.

As you know, ANC 3C did support the building of a larger tower at the NBC site in 1981. That tower was proposed to meet new FCC requirements for HDTV and to complement a 25-year master building plan for the site. It was stated by the applicant at that time that the new tower would replace the original 459 foot tower. But the original tower was never dismantled. There has been considerable discussion and testimony since that time about what "replace" means and whether the community was hoodwinked, but the fact remains that NBC eventually filed for a special exception to use the original tower and they were granted that zoning authority.

ANC 3C was aware of this background, but we evaluated this application based on the provisions of 11 DCMR 211, which regulates commercial broadcast antenna in residential zones. We came to the conclusion that the use of the antenna would violate several of these provisions.

First, does the location of the antenna minimize its visibility from neighboring property and from adjacent public space? The tower is completely visible from every angle. It sits on higher ground than McLean Gardens, which is to the east of NBC. The existence of two towers is an unexpected sight in a residential area and draws more attention to the towers than if there were one tower.

Second, is the height of the tower no more than what is reasonably necessary for satisfactory service in the service area? The height of the original tower is more than what is necessary for service, in fact, the tower isn't necessary at all. The application

BZA
Case No. 17211
Exhibit No. 32

Board of Zoning Adjustment
District of Columbia
CASE NO. 17211
EXHIBIT NO. 32

shows only one NBC use emanating from the tower. NBC representatives told the ANC that this use could be accommodated on the larger tower. NBC has no current broadcasting need for this tower.

Third, is the location necessary for technically satisfactory and reasonable economical transmission because if it is not necessary it shouldn't be in a residential area? NBC stated to the ANC that they don't need the original tower for their transmissions. As the Board is well aware, NBC has a larger tower that they use for their transmissions and they have antenna space on that tower for the minimal NBC antenna use currently on the original tower. They argue, however, that the revenue generated from leasing space on the original tower helps their profit margin. We don't believe that "reasonable economical transmission" means every broadcast station can have towers beyond their needs so that they can have an additional revenue source. We think that phrase means that locations outside the residential area have to be shown to be unreasonably expensive before the BZA would approve locating a tower in a residential area for the applicant's transmissions.

Fourth, has it been demonstrated that there is a need for the height beyond matter of right allowances? The ANC found that there is no need for this tower...period. NBC is minimally using it for their transmissions and they can move this use to the larger tower. They were allowed to build a larger tower that was supposed to meet their needs within the provisions of 11 DCMR 211 and it does meet their needs. NBC is using the original tower to lease to a large commercial tenant and the Fairfax police, among others. In our estimation, this is not the use that 211 authorizes.

Finally, the ANC looked at the Environmental Element of the Ward 3 plan of the District of Columbia Comprehensive Plan, as we knew the Office of Planning would. Section 1403.13(e) is quoted in its entirety in the ANC resolution, but it includes the phrase, "..., District government officials must incorporate prudent avoidance in decisions regarding the approval, location or routing and intensity of EMF generating facilities such as generators, power lines, and antennas in Ward 3."

Mr. Chairman and members of the Board, ANC 3C believes that NBC has not met the burden of demonstrating a continuing need for the original broadcast tower and we urge you to deny this application.

Thank you for your time and attention, and giving the views of ANC 3C great weight.

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ANC 3C Resolution No. 2004-027

WHEREAS National Broadcasting Corporation (NBC) is seeking a Special Exception pursuant to 11 DCMR 211.1 to use an existing 459 foot tower built in 1955; and

WHEREAS a proposed second, larger tower was approved by the Board of Zoning Adjustment (BZA) in 1981 as part of a 25-year master plan for the NBC property; and

WHEREAS the District of Columbia Zoning Administrator stated in 1992, after the second tower was built, that the approved master plan provided for the replacement of the old tower and therefore, the old tower had to be removed; and

WHEREAS NBC filed for a Special Exception in December 1992 to continue the use of the old tower, which was granted; and

WHEREAS the old tower is occupied almost exclusively by antennae from users other than NBC, including a large commercial tenant and the Fairfax police; and

WHEREAS the Environmental Element of the Ward 3 Plan of the District of Columbia Comprehensive Plan states

> It is reasonable to conclude that reducing exposure to electromagnetic fields ("EMF") at all points on the spectrum increases public safety. Doing nothing, while waiting for conclusive evidence about human health effects, is not a reasonable response to the potential risks associated with EMFs. Because the vast majority of the ward's land is zoned residential or is natural parkland, District government officials must incorporate prudent avoidance in decisions regarding the approval, location or routing and intensity of EMF generating facilities such as generators, power lines, and antennas in Ward 3. Facilities should be located in the ward only when and where necessary, based on the local service needs of the ward's property owners, and facilities should be designed using methods to mitigate, to the greatest extent practicable, involuntary exposures to the public and adverse effects on parkland, public space, and private property. (1403.13(e); and

WHEREAS an applicant for a Special Exception pursuant to 11 DCMR 211, which regulates commercial broadcast antenna in residential zones, must show

-that the existence of the antenna does not adversely affect use of neighboring property,

-that its location minimizes its visibility from neighboring property and from adjacent public space,

-that all parts of the antenna are located the greater of at least 10 feet from each lot line or at least one-sixth of the mounted height of the antenna,

-that the height is not greater than what is reasonably necessary for satisfactory service in the service area;

-that the location is "necessary for technically satisfactory and reasonably economical transmission" because this equipment should not be otherwise located in a residential district;

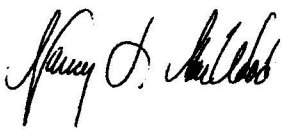
-that the height, if it is greater than that allowed under the District of Columbia Height Act of 1910, which is 90 feet in a residential district, has been permitted by the Mayor;

-that the Office of Planning has reviewed and reported on the application;

-that it has been demonstrated that there is a need for the height, and "that full compliance with matter-of-right standards would be unduly restrictive, prohibitively costly, or unreasonable"; and

WHEREAS ANC 3C urged NBC to work with the Commission to conduct studies and evaluations of the electromagnetic field exposure in the residential area surrounding the towers, including the area in ANC 3C bordered by Van Ness St. to the north, Massachusetts Ave. to the south, and 34th St. to the east, based on the most up-to-date scientific information about data collection and area of exposure, and to make that study and evaluation available to the commission:

THEREFORE, BE IT RESOLVED that ANC 3C does not support the Special Exception application because it finds that the existence of two towers is a more visible presence than is the presence of one tower, that the height of the old tower is greater than what is necessary given that the old tower is not used for NBC transmissions and what is provided on the old tower for NBC use could be moved to the new tower, and thus, there is no necessity as described in 11 DCMR 211 for the continued use of the old tower.

Attested by  Chair, on October 19, 2004

Nancy J. MacWood

This resolution was unanimously approved (7-0) by ANC 3C at its regularly scheduled public meeting on October 18, 2004, at which a quorum was present.