

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
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Rockville, Maryland 20850
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IN THE MATTER OF
TELECOM CAPITAL GROUP

Applicant

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OZAH Case No. CU 24-17

Before: Kathleen Byrne, Hearing Examiner

ORDER ADMINISTRATIVELY APPROVING A MINOR AMENDMENT

I. BACKGROUND

On September 9, 2024, this Hearing Examiner, approved a conditional use filed by the Applicant, Telecom Capital Group (Applicant or Telecom) to construct an unmanned 160-foot-tall wireless Telecommunications Tower and 3,600 square foot electrical compound at 22900 Old Hundred Road, Barnesville, Maryland 20838 (Tax Account No. 11-00916938). *Hearing Examiner's Report and Decision*, CU24-17 (September 9, 2024)¹. (HE Report). The property is zoned AR (Agricultural Reserve). The Applicant now requests a minor amendment to the conditional use plan approved in September of 2024.

The previously approved conditional use permitted installation of a 160-foot monopole within a 3,600-square foot compound containing the monopole as well as electrical equipment. HE Report pp. 8-9. The monopole compound is to be set back 259 feet from the front property line along Old Hundred Road with the equipment compound enclosed by a chain link fenced in area measuring 60 feet in length and 60 feet in width. *Id.* Access is to be from new driveway spur off the existing onsite driveway approximately 200 feet from the existing entrance on Old Hundred Road. *Id.* The previously approved partial site plan (Ex. 8c) and compound site plan (Ex. 8d) are reproduced on pages 4 and 5 of this Order for convenience.

The Hearing Examiner approved the application subject to the following 8 conditions of approval. *Id.* pp. 34.

1. The use is limited to a Telecommunications Tower per section 59.3.5.2.C.
2. The Telecommunications Tower on the site must conform to submitted Conditional Use Site Plan (Exhibit 8(a)-8(i)).

¹ On September 13, 2024 the Hearing Examiner issued an errata to the September 9, 2025 report and recommendation to correct errors and clarify her decision. All references in this decision to the *HE Report* also include the content of the errata.

3. The support structure must provide space for the antennas of minimum of five (5) wireless communication carriers.
4. In accordance with *Zoning Ordinance* §59.3.5.2.C.2.c.iii, 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.
5. 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.
6. In accordance with *Zoning Ordinance* §59.3.5.2.C.2.c.x., the Telecommunications Tower 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.
7. In accordance with *Zoning Ordinance* §59.3.5.2.C.2.c.xi., the Applicants and all owners of the Telecommunications Tower are responsible for maintaining the facility in a safe condition.
8. Applicants must comply with Forest Conservation Plan No. F20240500.

