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I. STATEMENT OF THE CASE

On January 15, 2025, Verizon Wireless and the Maryland Department of Transportation State Highway Administration (“Applicant” or “Verizon”) filed an application for a conditional use under the Montgomery County Zoning Ordinance (“Zoning Ordinance”) §59-3.3.5.2.C.2.c (Telecommunications Tower) and §59-3.3.1.4 (Temporary Use) seeking approval for both a conditional use and for temporary use for a temporary telecommunications tower (“Facility”). Exhibit 1. The Property is owned by the Maryland Department of Transportation State Highway Administration (“SHA”) and is located in an R-60 zone. Exhibit 29, pg. 1.

The Hearing Examiner notes this is the second application for a temporary telecommunications tower to come before OZAH for these same carriers for the same reason. On February 22, 2024, New Cingular Wireless PCS, LLC, d/b/a AT&T Mobility, Yeshiva of Greater Washington, Montgomery County, and Smartlink Group, LLC filed an application for conditional use under the Zoning Ordinance §59-3.3.5.2.C.2.c (Telecommunications Tower) and §59-3.3.1.4 (Temporary Use) seeking approval for both a conditional use and for temporary use for a temporary telecommunications tower at 2010 Liden Lane, Silver Spring, Maryland. The Katherine Taylor, the Hearing Examiner assigned, approved application CU 24-14 on May 8, 2024. However, after receiving approval of CU 24-14, the lease for the property that was the subject of CU 24-14 was terminated, requiring Verizon to seek a different location for its antenna.

The Applicant’s proposed temporary monopole and antenna will be used to relocate and operate three cellular communications carriers, AT&T, T-Mobile and Verizon, while the Washington Suburban Sanitary Commission’s (“WSSC”) North Woodside Water Tank located on

Seminary Place (“WSSC Tower”), the permanent location of the tower, will be temporarily unavailable during planned refurbishment of the WSSC Tower. Exhibit 6.

The Montgomery County Transmission Facility Coordinating Group (TFCG) concluded there was a need for the facility on October 2, 2024:

... “Recommended on the condition the application receive conditional use approval from OZAH. Recommendation is subject to compliance with all applicable laws.” Exhibit 26.

Staff of the Montgomery County Planning Department (“Planning Staff” or “Staff”) issued its report on February 7, 2025. Exhibit 29. Staff recommended approval of the application subject to seven conditions. *Id.*, p. 3-4.

OZAH issued notice of the public hearing on January 15, 2025, for a hearing on February 14, 2025. Exhibit 28. The public hearing convened on February 14, 2025, as scheduled. The Applicant presented three witnesses in support of the application:

- Ryan Davis, Project Manager at Site Link
- Niculai Alistar, a radiofrequency engineer
- Alexander Leadore, Senior Structural Engineer at Morris & Ritchie Associates

T. 15-19, 20-28, 28-38.

Weighing all the 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 (1) 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, under §59-3.3.5.2.C.2.c (Telecommunications Tower) and (2) the use proposed in this application conforms to the provisions of §59-3.3.1.4 for temporary use for a temporary telecommunications tower. Therefore, the Hearing Examiner hereby grants the Applicant’s requests.

II. FACTUAL BACKGROUND

A. The Purpose of the Application

The Applicant states that the temporary Facility is required because all three major wireless providers (AT&T, T-Mobile, and Verizon) must remove their antennas from the existing telecommunications facility located on WSSC's North Woodside Water Tank located on Seminary Place. Because the WSSC Tower is undergoing a two-year rehabilitation project, all existing wireless antennas must be removed until the rehabilitation is completed. T. 14-15 and Exhibit 6. The removal of the antennas will cause a significant gap of wireless coverage for this area of Montgomery County for all three major wireless networks requiring a new temporary location for placement of a tower. T. 14-16.

