

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS  
Stella B. Werner Council Office Building  
Rockville, Maryland 20850  
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**IN THE MATTER OF:  
NETWORK TOWERS II, LLC**

Applicant  
Samuel Avera

For the Application

Sean P. Hughes, Esquire  
Miller, Miller & Canby  
Attorney for the Applicant

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**OZAH Case No. CU 26-02**

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Before: Khandikile Mvunga Sokoni, Hearing Examiner

**HEARING EXAMINER'S REPORT AND DECISION**

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## I. STATEMENT OF THE CASE

Filed on August 22, 2025, Network Towers II, LLC (hereinafter “Applicant”) applied for a conditional use to construct and operate a new 179-foot Telecommunications Tower at the existing Montgomery County Colesville Maintenance Depot pursuant to 59.3.5.2.C of the Zoning Ordinance. The subject property is identified as, 14335 Cape May Road, Silver Spring, Maryland 20904, Subdivision 0001, Tax Account number 02257822 (“property”). Exhibit 1. The property is zoned Residential Estate (RE-2C). *Id*; Exhibit 20. On September 2, 2025, OZAH mailed out and posted to its website a Notice of Hearing and Motion to Amend, scheduling the public hearing for Tuesday October 21, 2025. Exhibit 17.

Staff of the Montgomery County Planning Department (“Planning Staff” or “Staff”) issued a report dated October 6, 2025, recommending approval of the conditional use application subject to the following conditions of approval:

1. The use is limited to one (1) Telecommunications Tower.
2. The Telecommunications Tower must be set back, as measured from the base of the support structure, 300 feet from any existing dwelling per Section 59-3.5.2.C.2.C.
3. The Telecommunications Tower must be no taller than 179 feet. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection required by the building permit, the Applicant must certify to the Department of Permitting Services (DPS) that the height and location of the support structure conforms with the height and location of the support structure on the building permit.
4. The support structure must be constructed to hold a minimum of three (3) wireless communication carriers.
5. The equipment compound must have sufficient area to accommodate equipment sheds or cabinets associated with all the carriers. Outdoor storage of equipment or other items is prohibited.

6. The support structure must be removed at the cost of the owner of Telecommunications Tower when the Telecommunications Tower is no longer in use by any wireless communication carrier for more than 12 months.

7. The support structure must be identified by a sign two (2) square feet or smaller, affixed to the support structure or any equipment building. The sign must identify the owner and the maintenance service provider of the support structure or any attached antenna and 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.

8. Prior to any land disturbing activities, the Applicant must provide a redline of the approved Final Forest Conservation Plan, showing all proposed development and demonstrating compliance with the approved Final Forest Conservation Plan.

9. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Code of Montgomery County Regulations ("COMCOR"), Forest Conservation Regulations.

The application of Network Towers II included among other things a lease exhibit showing the area of the lease for the site; Area Plan; Overall Site Plan; Existing Conditions Plan; Proposed Site Plan; Aerial Plan; Compound Plan; Tower Elevation Images; Fence Details; Signage Details; Verizon Equipment Details; Grading Erosion Details; Overall Fiber Plan; Overall Electric Plan; Compound Electric Plan; Fire Access Plan. Exhibit 6. These and several of Applicant's submissions are addressed in greater details during the course of this Report and Decision.

A total of four witnesses testified in support of the application, three of whom were called by the Applicant. Applicant's witnesses were:

1. Yaw Osei Bonsu, Civil Engineer.<sup>1</sup>
2. James Golden.
3. Paul Dugan, Radio Frequency Engineer from Millenium Engineering.

Samuel Avena of Network Towers was also present at the hearing.

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<sup>1</sup> The Hearing Examiner qualified Mr. Bonsu as an expert in this case in civil engineering and wireless infrastructure telecom tower design. T. 46.

T. 19

Russell Hartung who identified himself as being with Montgomery County Police, Fire, and Rescue, Technical Support and Communications testified in support of the application. T. 27- One neighbor, Ty McKinney stated that he was neither in support of nor against the application but attended the hearing to listen and learn more about the proposed use and to ask questions before he could form a position. Mr. McKinney said that his property is directly across the street from the proposed installation. T. 11.

The Application was reviewed and unanimously recommended for approval by the County's Transmission Facility Coordinating Group (TFCG) on June 4, 2025. Exhibit 4. The minutes of the TFCG meeting were included in the Pre-Hearing Statement submitted by Applicant's Counsel. Exhibit 23, p. 16<sup>2</sup>, as well as in the Staff Report, Exhibit 24, Attachment C.

Weighing all testimony and evidence of record under the "preponderance of the evidence" standard specified in Zoning Ordinance §59.7.1.1, the Hearing Examiner concludes that the conditional use proposed in this application conforms to the general and specific standards for approval, with the conditions of approval listed in Part IV of this Report and Decision, under §59-3.3.5.2.C.2.c (Telecommunications Tower). Therefore, the Hearing Examiner hereby grants the Application.

## **II. FACTUAL BACKGROUND**

### **A. The Subject Property**

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<sup>2</sup> The Pre-Hearing Statement is numbered pages 1-4 with various attachments. The relevant portion of the TFCG minutes are the final attachment, at page 16 of the electronic (pdf) exhibit.

The Subject Property (“Property”) which is owned by the County is known as the Montgomery County Colesville Maintenance Depot (“Depot”)<sup>3</sup> and is located in the Colesville area approximately 600 feet northeast of the intersection of New Hampshire Avenue (MD 650) and the Inter-County Connector Corridor (MD 200). There is a mix of large undeveloped parcels and single-unit, detached residential dwellings within the vicinity of the Property. The 11.7-acre property abuts parkland to the west and east owned by M-NCPPC. Exhibit 24, p. 8. The main office building is set back from Cape May Road and is buffered from the road with an L-shaped surface parking lot. An existing paved entrance and driveway leads to the proposed site. This driveway is separate from a driveway that leads to surface parking for the administrative building. To the rear of the office building are various equipment and salt barns, fueling stations, vehicle washes, garages and canopies, and other ancillary buildings that support highway services. The Depot extends towards the southern edge of the Property line closer to MD-200. *Id.*

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<sup>3</sup> Staff note that this property is also known as “Castle Cliff”. See Exhibit 24, p. 8).



