

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF
TELECOM CAPITAL GROUP and
RHODES BROTHERS LLC
Applicants

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OZAH Case No. CU 23-07

Before: Kathleen Byrne, Hearing Examiner

ORDER ADMINISTRATIVELY APPROVING A MINOR AMENDMENT

I. BACKGROUND

On January 27, 2023, Hearing Examiner, Lynn Robeson, approved a conditional use filed by the Applicants Telecom Capital Group and Rhodes Brothers LLC (Applicant or Telecom) to construct an unmanned 145-foot-tall wireless Telecommunications Tower and 2,500 square foot electrical compound at 28025 Ridge Road, Damascus, Maryland 20872 (Tax Account No. 12-00939735). *Hearing Examiner's Report and Decision*, CU23-07 (January 27, 2023). (HE Report). The property is zoned RC (Rural Cluster). The Applicant now requests a minor amendment to the conditional use plan approved in January of 2023.

The previously approved conditional use permitted installation of a 145-foot monopole within a 2,500-square foot compound containing the monopole as well as electrical equipment. HE Report pp. 7-8. The monopole compound is to be set back 254 feet from Ridge Road, 160 feet from the closest point on the northwest property line, 217 feet from the closest point to the southwest property line, and 310 feet from the nearest dwelling. *Id.* Access is to be from Ridge Road via a 12-foot gravel driveway. *Id.* The previously approved conditional use site plan (Ex. 39) and partial site plan (Ex. 41) are reproduced on page 4 of this Order for convenience.

The Hearing Examiner approved the application subject to the following 13 conditions of approval. *Id.* pp. 37-38.

1. All development on the site must conform to the Conditional Use Plans (Exhibits 38, 39, 41 through 48).
2. The Applicants must maintain the landscape plantings to ensure healthy growth. Any plant material planted in fulfillment of this condition that dies or becomes diseased shall be promptly replaced by the Applicants.
3. Tower Facility Coordinating Group Application No. 2021081545 must be colocated on the telecommunications facility.

4. The Applicants must schedule the required site inspections by M-NCPPC Forest Conservation Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
5. The Applicants must comply with all tree protection and tree save measures shown on the approved Tree Save Plan and Forest Conservation Exemption Plan. Tree save measures not specified on the Forest Conservation Exemption Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
6. The Limits of Disturbance (LOD) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Forest Conservation Exemption Plan.
7. Any requirements of the Department of Permitting Services for stormwater management must be fulfilled prior to issuance of sediment and erosion control permits.
8. In accordance with Zoning Ordinance §59.3.5.2.C.2.c.iii., the Hearing Examiner has approved a telecommunications support structure not to exceed 145 feet in height. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection pursuant to the building permit, the Applicants must certify to the Department of Permitting Services that the height and location of the support structure is in conformance with the height and location of the support structure as authorized in the building permit.
9. In accordance with Zoning Ordinance §59.3.5.2.C.2.c.vii., the support structure must provide space for the antennas of five providers, including the Applicants and TFCG Colocation Application No. 2021081545. No outdoor storage of equipment or other items unrelated to the conditional use is permitted.
10. In accordance with Zoning Ordinance §59.3.5.2.C.2.c.ix., the Telecommunications Tower support structure and equipment must be removed at the cost of the owner of the Telecommunications Tower when the Telecommunications Tower is no longer in use by any wireless communication carrier for more than 12 months.
11. In accordance with Zoning Ordinance §59.3.5.2.C.2.c.x., the telecommunication facility must display a contact information sign, two square feet or smaller, affixed to the outside of the support structure or equipment building. This sign must identify the owner and the maintenance service provider of the support structure and any attached antenna, and it must provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Hearing Examiner notified within 10 days of any change in ownership.
12. In accordance with Zoning Ordinance §59.3.5.2.C.2.c.xi., the Applicants and all owners of the telecommunications facility are responsible for maintaining the facility in a safe condition.
13. The Applicants and any successors in interest must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the

conditional use as granted herein. The Applicants and any successors in interest shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Service.