Mr. Davis, the Applicant's consultant explained how this site was chosen. T. 12. Mr. Davis explained site selection is limited by geography requiring a location to provide service in the coverage gap created once the antennas are removed from the water tank. T. 15-16. Mr. Davis testified that the Facility will be temporary and that once the WSSC Tower is operational again, the Facility will be removed. T. 17. Applicant has stated that the WSSC Tower work will take up to 24 months. Staff recommends approval for 36 months, and I agree that the additional time is reasonable. Exhibit 29, pg. 3.

B. The Subject Property

The Subject Property is approximately 2.45 acres in size and is part of the I-495 (Capital Beltway) right-of-way and is bounded by Georgia Avenue to the East, the Georgia Avenue on ramp to the Capital Beltway to the north and west, and the outer loop of the Capital Beltway to the South ("Site"). Exhibit 29, pg. 6. Staff note the property is triangular shaped and is "bisected by the Georgia Avenue sidepath's bicycle and pedestrian bridge. *Id.* Staff note that

The project site area is in the center approximately 27 feet by 37 feet and rectangular in shape *Id.*

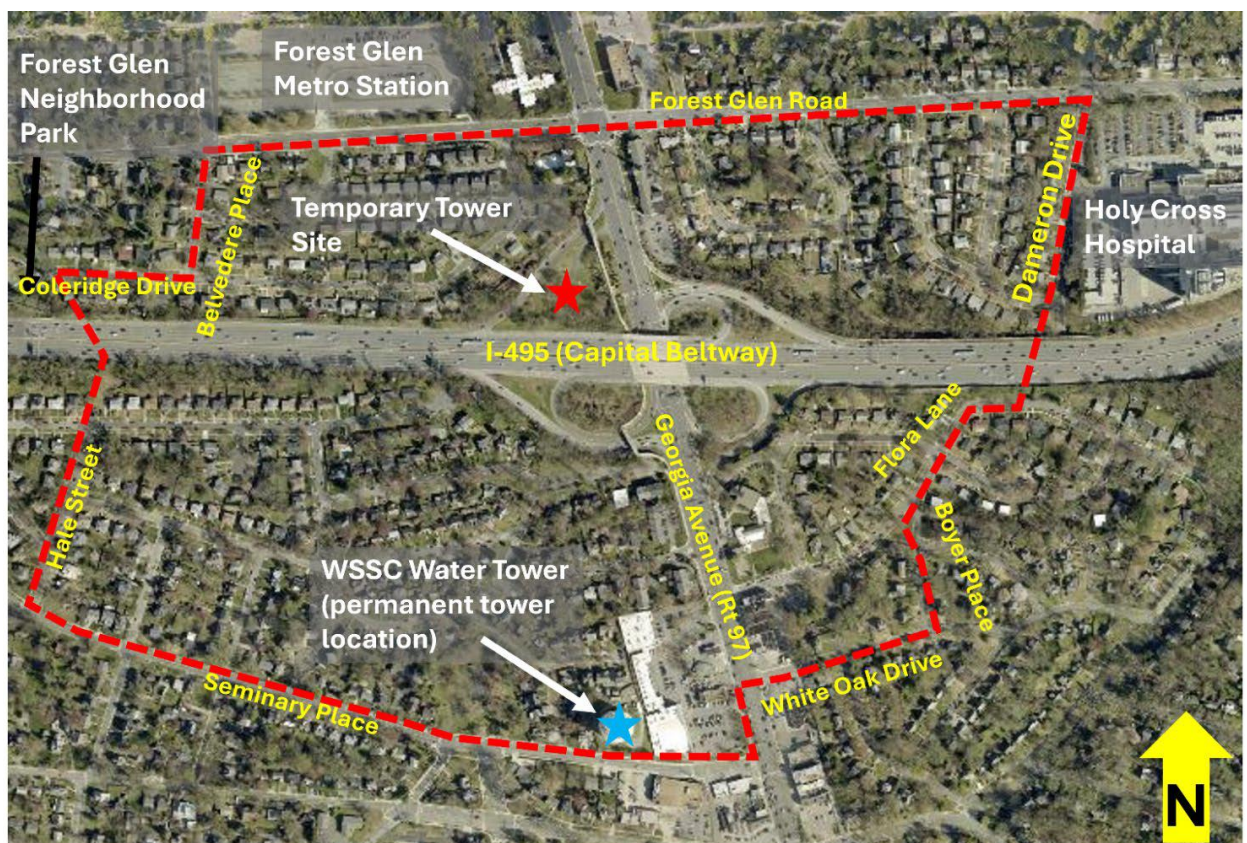


Staff Report, Exhibit 39, Figure 3, p. 7

C. 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.

Because the property is a “state-owned right-of-way” it does not have any zoning, but its primary use is recognized as being the “state right-of-way” and a previously approved existing use for telecommunications.¹ Exhibit 6, pg. 3. Staff defined the neighborhood based on topography and the visual impact analysis provided by the Applicant noting the boundaries are complicated because of the presence of the Capital Beltway and the adjacent road network. Exhibit 29, pg. 5. See image below.



Staff Report, Exhibit 29, Figure 1, p. 4