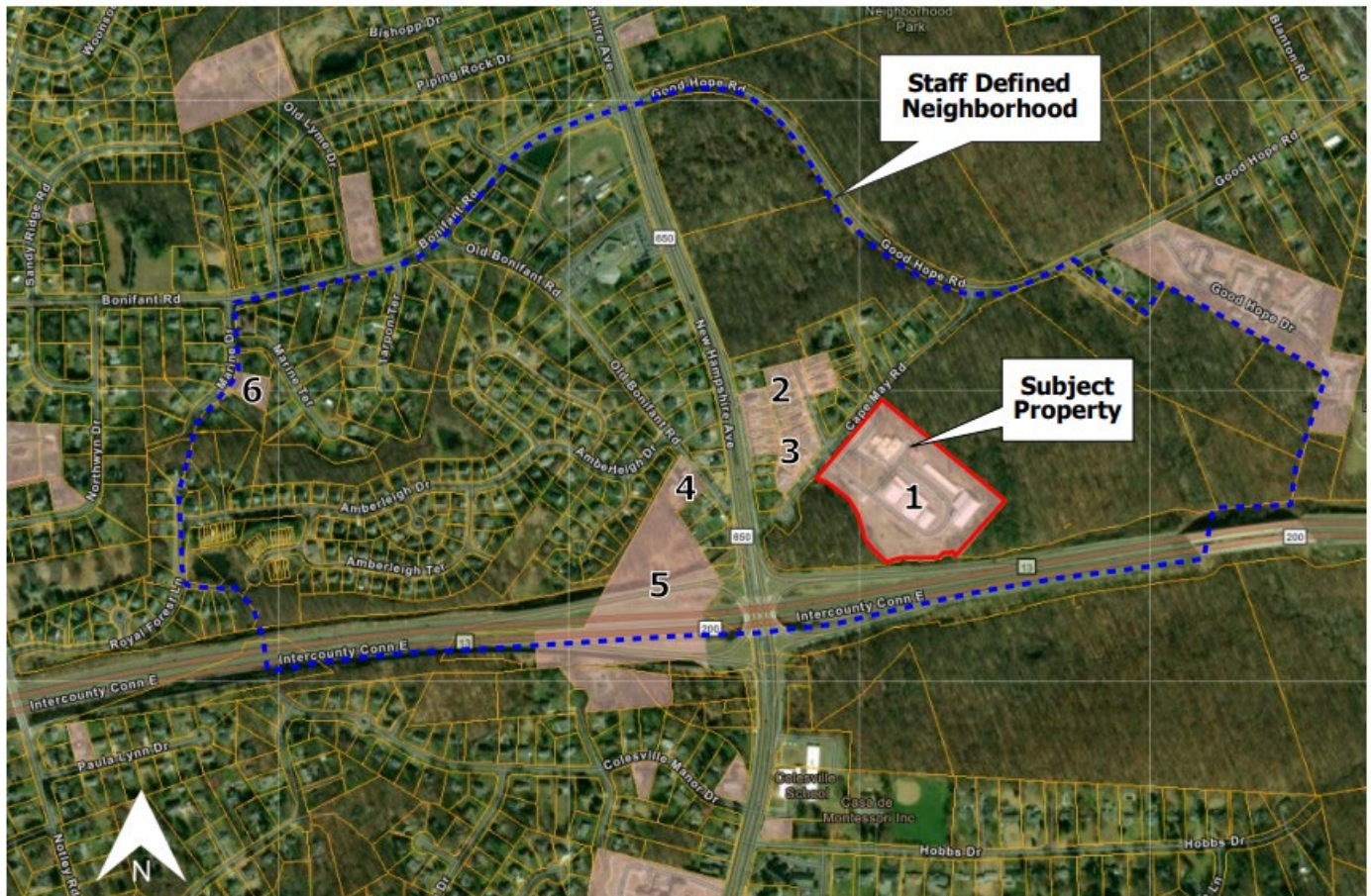
Copied from Exhibit 24, p. 8. Figure 2 Subject Property (outlined in red)

## **B. Surrounding Neighborhood**

To determine the compatibility of the proposed use, it is necessary to delineate the “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use). The area is then “characterized” to determine whether the use proposed is compatible with the character of the surrounding neighborhood.

According to the Planning Staff Report, located in the Residential Estate – 2C (RE-2C) zoning district and within the Upper Paint Branch Overlay, the neighborhood is characterized by a curvilinear street network with most of the residential streets terminating into a cul-de-sac design. New Hampshire Avenue (MD 650) is a four-lane divided Boulevard with a posted speed limit of 35 miles per hour and 125-foot-wide right-of-way. Good Hope Road has a posted speed limit of 30 miles per hour and 70-foot-wide right-of-way. Cape May Road is a low-volume road only accessed from Good Hope Road from the north and its southern terminus is a cul-de-sac. There is a four-foot-wide asphalt path located along the north side of Cape May Road. Exhibit 24, p. 5.

The greater neighborhood, beyond the defined boundary, is mostly residential with some neighborhood retail uses and civic and institutional uses spotted along the New Hampshire Avenue corridor to the north and south. Most of the houses to the west of the Staff-defined neighborhood were built in the 1970s and 1980s and are zoned R-200. *Id.* The homes to the east of the neighborhood were built after 2010. The Dr. Charles Drew Elementary School is located to the east. The closest bus stops are located at the intersections of Good Hope Road and New Hampshire Avenue and Good Hope Road and Good Hope Drive. There are no traffic control devices along Cape May Road and no on-street parking along the Property's frontage. *Id.*



Copied from Staff Report, Exhibit 24, Figure 1, p. 6

During the Application's review, Staff identified five (5) properties with conditional use approvals within the Staff-defined neighborhood not including the subject property), which consists of various uses including riding stables, horticultural nursery and childcare. The Application represents the first Telecommunications Tower within the delineated neighborhood boundary of an existing accessory apartment. Exhibit 24, p. 6; p.7 Figure 1 and Table 1). Aside

from this application, which is currently under review, Staff identified the following conditional uses in the defined neighborhood:

1. S-193 for a private riding stable for two horses, located on the east side of New Hampshire Avenue north of Cape May Road (Lots 1-4, 17-19, Block A and Lots 14-16, Block B).
2. CBA-3028 for a horticultural nursery located on the east side of New Hampshire Avenue, north of Cape May Road (Lots 9-13, Block A, Lots P5 and P6, Block A; Lots 14-16, Block B).
3. S-1708 for a Child Care Center for up to 40 children located at 10 Bonifant Road, Parcel 736.
4. S-1285 for an antique shop (withdrawn) located at 14120/14122 New Hampshire Avenue, Parcel A (Parcel N900) and
5. S-1128 for the continued use of an existing accessory apartment in a private dwelling located at 14409 Marine Drive (Block A, Lot 3).

### **C. Proposed Use**

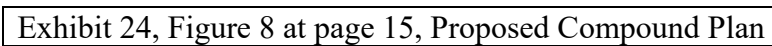
The Applicant proposes to construct and operate a new 179 foot three-sector monopole to be leased, permitted and maintained by Applicant ("Facility"). Three carriers are reportedly interested in locating on this structure with Verizon as the lead carrier. The total proposed lease area is 1,815 square feet (30' x 48' for ground equipment and 15' x 25' for potential propane tanks). Verizon's lease area for ground equipment was presented as 12.5' x 21' concrete pad. Applicant proposes two equipment cabinets and a battery cabinet.

#### **1. Site Plan**

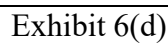
The following two images excerpted from the Staff Report depict the existing site with the proposed telecommunications tower shown as a red dot, and the Proposed Compound Plan respectively:



Existing Site with Proposed Telecommunications Tower Location  
Copied from Staff Report - Exhibit 24, p.14, Figure 7.