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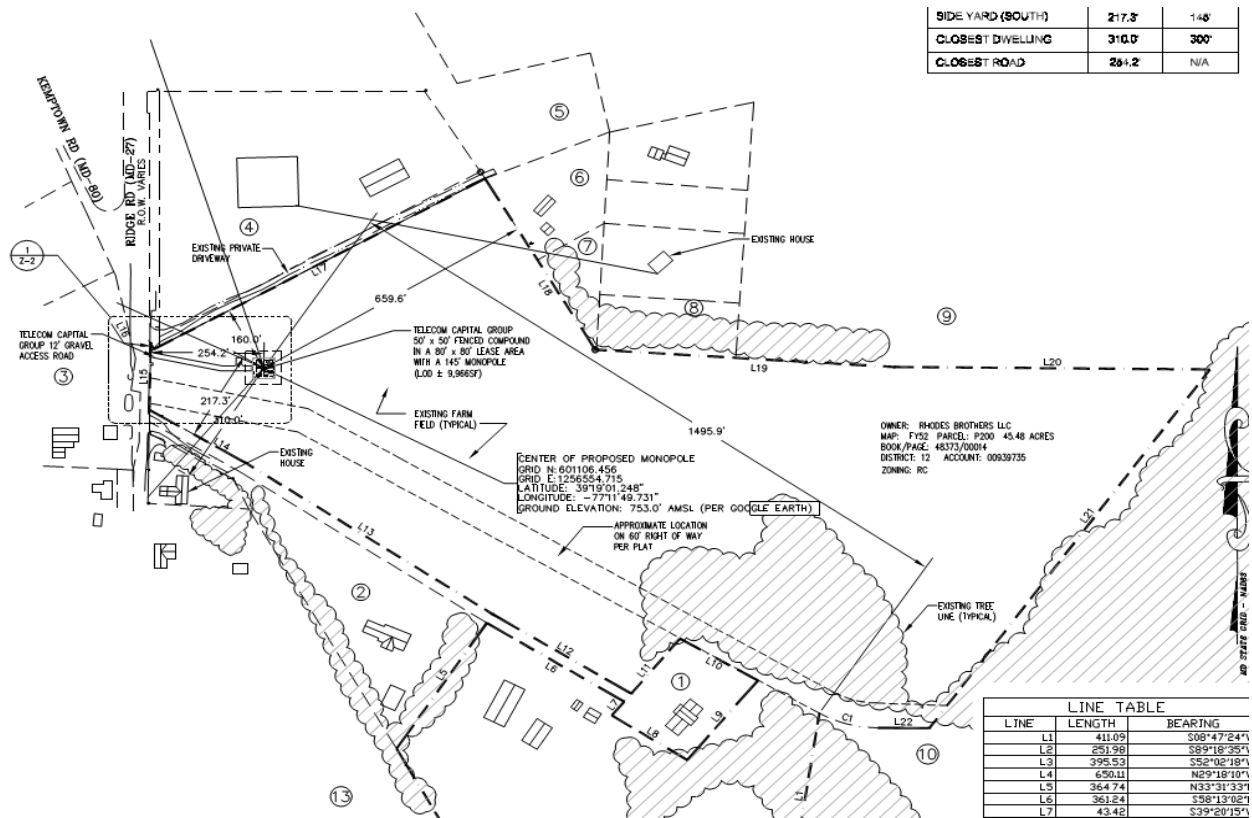