¹ Staff identified the underlying zoning as being R-60. Exhibit 29. The Applicant states the property has no zoning, because it is State owned, but notes the nearest parcels to the site as being zoned R-60. Exhibit 6. The Hearing Examiner need not discuss the underlying jurisdictional issues to issue her report and recommendation.

Staff identified the following conditional uses/special exceptions identified in the neighborhood, as shown above:

1. Special Exception S2766: To permit an accessory apartment.
2. Special Exception S748: To permit a non-resident medical practitioner's office.
3. Special Exception S215: To permit off-street parking in connection with a proposed office building.
4. Special Exception S1094: To permit the continued use of an existing accessory apartment in a private dwelling.
5. Special Exception S981: To permit the use of an existing accessory apartment.

Exhibit 29, p. 5.

The Hearing Examiner finds Staff's rationale reasonable given the presence of the Capital Beltway, lack of suitable areas and the fact that the placement on the Site will be temporary. For that reason, she accepts Staff's determination of the surrounding area.

D. Proposed Use

The Applicant proposes to construct and operate a temporary 155-foot-tall telecommunications facility ("Facility") – monopole and antenna -- with ancillary equipment on the Property. The proposed monopole and antenna will be used to locate and operate three cellular communications carriers while the WSSC water tank on Seminary Place, the permanent location of the antennas, will be temporarily unavailable during planned refurbishment of the WSSC water tank. The Applicant requested approval for 24 months (but Staff recommended up to 36 months).

Exhibit 29, pg. 1, 8.

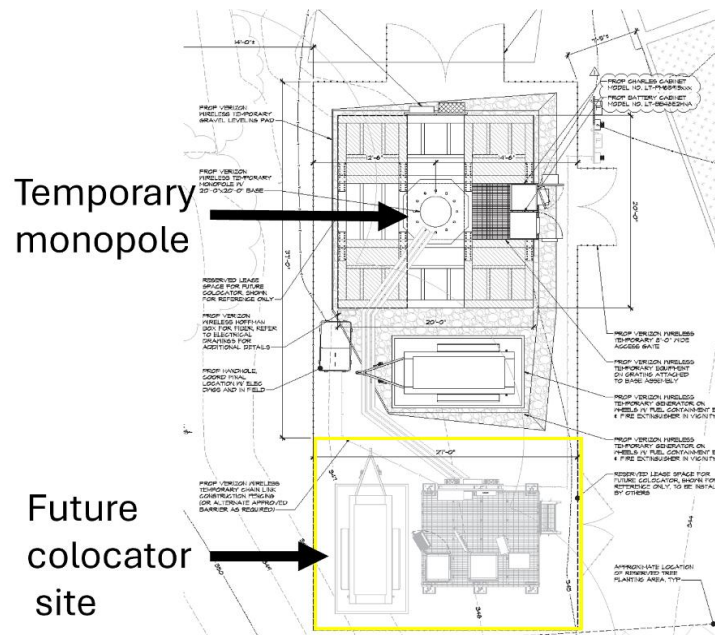
1. Site Plan (Tower and Compound)