With its application, Applicant submitted an overall site plan shown on the next page:



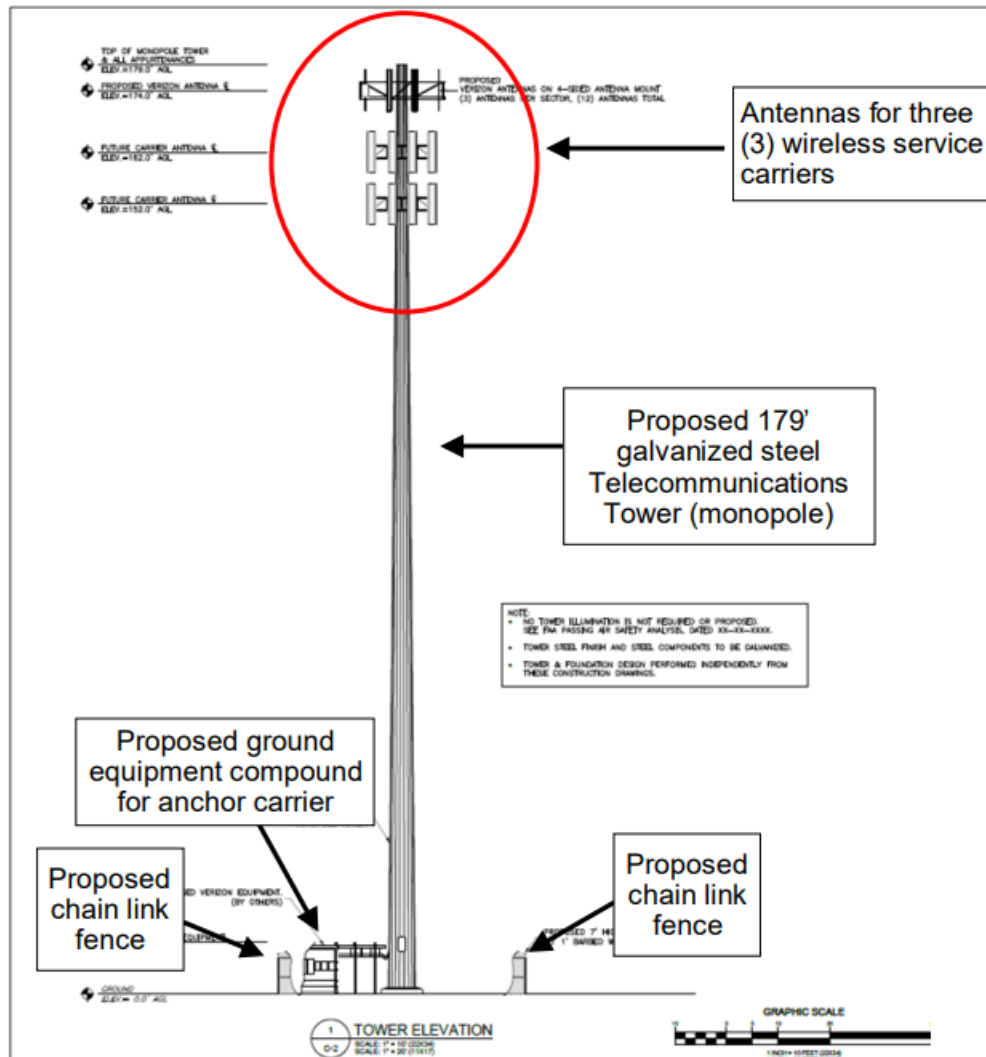
Due to the nature of the Tower and its operations, outdoor lighting is not needed nor proposed with the Application. Existing on-site lighting will remain unchanged.

### **3. Parking and Access**

Applicant is not proposing any circulation or access improvements. The Tower will be accessed using the existing points of ingress and egress from Cape May Road and the existing driveway that travels past the main office building to the maintenance area. Exhibit 24, p. 15. Mr. Bonsu testified that one or two technicians would service the generators and that takes about 30 minutes to occurrence. T. 55. Mr. Golden further testified that most of the maintenance of the generators required to support the tower is done remotely, and that Verizon, for instance would only need to service their generators once a week, every Tuesday at 3:00 PM. T. 79. They would only send a technician to the site if there was a problem. *Id.* According to Mr. Golden this is an installation that is for the most part does not require staff to be on site. The County has made available two parking spots to support this use even though parking is not required.

#### **D. Visual Impact**

Mr. Bonsu testified that there is no lighting proposed on the Telecommunications Tower, and at this time no lighting is required under the FAA rules. T. 52. Mr. Golden also confirmed this in his testimony explaining that lighting is not required because the height of the tower is under 199 feet and does not meet any the features that would require lighting such as proximity to an airport T. 78. The Applicant proposes security for the Tower via a locked eight-foot-tall chain link fence with restricted access to be installed with green privacy slats at the northern, eastern, and southern views of the compound. Caution and notice signs are proposed for mounting on the gate entrance and other areas nearby. *Id.*



Proposed Telecommunications Tower with detail. Copied from Exhibit 24, Figure 6 at p.13

The Applicant conducted an analysis of where the proposed Tower could be viewed from various locations in their defined impact area. It was reported that the tower would be visible from a total of five locations identified as View Numbers 1, 2, 3, 4 and 5 on the Simulations Image below. View numbers 16, 17 and 18, that are located south of the ICC are not visible.



Copied from Exhibit 24, Figure 11 at p. 17

The Staff Report also analyzed photo simulations provided by the Applicant for potential visibility of the tower from various locations in the defined neighborhood. Exhibit 24, Figures 12, 13, 14, 15, 16 and 17. Mr. Golden testified to the process of conducting these visibility simulations, that the red dots represent non-visible and the green ones mean it is visible. T. 76.

### **E. Community Response**

Per the Staff Report, Staff did not receive any correspondence from the Community regarding the conditional use application as of the date of the staff report. Exhibit 24 p. 22. However, the applicant presented to Planning Staff some letters of support that Applicant had

received directly. These are attached to the Staff Report as Attachment B, and include correspondence from Councilmember Kristin Mink who represents District 5 which is the district in which the subject project is located, and the Mayor of Gaithersburg, Jud Ashman.

OZAH received two separate letters from Maryland State Senator for District 17, Cheryl C. Kagan, one dated May 14, 2025 (Exhibit 9), and another dated October 16, 2025 expressing concern about the lack of reliable cell service in the Gaithersburg and Rockville area along the Eastern half of Intercounty Connector (ICC). State Senator Kagan presented support of this application and described the need for enhanced cell service as being essential not only for elected officials, but also for public safety, business and continuity. Exhibit 26.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A conditional use is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. These pre-set standards are both specific (to a particular use) and general (applicable to all conditional uses). The specific standards are those which apply to the particular use requested – in this case, a Telecommunications Tower allowed under Section 59.3.5.2.C.2 of the Zoning Ordinance. These standards are listed below with the Hearing Examiner's findings on each standard. The general standards (termed "Necessary Findings" in the Zoning Ordinance) for all conditional uses are found in Section 59.7.3.1.E. An applicant must prove that the use proposed meets all specific and general standards by a preponderance of the evidence. The Hearing Examiner concludes that Applicant has done so in this case, with the conditions of approval included in Part IV of this Report.

#### **A. Necessary Findings (General Standards, Section 59.7.3.1.E)**

The relevant standards and the Hearing Examiner's findings for each standard are

discussed below.<sup>4</sup> For discussion purposes, the general standards may be grouped into four main areas:

1. Substantial Conformance with the Master Plan;
2. Adequate Public Services and Facilities;
3. No Undue Harm from Non-Inherent Adverse Effects; and
4. Compatibility with the Neighborhood

***E. Necessary Findings***

***1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:***

***a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;***

Staff outlined the following three previous approvals for the subject property:

• **NRI/Forest Stand Delineation Plan No. 420101460**

On July 29, 2010, Planning Staff approved a Natural Resource Inventory / Forest Stand Delineation (NRI/FSD) for the Subject Property.

• **Mandatory Referral No. MR2010735**

In 2010, an application by the Montgomery County Department of General Services was approved for the construction of a salt storage building on the Colesville Maintenance Depot Property.