Exhibit 39 – Site Plan

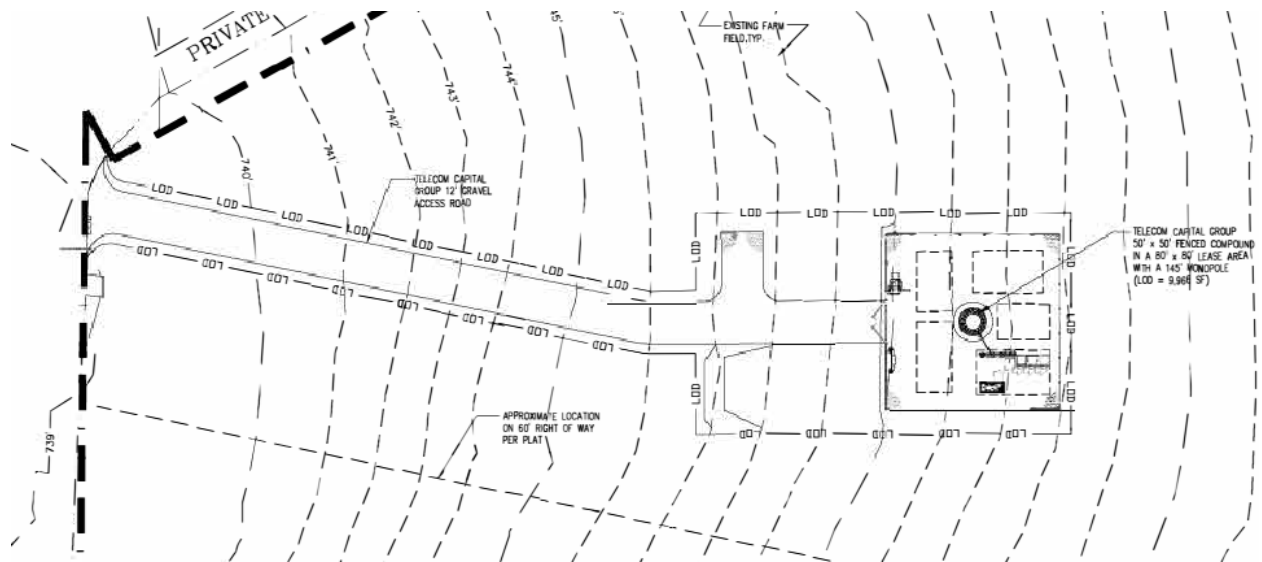


Exhibit 41 – Partial Site Plan

II. MINOR AMENDMENT

1. Applicant's Proposal

On October 18, 2023, the Applicant filed a request for a minor amendment to the original conditional use approval seeking a change in the orientation and design of the proposed driveway as originally depicted in the drawings previously approved and submitted as part of the Conditional Use Application No 23-07. (Exhibit 54). Specifically, the Applicant provided the following justification as grounds for the minor amendment:

The Maryland Department of Transportation's State Highway Administration (MDOT/ SHA) reviewed the originally proposed entrance location and found it failed to incorporate two (2) requirements: (1) the 10' minimum tangent between the limits of the parcel's street frontage and the radius return point of the entrance and (2) the 20' minimum tangent between adjacent entrances on the same side of the road. The plans have been revised to reflect the location recommended by MDOT – within the 60' right-of-way on the subject parcel. This change prompted the need for a new NRI/FSD Exemption which TCG expects to file by 10/25/23 with approval anticipated around 12/27/23.

2. Revised Plans

The Applicant submitted a revised partial site plan reflecting the amendment requested including an increase in the square footage of the limits of disturbance from 9,966 square feet to 9,995 square feet. The amended partial site plan is shown on the following page.

3. Staff Recommendation

Hearing Examiner Robeson Hannan referred the modification request to Planning Staff for a recommendation on whether they considered the modification to be major or minor under §59.7.3.1.k. of the Zoning Ordinance (described below). Planning Staff responded that they reviewed the submitted documentation and concur that this would be considered a Minor Modification "because the proposed changes do not change the nature, character, or intensity of the previously approve[d] Conditional Use."

III. GOVERNING LAW

Requests to amend a conditional use are governed by Zoning Ordinance §59.7.3.1.K. Whether an amendment request is characterized as one for a major amendment or for a minor amendment is significant because a *major amendment* application must "*follow the same procedures, must meet the same criteria, and must satisfy the same requirements as the original conditional use application . . .*" Zoning Ordinance §59.7.3.1.K.1.b. However, an application for a *minor amendment* need not go through those extensive procedures. Rather, "*. . . it may be approved administratively by the Hearing Examiner.*" Zoning Ordinance §59.7.3.1.K.2.a.