According to Staff:

The twenty-seven (27) foot by thirty-seven (37) foot compound will be surrounded by an eight (8) foot tall chain link fence. The compound will be placed on a temporary gravel base to level the area. The monopole will be placed on a twenty (20) foot by twenty (20) foot base, on top of six (6) inches of gravel to level the base. The monopole will be attached to a temporary base assembly. The

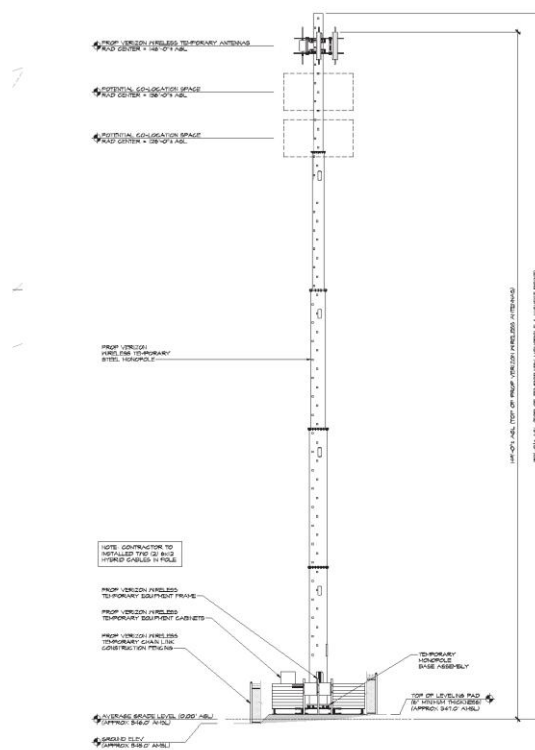
base assembly will be ballasted with concrete in a weight that meets or exceeds the minimum required in the structural specifications of the temporary monopole. The proposed monopole will be painted with the standard matte finish steel gray, which is designed to blend into the horizon to the extent it is visible.

Exhibit 29, pg. 8



Staff Report, Exhibit 29, pg. 8, Figure 4

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Staff Report, Exhibit 29, pg. 8, Figure 5

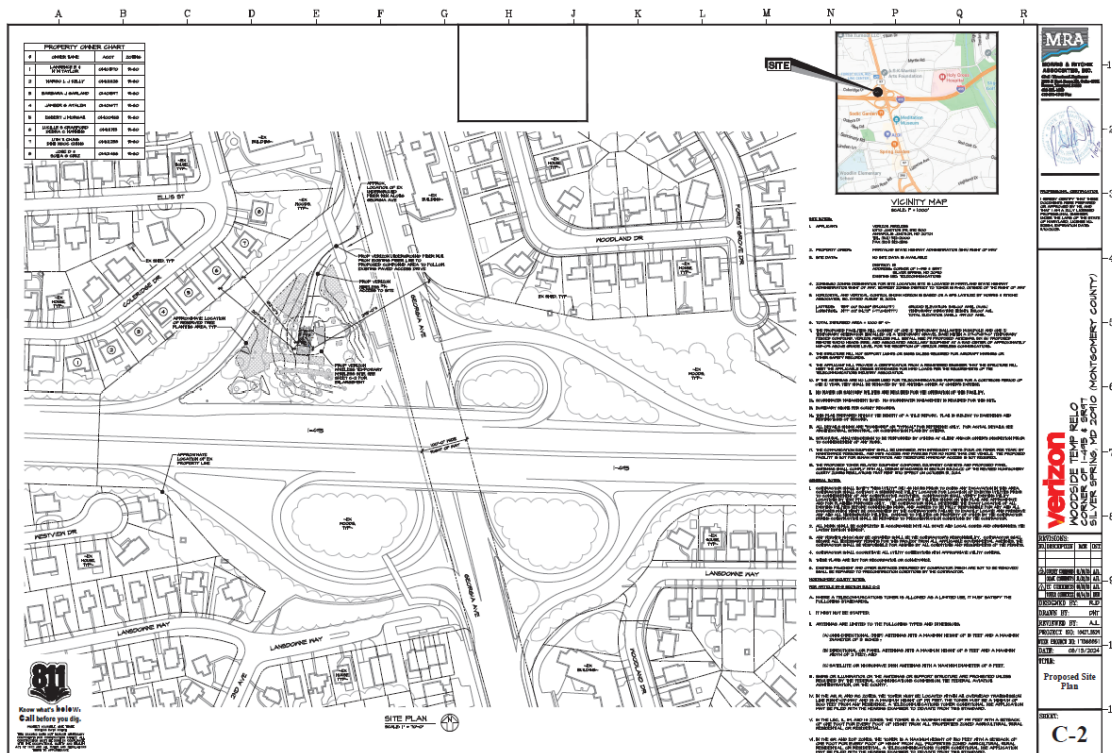
The Facility will operate 24 hours a day 365 days a year automatically and not require any personnel or hours of operation. Exhibit 29, pg. 9. The only site visits will be for an occasion repair or modification. *Id.* The Applicant's structural engineer expert, Mr. Leadore testified to the permit drawings used for the construction of the site. T. 30. Specifically, he explained that the biggest difference is that with a standard monopole there are generally two types of foundations, a drilled pier or a pad and pier, and that involves excavating the earth, drilling down 30 feet or so. T. 31 He further explained that a temporary tower rests on top of the soil, so it does not require that earthwork. T.31. Regarding the safety of a temporary structure, he explained that there are no safety concerns because the Facility is still designed to meet IBC, ASC, and all the governing codes. T. 32.