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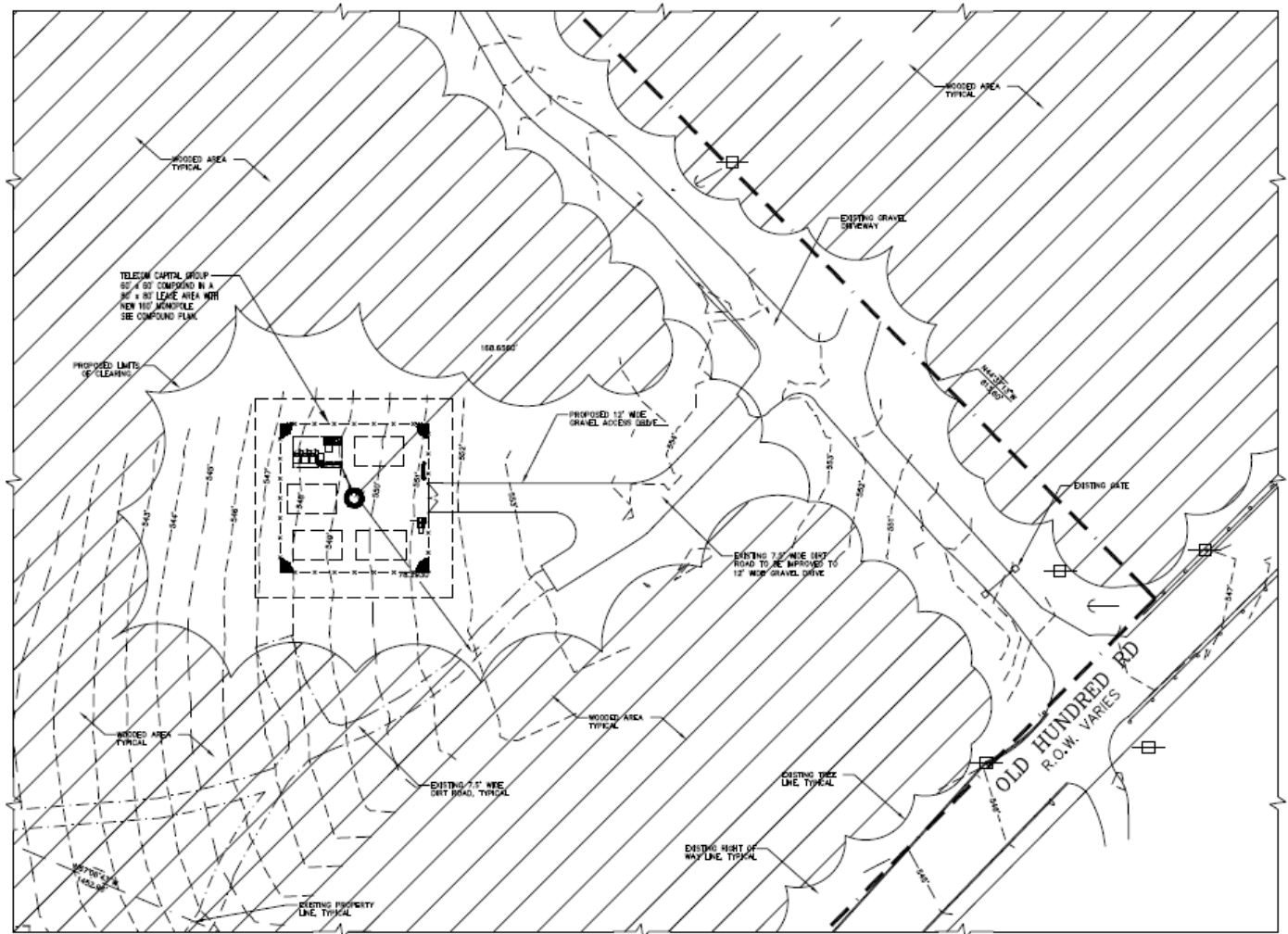


Exhibit 8c – Partial Site Plan



II. MINOR AMENDMENT

1. Applicant's Proposal

On June 3, 2025, the Applicant filed a request for a minor amendment to the original conditional use approval seeking to allow the construction of the transformer and bollards outside of the compound in response to a comment from Reviewer Zou that the transformer must be moved into the compound. See Exhibit 29. The Applicant notes that in the original partial site plan and compound plan the transformer and bollards are not shown, but are shown on the construction drawings. Exhibit 26. Specifically, the Applicant provided the following justification as grounds for the minor amendment. Applicant's engineer Marc A. Marzullo, PE opined that the transformer cannot be inside the compound for utility access reasons. Further, adding

It seems that the addition of transformer and bollards required by Potomac Edison outside the compound fence would be considered a very insignificant modification (de minimis) to the approved CUP site plan. The addition of the transformer and bollards outside the compound does not affect the applicable standards used in the determination for the conditional use approval, nor did it affect the overall LOD of the project