• **Mandatory Referral No. MR2012011**

On November 17, 2011, the Montgomery County Department of General Services filed an application for approval of a Forest Conservation Plan and a Water Quality Plan Upper Paint Branch Special Protection Area on the Subject Property with associated Mandatory Referral for a

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<sup>4</sup> Although §59.7.3.1.E. contains six subsections (E.1. through E.6.), only subsections 59.7.3.1.E.1., E.2. and E.3. contain provisions that apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

new salt barn and renovations to the administrative building. The Planning Board approved the Plans on May 23, 2012, through MCPB Resolution No. 12-15 (Forest Conservation Plan No. MR2012011) and MCPB Resolution No. 12-16 (Preliminary/Final Water Quality Plan No. MR2012011). Exhibit 24, p.11.

At the hearing on October 21, 2025, Counsel for the Applicant offered into evidence confirmation from Amy Lindsey, Regulatory Supervisor, Environment and Climate Division at MN-CCP confirming the Department's review of redlines submitted in connection with this Conditional Use Application, and that these are in conformance with the Forest Conservation Plan and Preliminary/Final Water Quality Plan approved with Mandatory Referral MR2012011 approved by the Planning Board, through MCPB Resolution 12-15 (Forest Conservation Plan No. MR2012011) and MCBP Resolution No. 12-16 (Preliminary Water Quality Plan No. MR2012011). The correspondence noted that the proposed cell tower is located adjacent to existing structures and within the initially approved limits of disturbance, and that no trees are proposed to be impacted with the proposed development and no additional areas of impervious surfaces are required. Exhibit 29.

**Conclusion:** Staff recommended inclusion of Conditions 8 and 9 to ensure review of compliance with these prior approvals. The Hearing Examiner finds that with inclusion of these conditions this requirement is satisfied.

Further, Staff explained in the Staff Report that any type of land acquisition, sale, use, or development activity on publicly owned land requires a government entity to submit a Mandatory Referral application for an advisory review from the Planning Board. However, the Uniform

Standards for Mandatory Referral Review states that, “Any regulatory processes required of the private entity may satisfy the intent and requirements of these Uniform Standards in the event the requirements overlap (in Staff’s sole discretion). Substantive procedural duplication is to be avoided.” The Planning Department concluded that this Project may proceed without the submission of a Mandatory Referral application due to the stricter findings for approval under the Conditional Use (CU) application, opportunity provided for public input (via County Transmission Facility Coordinating Group’s (CTFCG) application review process, sign notice of the CU application by the Applicant, hearing notice mailed by OZAH, and the OZAH public hearing), and to eliminate procedural duplication. Exhibit 24, p. 12, footnote 1. The Hearing Examiner sees no reason to disagree with this position.

***b. satisfies the requirements of the zone, use standards under Article 59.3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59.6;***

**Conclusion:** This subsection requires the proposed development to meet the standards of the R-60 (Residential Detached) Zone contained in Article 59-4, the specific use standards for a Telecommunications Tower contained in Article 59-3, and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate §§ of this Report and Decision (Parts III.B, C, and D, respectively). Staff note that the Application will comply with these requirements for “content, size and location” as proposed and conditioned. Exhibit 29, pg. 13. Based on a review of those standards, the Hearing Examiner finds that, to the extent they are applicable, the application satisfies the requirements of Articles 59-3, 59-4 and 59-6 of the Zoning Ordinance. 1. Substantial Conformance with the Master Plan

***c. substantially conforms with the recommendations of the applicable master plan;***

**Conclusion:** The Hearing Examiner agrees with Staff's analysis that this Application substantially conforms with the 1997 Cloverly Master Plan ("Master Plan"), and any other applicable master plans. The report states "The Master Plan does not expressly address telecommunications or wireless facilities, particularly related to the subject property. However, the proposed Telecommunications Tower is consistent with the Master Plan's priorities which places emphasis on reinforcing Cloverly's character and protecting watersheds. The Cloverly Master Plan implements the 1993 General Plan Refinement, which identified the area as containing parts of the Agricultural Wedge, Residential Wedge, and Suburban Communities. One of the Plan's fundamental planning principles is to reinforce the character of Cloverly's communities. Furthermore, the proposed recommendations for Special Exceptions particularly related to the concentration of non-residential uses in Cloverly makes the retention of residential character an important element in this Plan. The Plan states (page 38) that when the Board of Appeals considers any application for a special exception in the Cloverly Master Plan area, it should consider the following factors in order to maintain, to the greatest extent feasible, the residential character of the area: a. Maintenance of a residential appearance, where feasible. b. Compatibility with the scale and architecture of the adjoining neighborhood, consistent with the proposed use. c. The impact of signs, lighting, and other physical features on surrounding residential communities. d. Location of parking, loading, and other service areas to maintain residential appearances to the extent feasible. e. Options for landscaping that minimizes the non-residential appearance of the site and the view from surrounding properties and roads. It is preferable for landscaping to reinforce Cloverly's rural

character and be Network Towers II, Conditional Use No. CU202602 32 consistent with the streetscape standards (see page 49 in Transportation Chapter) of the Master Plan and the landscaping standards for special exceptions. f. When special exceptions are adjacent to each other or to commercial properties, review whether it is feasible and reasonable to consolidate driveways and connect parking areas. g. Any special exception application that exceeds the recommended imperviousness level for a particular watershed in a SPA must be reviewed to determine compliance with the appropriate laws. Each of the above recommendations have been addressed throughout other findings in this Staff Report. This Project is compatible with the surrounding area, will not hinder the residential appearance of the neighborhood, nor require minimization of impacts from lighting, signage, or other physical improvements. Due to the nature of the abutting lots and the location of the Tower on the Subject Property, there is no need for additional landscaping. There are no conditional uses adjacent to the Subject Property. With respect to watershed protection, the Subject Property lies within the designated Upper Paint Branch Special Protection Area (SPA). The Project supports environmental preservation, particularly concerning water quality and forest conservation. The proposed Telecommunications Tower will have less than 5,000 square feet of disturbance (tower, equipment compound, parking spaces, etc.), will adhere to stormwater management requirements, and will comply with the approved Forest Conservation Plan No. MR2012011, ensuring that the Project's environmental impact is negligible. Overall, Staff concludes that the Project conforms with the recommendations of the Cloverly Master Plan and recommends approval." Exhibit 24, pp 31-33.

*d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan.*

Staff found and the Hearing Examiner agrees with the analysis that the proposed tower meets the above criterion:

“As previously noted, the proposed Tower is substantially set back from Cape May Road and from the nearest residential dwelling and therefore will not have an adverse visual impact to the public or private realms. The proposed Tower and compound will be surrounded by existing shrubs and trees to the north on the Property, east and west (vacant parkland), the six- (6) lane MD-200 highway immediately to the south and existing trees and shrubs as well on the other side of the highway, as well as the fenced compound and significant setbacks to the nearest residences to the north. Therefore, visual impact will be minimal, and the proposal will be harmonious with and will not alter the character of the surrounding neighborhood.”

This was confirmed by the testimony

The Hearing Examiner finds that this criterion for approval is met.

*e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;*

## **2. Adequate Public Services and Facilities**

*f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:*

*i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or*

*ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and*

Conclusion: No preliminary subdivision plan is required. Regarding the adequacy of public services and facilities in this case the Hearing Examiner agrees with Staff and the Applicant's experts that by its very nature a cell tower requires hardly any public facilities. The proposed cell tower will not generate a use that requires the support of schools, sidewalks, parking, public transit or other public facilities. The only plausible public facility needed would be fire services which the record shows is adequate. The Hearing Examiner finds that this criterion is met. Since the Hillandale Fire Station is located just 1.5 miles from the site. Exhibit 24, p. 34.