The Applicant's experts and the Staff Report discussed the need for coverage at this location.

The facility is required because all three major wireless providers (AT&T, T-Mobile, and Verizon) are required to remove their antennas from an existing telecommunications facility located on the Washington Suburban Sanitary Commission's ("WSSC") North Woodside Water Tank (Figure 1) located on Seminary Place. The WSSC water tank is undergoing a two-year rehabilitation project. The rehabilitation project will require all wireless antennas to re-locate for twelve (12) to twenty-four (24) months. Once the rehabilitation is complete, all three wireless providers have a lease agreement to relocate their antennas back onto the water tower. Absent a new, temporary location for the providers' wireless antennas, there will be a significant degradation of wireless coverage for this area of Montgomery County for all three major wireless networks, including a portion of Interstate 495.

The facility will also replace and enhance the existing emergency and non-emergency wireless coverage in the area. Demonstrating the significant need for this Site, AT&T has signed a letter of intent in support of this application, certifying its intent to co-locate on the facility. T-Mobile has also had discussions with Verizon and has indicated a significant need to relocate its antennas onto the monopole. The facility includes space for Verizon to locate its antennas, with additional space for AT&T and T-Mobile.

Exhibit 29, pgs. 9-10.



Site Plan, Exhibit 11

2. Parking and Access

The Zoning Ordinance contains no parking requirements for a telecommunications tower and the Applicants do not seek authorization for parking. *Zoning Ordinance*, §59.6.2.4. As stated in the Applicant's Statement of Justification, the site will be accessed by personnel on foot and, therefore, no driveway access or parking is required. Exhibit 6, pg. 10. Since the device is not staffed and requires maintenance visits only once or twice a month, a parking facility is not needed. Staff confirms that the Zoning Ordinance sets no parking requirements for this type of use. Exhibit 29, pg. 15.

Mr. Leadore testified that the site is relatively flat, no earthwork is required, no disturbance of the soil will occur and everything will be done on top of the existing topography. T. 30. He further explained that unlike a permanent pole, the temporary tower rests on a 20 foot by 20 foot steel base with 28 blocks on that "a total of 137,000 pounds that will stop the tower." T. 32.