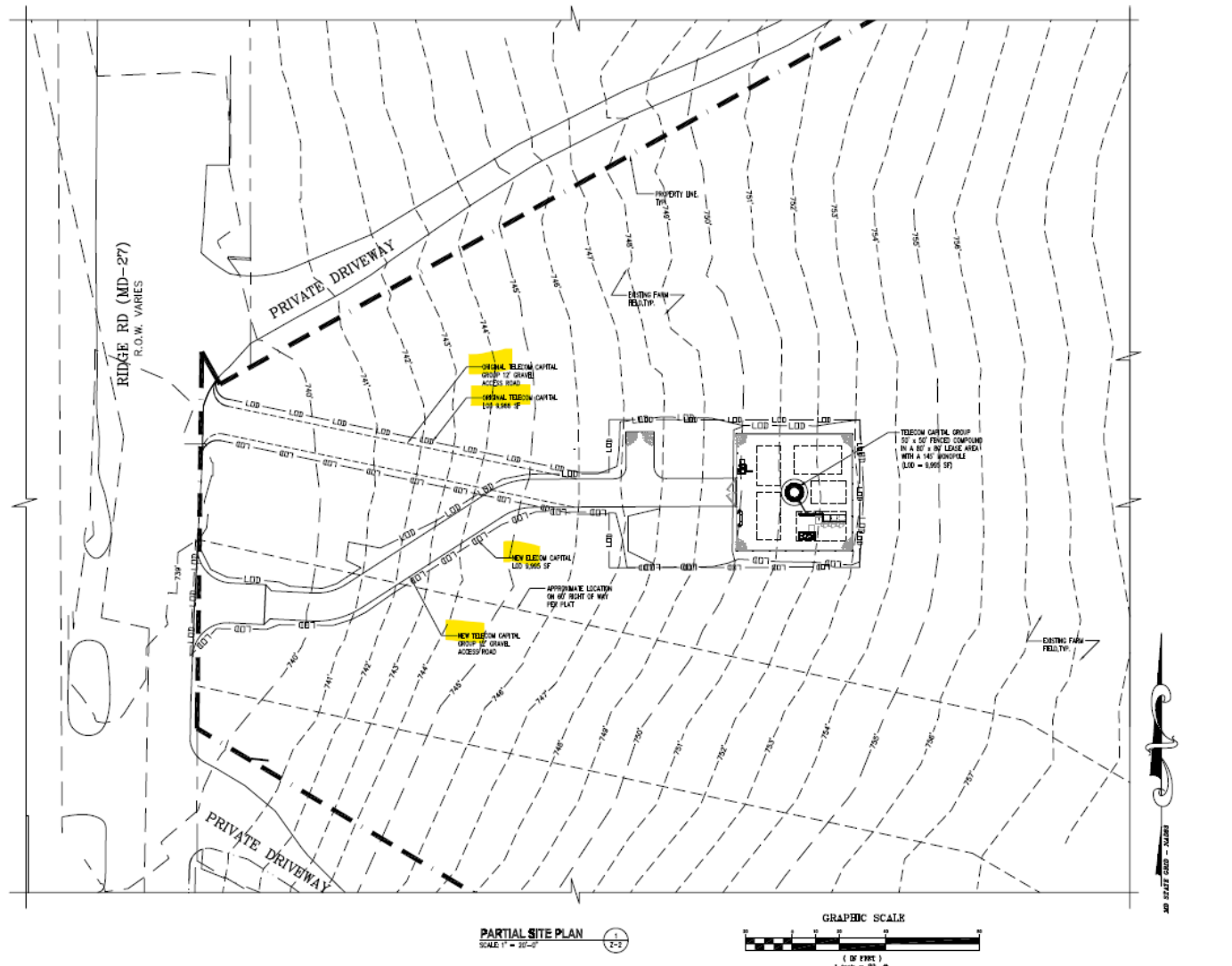


Exhibit 54a – Revised Partial Site Plan -
Driveway & LOD (emphasis added)

Zoning Ordinance Section 59.7.3.1.K. also defines major and minor amendments:

§59.7.3.1.K.1.a. A major amendment to a conditional use is one that changes the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.