*f) will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories: i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood; ii. traffic, noise, odors, dust, illumination, or a lack of parking; or iii. the health, safety, or welfare of neighboring residents, residents, visitors, or employees.*

Based on the following analysis in the Staff Report which the Hearing Examiner agrees with this criterion is satisfied:

“This finding requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Section 1.4.2 of the Zoning Ordinance defines inherent adverse effects as “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use. Non-inherent adverse effects are defined as “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the adverse effect causes “undue” harm to the surrounding neighborhood. When analyzing whether impacts are inherent or non-inherent, Staff examines the size, scale, scope, light, noise, traffic, and environmental effects of the proposed use. Every conditional use has some or all these effects in varying degrees. Thus, inherent effects associated with the use must be determined. In addition, non-inherent effects must be determined as these effects may, by themselves, or in conjunction with inherent effects, form a sufficient basis to deny a conditional use. It must be determined during the Application review whether these effects are acceptable or would create adverse impacts sufficient to result in denial. Staff determined that the inherent physical and

operational characteristics associated with the proposed Telecommunications Tower include the following key issues when they exceed existing conditions or typical conditions or something is unique about the Property that causes additional impacts: 1) excessive vehicular Network Towers II, Conditional Use No. CU202602 36 trips to and from the Site; 2) inadequate storage areas; 3) excessive noise generated by the use; 4) inadequate circulation and parking; 5) excessive lighting; and 6) inadequate screening. There are no unique circumstances that exacerbate the inherent impacts on this Property compared to other Towers of this size or sited as an accessory to a principal use. Less than 50 additional vehicle trips will be generated which is not excessive and remains below the threshold to require a transportation impact study. Adequate off-street parking is available within the Property. The existing areas at the base of the Tower are adequate for equipment and storage use, as evidenced by an existing lease to be executed by at least one of the Tower tenants. The Tower does not impact adequate sunlight and air for the Property. The Tower is not expected to exceed typical noise levels for any activity that is customary to a maintenance facility. Additionally, the Tower is located closer to the multi-lane MD 200 highway than any traffic on Cape May Road, thereby eliminating any disruptions to residences. The existing lighting on the Property is minimal and primarily serves the needs of the Colesville Maintenance facility. Existing lighting at the facility is internal to the Site

and does not intrude onto neighboring properties. As discussed in the above section, there is an existing forest that provides screening along the west and east of the Subject Property. The proposed Tower and associated equipment are largely out of view from the public due to its setback from Cape May Road and the tree canopy. The proposed Telecommunications Tower will be located to the rear of the existing Maintenance Facility and accessed using existing parking and vehicular circulation routes. The properties that abut the Subject Property to the west and east are vacant and undeveloped parkland owned by M-NCPPC. These properties are within the Upper Paint Branch Stream Valley Park and used for public use or recreation purposes. The Telecommunications Tower will be substantially set back from Cape May Road which is the main access road to the site. The ICC (MD 200) runs along the southern edge off the property where the Tower will be located and largely out of view of the neighborhood. The proposed Telecommunications Tower is anticipated to generate maintenance trips about once every six (6) months. No noise, dust, or illumination will be generated by the new use. The proposed equipment is located on a secure foundation and the antennas and transmission lines are silent. There will be no offensive odors emitted by the equipment, transmission lines, or antennas. The Site will not cause any vibrations. While not a requirement for the use, the Project proposes to provide the minimal amount of parking spaces necessary to accommodate maintenance

vehicles. Considering existing service shortages identified within the Plan area, the provision of the proposed Tower will provide a necessary neighborhood service and support the health, safety, and welfare of neighboring residents. There are no expected impacts to the neighborhood's public realm. Overall, Staff determined that the Proposal will not have any non-inherent effects at this location that exceed typical conditions.”

(Exhibit 24, pp. 34-36):

#### **4. Compatibility with the Neighborhood**

Several sections of the Zoning Ordinance require a proposed conditional use be compatible with the character of the surrounding neighborhood.

Section 59.7.3.1.E.1 includes the standards of approval below:

***d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the [master] plan.***

Section 59.7.3.2.E.2 contains an additional requirement for conditional uses in single-family detached zones:

***2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.***

Staff concluded that the proposed conditional use will not change the existing residential character of the property or the neighborhood. Exhibit 38, pp. 24. Staff note that the Applicant is not proposing any physical changes, all exterior improvements are compatible with the surrounding neighborhood, will still reside in the single-family detached house, and the conditional use will take place in the accessory structure to the rear of the property. *Id.* Further Staff

determined the Applicant's proposal to "limiting the operation to weekdays and Saturdays, limiting the hours of operation, and limiting the number of classes and students to ensure the Home Occupation (Major Impact) remains the accessory use for the Property." *Id.* at 25.

The Applicant states that many students walk to the studio from nearby schools and that the amount of traffic generated will be *de minimums*, in comparison with existing traffic on Postoak Road. Exhibit 5. *See also* Exhibit 7, Transportation Study of Traffic. The Applicant further points to the location of the property abutting the PEPCO right-of-way on one side of the property and the sight-tight fencing on the other with the installation of 3 additional trees as further providing screening and compatibility with the neighborhood. *Id.*

Conclusion: Section 59.7.3.1.E.2.d examines whether the Plans goals are achieved in a manner compatible with the area. Section 59.7.3.1.E.2. requires an examination of the compatibility of the use with the character of the residential neighborhood in which it is located, regardless of the goals of the Plan.

The Hearing Examiner has adopted Staff's characterization of the existing neighborhood and has already found that the use fulfills the goals of the Plan. She further finds that it does so in a manner that is compatible with the surrounding area. Key to this finding are the following factors: 1) The use itself will be contained to inside the garage structure, 2) the Application proposes no physical or functional changes to the existing residential use, 3) the studio hours fall generally outside the morning and afternoon school arrival and departure times, and 4) the location of the use adjacent to the PEPCO right-of-way provides additional opportunity for street parking and screening the use from neighbors.

For these reasons, the Hearing Examiner finds that the use is compatible with the surrounding neighborhood in a manner consistent with the Plan and will not adversely affect the character of the surrounding area.

***Section 59.7.3.1.E.3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.***

**Conclusion:** The application satisfies all specific requirements for the conditional use, and with the conditions imposed, meets the standards required for approval.

## **B. Development Standards of the Zone (Article 59-4)**

In order to approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the RE-2C Zone, contained in Article 59.4 of the Zoning Ordinance. A Telecommunications Tower is allowed as a conditional use in the Residential Estate – 2C (RE-2C) Zone. Division 59-3 lists additional standards for the conditional use as outlined and addressed in the preceding section of the report findings. Staff included a table (Exhibit 24, p. 30, in its report comparing the minimum development standards of the RE-2C Zone to what is proposed in this application. The record shows that with the exception of the height which is addressed separately in this Decision, Applicant by far exceeds the minimum requirements. For instance, the minimum lot requirement is 2 acres, and they will have 11.7 acres. Minimum side setback required is 17 feet and Applicant proposes 317.4 feet.

**Conclusion:** Nothing contradicts Staff's assessment of compliance with the development standards of the Zone. The Hearing Examiner finds that the proposed facility complies with the standards of the RE-2C Zone.

### **C. Use Standards for Telecommunications Tower (§59-3.5.2.C.2.c)**

The specific use standards for approval of a Telecommunications Tower Conditional Use are set out in §59.3.5.2.C.c. of the Zoning Ordinance. The applicable standards are:

#### ***C. Telecommunications Tower***

...