3. Landscaping, Lighting and Signage

The Applicants do not propose any lights on the tower or the Compound. Exhibit 6, p. 12; Exhibit 28, p. 15. As for signage, as required by the Zoning Ordinance, the Applicant shall supply a sign no larger than two square feet which shall be affixed to the structure to identify the facility owner(s) and operator(s). No other signs are allowed, unless required by the Federal Communications Commission (FCC), the Federal Aviation Administration (FAA), or the County. Applicant states it will comply with this provision. Exhibit 6, p. 9.

Zoning Ordinance, §59-3.3.5.2.C.2.c.iv. provides, inter alia, "Screening under Division 6.5 is not required." Because the visibility of a telecommunications tower is always a concern in terms of compatibility, both Staff and the Hearing Examiner do examine issues relating to landscaping

and screening. The Applicant notes that the location was chosen to maximize coverage, while minimizing visual impact on the surrounding area. Exhibit 6, pg. 8. Because the Facility is located in a state-owned right-of-way, there is no adverse impacts to County residential properties, further it will be buffered from nearby residential areas by existing state roads and highways. *Id.* The Applicant notes that the existing vegetation and topography will assist in minimizing and visual impact. *Id.*

E. Visual Impact

The most significant issue regarding a telecommunications tower in an area with nearby residences is its visual impact upon the neighbors. Neither OZAH nor Planning received submissions from neighbors in opposition to this proposal.

Applicant submitted several photographs from a variety vantage points surrounding the proposed replacement poles. Those photographs were included in the Staff Report and some of which are reproduced below.