2. Revised Plans

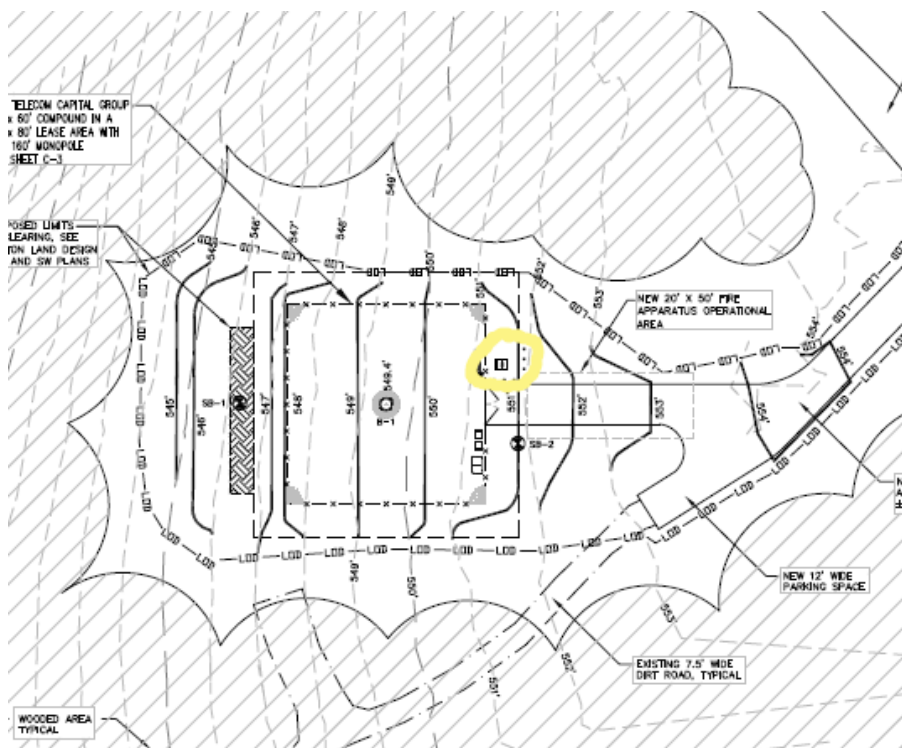
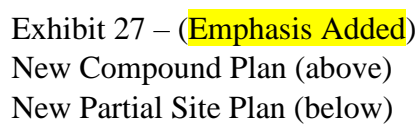
The Applicant submitted a revised partial site plan and compound site plan reflecting the location of the transformer and bollards. The amended partial site plan and compound site plan are shown on the following page.

3. Staff Recommendation

On Monday, June 9, 2025, the Hearing Examiner received correspondence from the Department of Planning noting that the request appears to be minor and is well within the LOD of the previous approval as well as the approved FCP.

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.



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.*

Additionally, the Hearing Examiner notes that Section 59.7.3.1.K.2.b provides as follows: ***“Except for an amendment for a Telecommunications Tower, the resolution or decision, as applicable, must state that any party may request a public hearing on the Board of Appeals' or Hearing Examiner's action within 15 days after the resolution or decision is issued.”*** (emphasis added). Additionally, OZAH Rule 26.0(b)(ii) also states ***“Any amendment to a Telecommunications Tower is also a minor amendment.”*** (emphasis added).

IV. OPINION

The Applicant states that the amendment is minor because the proposed change is required to update the original conditional use site plan to reflect the location of the transformer and to place it outside the compound allow PEPCO required access. 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 and notes OZAH Rule 26.0(b)(ii) as well. The change only updates the conditional use plan to accurately reflect the transformer located outside the compound per the directive of PEPCO. The Hearing Examiner finds the project to be still within the approved limits of disturbance.

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 the location and bollards immediately outside the compound area. 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 location of the transformer outside the compound is a requirement of PEPCO, 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 12th day of June 2025,

ORDERED that the minor amendment application to CU 24-17, to locate of the transformer and bollards immediately outside the compound, in the application of Telecom Capital Group for the property located at 22900 Old Hundred Road, Barnesville, Maryland 20838 be and hereby is approved, and it is further

ORDERED that this amendment and 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

COPIES TO:

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