#### ***2. Use Standards***

...

***c. Where a Telecommunications Tower is allowed as a conditional use, it may be permitted by the Hearing Examiner under § 3.5.2.C.2.a, limited use standards, § 7.3.1, Conditional Use, and the following standards:***

***i. Before the Hearing Examiner approves any conditional use for a Telecommunications Tower, the proposed facility must be reviewed by the Transmission Facility Coordinating Group. The applicant for a conditional use must file a recommendation from the Transmission Facility Coordinating Group with the Hearing Examiner at least 5 days before the date set for the public hearing. The recommendation must be no more than 90 days old when the conditional use application is accepted.***

Conclusion: The Hearing Examiner finds that the requirements of this section have been met. A review of the TFCG minutes and records the TFCG initially reviewed this Application and recommended approval of the Applicants' proposal well within the time frames outlined above. TFCG reviewed and made its recommendation on June 4, 2025. Exhibit 24, p. 22. This Application was accepted for filing on August 22, 2025. Exhibit 1. The OZAH public hearing for this application was held on October 21, 2025.

***i. A Telecommunications Tower must be set back, as measured from the base of the support structure, as follows:***

***(a) A Telecommunications Tower is prohibited in any scenic setback indicated in a master plan.***

Conclusion: Staff advises that the structure is not located in any scenic setback. *Id.* Having no

evidence to the contrary, the Hearing Examiner finds that this criterion is met.

***(b) In the Agricultural, Rural Residential, and Residential Detached zones, a distance of one foot for every foot of height or 300 feet from an existing dwelling, whichever provides the greater setback.***

Conclusion: The Property is located in a Residential Estate Zone (RE-2C) a residential detached zone. Staff determined that the proposed 179-foot-tall Tower is set back more than one foot for every foot of height of the pole from all property lines and dwellings. As measured from the base of the support structure, the proposed Tower location is over 780 feet from the nearest off-site residential dwelling, which exceeds the minimum of 300 feet for the required setback. It is also approximately 651 feet away from Cape May Road. Exhibit 24, p.23. This was confirmed by expert testimony. T. 61.

***c) In the Employment zones, a distance of one-half foot for every foot of height from the property lines of abutting Commercial/Residential, Employment, or Industrial zoned properties, and one foot for every foot of height from the property lines of abutting Agricultural, Rural Residential, or Residential zoned properties.***

The Property is not in an Employment zone. This finding does not apply.

***d) The Hearing Examiner may reduce the setback requirement to not less than the building setback for a detached house building type in the applicable zone or to a distance of one foot from an off-site dwelling for every foot of height of the support structure, whichever is greater, if evidence indicates that a reduced setback will allow the support structure to be located on the property in a less visually obtrusive location than locations on-site where all setback requirements can be met after considering the height of the structure, topography, existing vegetation, nearby residential properties, and visibility from the street. A reduced setback may be approved only if there is a location on the property where the setback requirements can be met.***

Staff advised that the Applicant is not requesting a reduction of the required minimum setback for the proposed Tower. The Applicant proposes to meet all the minimum required setbacks as

demonstrated in Table 2. Exhibit 24, p. 23. This was confirmed by the testimony of Applicant's expert witnesses. T. 61, T. 62.

***iii. The maximum height of a support structure and antenna is 135 feet, unless it can be demonstrated that additional height up to 179 feet is needed for service, collocation, or public safety communication purposes. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection required by the building permit, the applicant must certify to DPS that the height and location of the support structure conforms with the height and location of the support structure on the building permit.***

The proposed height of the Tower is 179 feet, which is the adjusted maximum permitted if there is a demonstrated need to exceed the 135-foot maximum height of a support structure and antenna. Staff advised and the Montgomery County Transmission Facility Coordinating Group (TFCG) agreed that the additional height will allow the Applicant to meet the purpose of the Project, which is to provide reliable wireless service to both the general public and emergency services operating within these geographic areas of greater Cloverly, Colesville, and Colesville Park, as shown in Figures 1, 9 and 10 of the Staff Report.

The record supports Applicant's analysis of existing coverage data showing that these areas are currently underserved by wireless service. Additionally, the added height for the Tower allows the collocation of additional cellular service carriers. As previously noted, the anchor carrier is Verizon with AT&T and T-Mobile as potential additional carriers at this Site. The ability to accommodate more networks makes the Tower Project more effective in meeting the needs of the general public and addresses the existing coverage gap.

The proposed 179-foot-high Tower has been supported by other review agencies which include the TFCG. Based on the TTFC's review of coverage from multiple carriers, they

recommended approval of the Tower for coverage and colocation. According to the Applicant, data also suggests that the proposed Tower's location at the Colesville Maintenance Depot is uniquely suited to meet the geographic needs of the current coverage gaps. This is based on a comprehensive search of suitable locations in the service area. The record and the testimony of Mr. Golden supports a finding that overall, the Project demonstrates the need for the maximum height of 179 feet based on coverage analysis, colocation capabilities, and to efficiently and effectively meet the practical and economic needs of the general public for non-emergency and emergency usage. For these reasons, combined with the fact that this additional height is largely concealed due to the characteristics of the Site, Planning Staff supports the Applicant's height justification. As conditioned, the Hearing Examiner is satisfied that this requirement is met since Applicant must certify that the height and location conform with the building permit before the tower is operational.

***iv. The support structure must be located to minimize its visual impact. Screening under Division 6.5 is not required, however, the Hearing Examiner may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and nearby residential properties.***

Applicant as well as Mr. Hartung provided ample evidence to show that the Colesville Maintenance Depot was selected for a new Tower in order to maximize coverage in an area with existing cellular service gaps, while also minimizing visual impact on the surrounding area. The Tower is proposed to be located in between MD 200 and the existing office building and maintenance yard of the Colesville Maintenance Depot, which will completely screen the equipment compound. Furthermore, the existing conditions of the Property and the abutting properties provide additional visual shield from the general public.

The Tower is proposed to be constructed of galvanized steel material in order to be least visually intrusive against the sky during the daytime. Also, the Tower's design is not lighted in order to provide a stealth appearance against the nighttime sky and to avoid distractions for motorists travelling along MD 200 to the south. This approach to lighting is consistent with the typical design of Telecommunications Towers.

The Applicant has also conducted photo simulations to evaluate the proposed Tower against existing conditions of the Site and nearby viewsheds referenced earlier under Visual Impacts. The study concluded that the Tower would have minimal impact, and this conclusion was accepted by the TFCG. Staff advised that upon independent review of the materials, Planning Staff concurs with the conclusion that the Tower will have minimal impact. *Id.*

On the basis of the evidence in the record, the testimony and recommendations of Staff, the Hearing Examiner finds that this criterion is met.

***v. The property owner must be an applicant for the conditional use for each support structure.***

The Property Owner, Montgomery County, provided a letter authorizing this application for a conditional use to build and operate the Telecommunications Tower on the Property. Exhibit 18.

***vi. A modification of a conditional use is only required for a change to any use within the conditional use area directly related to the conditional use approval.***

The Subject Applicant is for a new Tower. No modification to an existing facility is proposed at this time. This criterion does not apply.