Exhibit 29, p. 10, Figure 6: View of Facility from southwest



Exhibit 29, p. 10, Figure 7: View of Facility from southeast

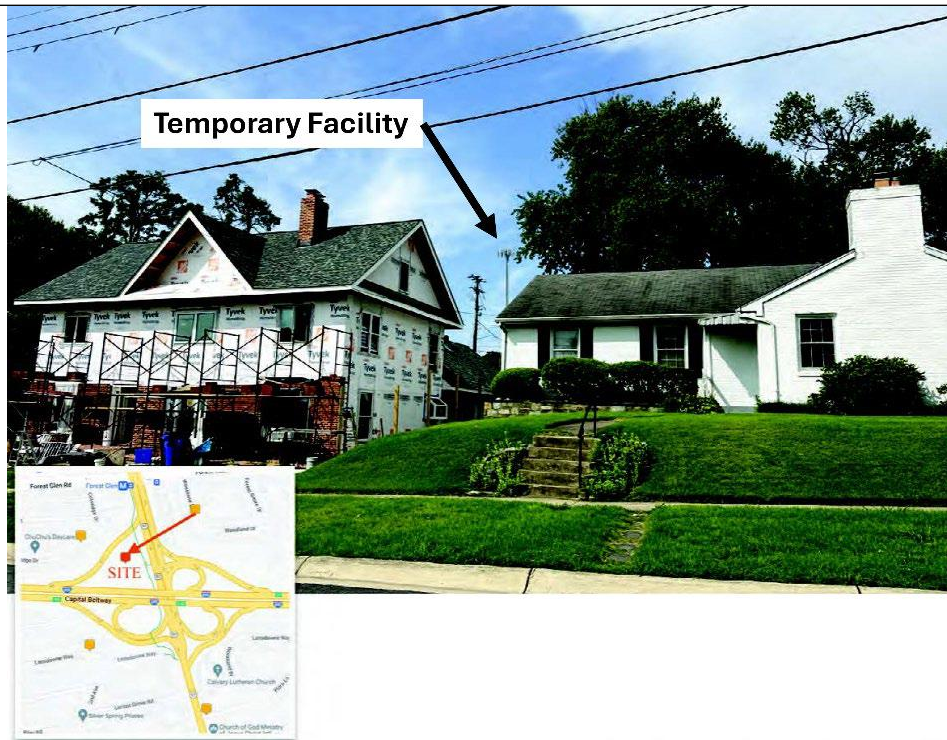


Exhibit 29, p. 11, Figure 8: View of Facility from northeast

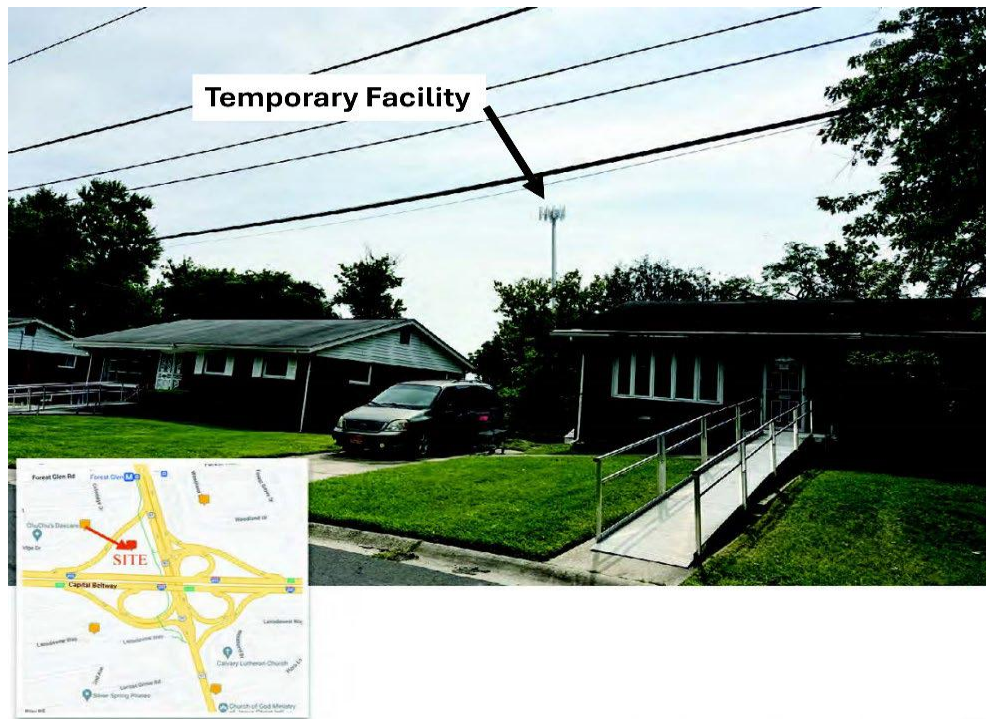


Exhibit 29, pg. 11, Figure 9: View of Facility from the Northwest

F. Community Response

The Notice of Hearing was sent to Abutting and Confronting Property Owners. Exhibit 28. Neither OZAH nor the Planning Department received any letters of opposition to this application. No one appeared at the hearing to testify in opposition.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that predetermined legislative standards are met. These standards are both specific and general. General standards are those findings that must be made for almost all conditional uses. *Zoning Ordinance*, §59.7.3.1.E. Specific standards are those which apply to the particular use requested -- in this case, a Telecommunications Tower allowed under *Zoning Ordinance* §59.3.5.2.C.2. These standards are listed below with the Hearing Examiner's findings on each standard.

In addition to conditional use approval, Applicant seeks the approval for a Temporary Use and the granting of a Temporary Use Permit. The Zoning Ordinance allows for the approval of a “Temporary Use” under the following conditions: (1) the use is temporary in nature; (2) the use is established for a fixed period of time with the intent to discontinue the use when that time is up; and (3) the use does not involve construction or alteration to any permanent structure. See *Zoning Ordinance*, § 3.1.4(A).

A. Conditional Use - Necessary Findings (§59.7.3.1.E.)

The general findings necessary to approve a conditional use are found in §59.7.3.1.E of the Zoning Ordinance:

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

Conclusion: Planning Staff approved FCP Exemption No. 42025074E on November 15, 2024.

There are no other applicable previous approvals on the Subject Site. Exhibit 29, p. 12.

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 §s 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.