§59.7.3.1.K.2.a. A minor amendment to a conditional use is one that does not change the nature, character, or intensity of the conditional use to an extent that

substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.

IV. OPINION

The Applicant states that the amendment is minor because the only reason for the proposed change is to satisfy the Maryland Department of Transportation's State Highway Administration (MDOT/SHA) requirements. The Hearing Examiner agrees with the Applicant and Planning Staff that the amendment is minor and is governed by §59.7.3.1.K.2.a of the Zoning Ordinance. The change only changes the orientation and design of the driveway. As the request for the minor modification comes at the direction of MDOT/SHA and impacts the ingress/egress only, nothing about the location of the structures or operation will change. While the configuration of the driveway increases the limits of disturbance, the Hearing Examiner finds the increase to be negligible given the size of the property and change in driveway orientation.

Upon review of the original approval, the Hearing Examiner finds that the amendment does not affect any of the findings required by §59.7.3.1.E (Necessary Findings), §59.3.5.2.C.2 (Use Standards). As previously stated, the minor amendment requests a change to the driveway orientation and design. The use standards for a telecommunications tower focus on the location of the overhead transmission line, height of the lines, tower/base location in relation to any dwelling and distance to neighboring property lines. Nothing about the tower, base, or lines is being changed by this minor amendment.

Because the changes proposed only impacts the driveway and the reason for the change was prompted by MDOT/SHA, the Hearing Examiner determines that the proposed use is a minor amendment that will not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use," and may be administratively approved..

V. ORDER

Based on the foregoing findings and Opinion, it is this 6th day of December 2023,

ORDERED that the minor amendment application to CU23-07, to alter the original orientation and design of the driveway, in the application of Telecom Capital Group and Rhodes Brothers LLC for the property located at 28025 Ridge Road, Damascus, Maryland 20872 be and hereby is approved, and it is further

ORDERED that this amendment and the continued use of the conditional use are subject to all terms and conditions imposed in connection with the initial approval, except as specifically amended by the Hearing Examiner in this Opinion and Order.



Kathleen Byrne
Hearing Examiner

NOTICE OF RIGHT TO REQUEST A HEARING

Under §59.7.3.1.K.2.b of the Zoning Ordinance, any party may object by requesting a public hearing on the Hearing Examiner's action within 15 days after this decision is issued. The request for public hearing must be in writing and must specify the reason for the request and the nature of the objection or relief desired. If a request for a hearing is received, the Hearing Examiner must suspend her administrative approval and conduct a public hearing to consider whether the amendment is a major amendment or a minor amendment under the Zoning Ordinance. A minor amendment is one that does not "substantially changes the nature, character, or intensity of the conditional use or its effect on the immediate neighborhood." A major amendment is one that does substantially change the nature, character, or intensity of the conditional use on the immediate neighborhood. If the Hearing Examiner determines, after an objection, that the impact will be major, then the application must be treated as a major amendment. A decision of the Hearing Examiner following a public hearing on a minor modification may be appealed based on the Hearing Examiner's record to the Board of Appeals.

COPIES TO:

Ed Donohue, Esquire
Tracy Themak, Esquire
Attorneys for the Applicant
Barbara Jay, Executive Director
Montgomery County Board of Appeals
All parties of record
Greg Nichols, DPS
Victor Salazar, DPS
Patrick Butler, Planning Department
Mark Beall, Planning Department
Michael J. Coveyou, Director, Finance
Marjorie Williams, Chair, TFCG