***vii. A support structure must be constructed to hold a minimum of 3 wireless communication carriers unless the Hearing Examiner finds:***

- a) that collocation at the proposed location is not essential to the public interest; and*
- b) that construction of a lower support structure with fewer wireless communication carriers will promote community compatibility.*

As noted by Staff As proposed, Applicant supplied evidence that the Telecommunications Tower will be constructed to host at least three (3) wireless carriers and this is stated in this decision as a condition of approval. The Co-Applicant and primary anchor for the Tower is Verizon. AT&T submitted an intent letter to co-locate on the Tower if approved at this Site, and T-Mobile submitted a letter of interest. With the relevant condition this criterion is met.

*xii. The Hearing Examiner must make a separate, independent finding as to need and location of the facility. The applicant must submit evidence sufficient to demonstrate the need for the proposed facility.*

## **Need**

The Staff Report outlines compelling analysis that Applicant has shown need. The need for cellular service is practical and a necessity for quality of life, business transactions, and life safety services. The Applicant has noted that now, more than ever, households are relying solely on cellular phones instead of land lines. This societal shift creates a tremendous need to provide adequate and reliable service to all county residents, workers, and visitors. There is a significant need for a new Telecommunications Tower in the Colesville area as demonstrated by the Applicant's Network Towers II, Conditional Use No. CU202602 analysis of cellular service gaps in the vicinity of the Site. As shown in Figures 9 and 10, the Applicant's proposed coverage analysis and map demonstrates that the Project will effectively meet coverage needs and eliminate service blackouts in the Colesville, Colesville Park, and the greater Cloverly area. Support for the Project from various sources also underscores the need. Along with Verizon as the anchor tenant,

T-Mobile is interested, and AT&T intends to co-locate on the Tower. Additional letters of support have been received from the City of Rockville, the City of Gaithersburg, Montgomery County Councilmember for District 5, and the Maryland State Senator for District 17. Further, the Application materials have documented that residents in the surrounding area have expressed their strong support for better cellular service reliability in their neighborhoods. More importantly, an independent assessment of the Project was conducted by the Montgomery County Transmission Facility Coordinating Group and the Application was recommended on its merits from an engineering review perspective. If the proposed Tower is not provided to serve this surrounding neighborhood, the lack of reliable cellular service would persist, and this gap would intensify with future population growth. Further, if the Tower were not provided at the selected Subject Property, it may alternatively be compelled to locate at a less desirable location, or not effectively address existing cellular service gaps, or forego installation altogether, none of which would be in the public's best interest. In addition to supporting the goals of the Cloverly Master Plan, the Project supports other County priorities to provide equitably distributed critical infrastructure across the County. Exhibit 24, p. 27. Mr. Hartung provided compelling testimony about the public safety needs of the vicinity and how failure to make a 911 call due to gaps in service can be life threatening.

The Hearing Examiner finds that the showing of need has been met.

#### **Location.**

The Hearing Examiner has carefully and seriously considered the concerns expressed by Mr. McKinney at the hearing as a resident of the subject neighborhood. Mr. McKinney expressed

concerns about any harmful emissions that could result from this cell tower. He was also concerned about the potential of a drop in the value of his home. The Emissions question is outside the scope of this Hearing Examiner's review. If the Applicant meets federal requirements, which in this case they appear to, and considering the recommendations of the TTFC, the only thing within the Hearing Examiner's jurisdiction is to review eligibility under the Zoning Ordinance. For the reasons outlined below and elsewhere in this Report and Decision the Hearing Examiner has not found any evidence in the record to warrant denial of this application. To the extent concerns exist, it is my hope that they are adequately addressed by the conditions attached to this application that have a direct relationship to considerations specified under the Zoning Ordinance.

Paul Dugan, Radio Frequency Engineer from Millenium Engineering testified about the low emissions from this proposed tower and how it meets federal standards. T.110 – 111. The Hearing Examiner allowed Mr. McKinney and opportunity to ask Mr. Dugan questions. Applicant's expert Mr. Golden provided compelling testimony about the search for an ideal location which spanned nearly 20 years. T.70 – 80. During the hearing he outlined a combination of factors including the fact that almost 90 percent of possible sites are parkland, the fact this location has existing infrastructure that would result in minimal disruption and is ideally set back significantly from residential properties all aligned to make this the ideal location.

The Staff Report also provides compelling analysis regarding the suitability of this specific location. Before considering a new site to address cellular service gaps in the Colesville area, the Applicant considered 15 existing wireless sites within a one-mile radius of the Colesville Maintenance Depot. The reasons each of these sites would not be suitable or available for colocation were reviewed and documented in the Application materials, which included safety

concerns due to proximity, no interest by private landowners, or not suitable at other government owned sites that serve the general public. After a comprehensive assessment of new locations, the Applicant determined that the Coleville Maintenance Depot is the best location for a new Tower to improve wireless coverage for existing and future users, for both non-emergency and emergency purposes.

Based on the evidence submitted in the Application, Planning Staff also concluded that the Colesville Maintenance Depot is the best location for a new Telecommunications Tower to serve the Colesville area from the perspective of 1) project purpose, 2) land ownership, 3) characteristics of the site (activity and function), and 4) character/compatibility with the surrounding area.

The proposed location is ideal to meet the primary purposes of the Project which is to directly impact cellular service levels where gaps exist, and to meet service needs while maintaining the harmony and character of the surrounding neighborhood and avoiding adverse impacts.

The Staff Report provides extensive analysis which the Hearing Examiner finds compelling to support the conclusion that the Colesville Depot meets the intent of the Project's purpose. Exhibit 24 pp 27-28. From the land ownership perspective, it is on county-owned land at the edge of a major roadway with abutting parkland. The county-owned land is a maintenance facility that is mostly industrial in nature. More specifically, the Site is a storage yard for storing construction equipment, building materials, and supplies. It has existing operations that are compatible with the proposed Tower. The abutting parkland is also controlled by a government entity – the Maryland-National Capital Park and Planning Commission (M-NCPPC) and does not have residential or commercial uses. Further, the characteristics of the Site in terms of activity and function make it an ideal location for the Project. The existing activity on the Property entails the storage and

movement of heavy maintenance equipment and materials. This type of activity is compatible with a Telecommunications Tower and its associated equipment compound, which will be secured, unmanned and uninhabited.

Additionally, the Tower will have a secured generator as an alternate power source. Currently, the Maintenance Depot, apart from the front office building for administrative purposes, is a secure facility that does not allow access to the general public. This level of restricted access is also best suited for a Telecommunications Tower.

While there are various activities occurring at the Subject Property, from a function perspective, the facility is a public works or public service type of operation. The Telecommunications Tower is a type of public infrastructure that is meant to serve the existing and future needs of the public. It is also a supportive infrastructure that services other types of public services. For example, cellular service provides an invaluable resource to government operations, schools, police, fire, emergency services, and more.

Finally, an analysis of compatibility with the surrounding neighborhood demonstrates that the Site is uniquely suited for a Telecommunications Tower due to topography, nature of the abutting properties, distances from nearest dwellings and the bulk of the Project will abut preserved parkland and a roadway. The Site has a slight drop in elevation from Cape May Road towards the major highway to the south. The location of the Site off of Cape May Road is ideal based on a comprehensive assessment of over a dozen potential sites and the location of the Tower within the Site is strategic.

The Tower's proposed location within the Site is approximately 651 feet from the primary access road for the Site and furthest away from the residential dwellings that also front along Cape May Road.

Further, the location of the Tower – approximately 780 feet from any dwelling – makes it suitable for added height. Due to the well-suited location, this height will be able to accommodate all three national major wireless carriers and their equipment including antennas.

Some areas of the surrounding neighborhood (Figure 1), mostly to the east, west, and south, are undeveloped or separated from the Site by a roadway. The rear and both sides of the Property are uninhabited. The dense forests of the abutting parkland naturally aid in coverage for viewsheds from the park's interior. The Tower and the associated equipment compound will sit behind the main office.

The Hearing Examiner find that the location criterion has been met.

#### **D. General Development Standards (Article 59-6)**

Conclusion: Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. Section 59.3.5.2.C.2.c.iv. exempts telecommunications towers from the screening requirements of Article 59-6 and states: "The support structure must be located to minimize its visual impact. Screening under Division 6.5 is not required, however, the Hearing Examiner may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and nearby residential

properties.” Other provisions of Article 59-6 of the Zoning Ordinance, such as parking, site access, and open space do not apply to this facility.

The Applicants do not propose signage (except the mandatory sign outside the Compound) or lighting. The practical fact is that traffic, access, parking, lighting, and signage are generally not issues in a cell tower case. The use has no significant need for parking; it creates virtually no vehicular traffic; the site is rarely accessed; it will not have lighting on the tower except as required by law or regulation; and it will have only the identification sign required by the Zoning Ordinance. Thus, there is no need to further address the general development standards in this case. The Hearing Examiner finds that the subject proposal satisfies the applicable general development standards “to the extent ... necessary to ensure compatibility,” as required by *Zoning Ordinance*, §59.7.3.1.E.1.b.

#### IV. CONCLUSION AND DECISION

As set forth above, the application meets all the standards for approval in Articles 59.3, 59.4, 59.6 and 59.7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Network Towers II, LLC (CU 26-02) for a conditional use under Section 59.3.3.5.2.C of the Zoning Ordinance to install and operate a new telecommunication tower and facility is hereby **GRANTED** subject to the following conditions<sup>5</sup>:

1. The use is limited to one (1) Telecommunications Tower.
2. The Telecommunications Tower must be set back, as measured from the base of the support structure, 300 feet from any existing dwelling per Section 59-3.5.2.C.2.C.

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<sup>5</sup> Planning Staff proposed conditions 1-9; the Hearing Examiner has adopted the Planning Staff recommendations on conditions as well as added conditions 10, 11 and 12.

3. The Telecommunications Tower must be no taller than 179 feet. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection required by the building permit, the Applicant must certify to the Department of Permitting Services (DPS) that the height and location of the support structure conforms with the height and location of the support structure on the building permit.
4. In accordance with Zoning Ordinance §59.3.5.2.C.2.c.vii., the support structure must be constructed with sufficient space and capacity to hold a minimum of three (3) wireless communication carriers, including the Applicant, Network Towers II, LLC.
5. The equipment compound must have sufficient area to accommodate equipment sheds or cabinets associated with all the carriers. Outdoor storage of equipment or other items is prohibited.
6. In accordance with Zoning Ordinance §59.3.5.2.C.2.c.ix., the support structure 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.
7. In accordance with Zoning Ordinance §59.3.5.2.C.2.c.x., the support structure must display a sign two (2) square feet or smaller, affixed to the support structure or any equipment building. The sign must identify the owner and the maintenance service provider of the support structure or any attached antenna and provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Hearing Examiner notified in writing<sup>6</sup> within 10 days of any change in ownership.
8. Prior to any land disturbing activities, the Applicant must provide a redline of the approved Final Forest Conservation Plan, showing all proposed development and demonstrating compliance with the approved Final Forest Conservation Plan.
9. The Applicant must ensure compliance with the Forest Conservation Plan and Preliminary/Final Water Quality Plan approved with Mandatory Referral MR2012011 by the Planning Board per Planning Board Resolution No. 12-15 in accordance with Section 22A.00.01.10 of the Code of Montgomery County Regulations ("COMCOR"), Forest Conservation Regulations.
10. In accordance with Zoning Ordinance §59.3.5.2.C.2.c.xi., the Applicant and all owners of the Telecommunications Tower are responsible for maintaining the facility in safe condition.

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<sup>6</sup> The Hearing Examiner adds the qualifier that notice must be in writing.

11. The Applicant must contact the Montgomery County Department of Permitting Services and schedule a preconstruction meeting before any land disturbing or construction activities take place.

12. 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 Telecommunications Tower 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 if any assessed by the Department of Permitting Services.

Issued this 14th day of November 2025.

Office of Zoning and Administrative Hearings



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Khandikile Mvunga Sokoni  
Hearing Examiner

#### NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to appeal the Hearing Examiner's Decision by requesting oral argument before the Board of Appeals, within 10 days issuance of the Hearing Examiner's Report and Decision. Any party of record may, no later than 5 days after a request for oral argument is filed, file a written opposition to it or request to participate in oral argument. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. A person requesting an appeal, or opposing it, must send a copy of that request or opposition to the Hearing Examiner, the Board of Appeals, and all parties of record before the Hearing Examiner.

Additional procedures are specified in Zoning Ordinance §59.7.3.1.f.1. Contact information for the Board of Appeals is:

Montgomery County Board of Appeals  
100 Maryland Avenue, Room 217  
Rockville, MD 20850

(240) 777-6600

<http://www.montgomerycountymd.gov/boa/>

**PLEASE NOTE THE FOLLOWING BOARD OF APPEALS FILING REQUIREMENTS:**

**The Board of Appeals website sets forth these procedures for filing documents:**

**Because remote operations may not always allow us to promptly date-stamp incoming U.S. Mail, until further notice, all time-sensitive filings (administrative appeals, appeals of conditional use decisions/requests for oral argument, requests for public hearings on administrative modifications, requests for reconsideration, etc.) should be sent via email to [BOA@montgomerycountymd.gov](mailto:BOA@montgomerycountymd.gov), and will be considered to have been filed on the date and time shown on your email. In addition, you also need to send a hard copy of your request, with any required filing fee, via U.S. Mail, to the Board's 100 Maryland Avenue address (above). Board staff will acknowledge receipt of your request and will contact you regarding scheduling.**

If you have questions about how to file a request for oral argument, please contact Staff of the Board of Appeals.

The Board of Appeals will consider your request for oral argument at a work session. Agendas for the Board's work sessions can be found on the Board's website and in the Board's office. You can also call the Board's office to see when the Board will consider your request. If your request for oral argument is granted, you will be notified by the Board of Appeals regarding the time and place for oral argument. Because decisions made by the Board are confined to the evidence of record before the Hearing Examiner, no new or additional evidence or witnesses will be considered. If your request for oral argument is denied, your case will likely be decided by the Board that same day, at the work session. Parties requesting or opposing an appeal must not attempt to discuss this case with individual Board members because such *ex parte* communications are prohibited by law. If you have any questions regarding this procedure, please contact the Board of Appeals by calling 240-777-6600 or visiting its [website](#).

**NOTIFICATION OF DECISION TO BE SENT TO:**

Sean P. Hughes, Esquire  
Attorney for the Applicant  
Samuel Avera, Applicant  
Ty McKinney  
Robert Kronenberg, Deputy Director, Planning Department  
Carrie Sanders, Planning Department  
Katie Mencarini, Planning Department

Department of Permitting Services Greg Nichols  
James Babb, Division Chief, Treasury Division  
Michael Coveyou, Director, Finance Department  
Barbara Jay, Executive Director, Montgomery County Board of Appeals  
Mark Bealle, Planning Department  
Elana Robison, Esquire, Associate County Attorney