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

Conclusion: Development of the Property is guided by the 2020 Forest Glen/Montgomery Hills Sector Plan (“Sector Plan”),² and any other applicable master plans. Staff advises that the Master Plan “does not expressly address telecommunications or wireless facilities.” *Id.* Staff note the proposed monopole is consistent with the Master Plan’s goals by “Create[ing] built environments that improve quality of life through public amenities, improved mobility, improved air and water quality, and safe, attractive and accessible public spaces.” *Id.* The Hearing Examiner agrees with Staff that maintaining wireless services and emergency communications is consistent with the Master Plan’s goals related to quality of life. Staff note further that the pole will be located within the I-495 right-of-way which is identified in the Sector Plan as an existing highway use. Staff determined that the application substantially conforms with the Master Plan. *Id.* The Hearing Examiner finds that this criterion is met.

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

Staff found that the proposed tower meets the above criterion:

The facility will not alter the character of the surrounding neighborhood. The facility is being located in a portion of the Capital Beltway right-of-way. The monopole will be located in a depression in the ground to minimize the visual impacts. The temporary monopole will be painted with the standard matte finish steel gray, which is designed to blend into the horizon to the extent it is visible. The facility will replace and support existing wireless coverage to ensure the area maintains adequate and reliable emergency and non-emergency wireless services. Any visual impact will be temporary, as conditioned.

Exhibit 29, p. 13.

² Staff use the term “Master Plan” rather than “Sector Plan” as shown above. Content referred to above is applicable regardless of the descriptive term used.

Conclusion: The Hearing Examiner has already discussed conformance to the Master Plan. For the reasons stated above, the Hearing Examiner finds that the proposed use will be in harmony with the character of the neighborhood and will not alter the surrounding neighborhood in a manner inconsistent with the Plan. While the tower cannot be fully screened from view, its location on SHA right-of-way property adjacent to the Capital Beltway lessens the visual impact. Further, any visual impact will be temporary as the use is only proposed for a period of 36 months. Nothing in the record suggests that the use will have a notable negative impact on the area since it generates no traffic, does not require parking, and will not generate noise or smells. 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

Conclusion: A review of the Zoning Map in this case (Exhibit 4) shows that the abutting properties are zoned R-60 (Residential Detached). Staff determined that if approved, the use “will not increase the intensity, or scope of the conditional uses in the area to adversely affect the residential nature of the area.” Exhibit 29, pg. 13. Staff also noted that the majority of the few conditional uses and special exceptions within the staff-defined neighborhood vicinity are residential in nature.

Id. Additionally, the facility is shown within the Capital Beltway right-of-way and not on a residential property. *Id.* The Hearing Examiner finds that this criterion for approval is met.

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 approval of a preliminary plan of subdivision is required for the proposed use. By its nature, an unmanned and unoccupied telecommunication tower would have no significant impact on schools, police and fire protection, water, sanitary sewer, and public roads. Staff advises that the use does not require any public services or facilities beyond what already exists on the Property and will remain sufficient for the proposed use. Exhibit 29, p. 14. The Hearing Examiner finds that the proposed development will be served by adequate public services and facilities. The Hearing Examiner finds that this criterion is met.

g. 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, visitors, or employees.

This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “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.” *Zoning Ordinance*, §59.1.4.2. Non-inherent adverse effects are “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.” *Id.*

As specified in §59.7.3.1.E.1.g., quoted above, inherent adverse effects are not a sufficient basis for denial of a conditional use. Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a conditional use, but there are not non-inherent adverse effects.

Staff concluded that:

Inherent impacts of a communications facility are visual and disruptions due to construction for installing and removing the monopole and associated equipment. The Applicant has identified a location that takes advantage of the existing screening provided by existing trees and topography. The location is also directly accessible by vehicle, which should limit traffic impacts of the construction vehicles on the surrounding neighborhood. Some noise will be made during construction and removal, but those impacts will be temporary and under the review the Department of Permitting Services.

The facility will not create any noise or light pollution and will be well insulated inside the Property and surrounded by trees and topography which will offer screening, as previously noted. It will have no impact on the peaceful enjoyment, economic value or development potential of abutting and confronting properties, which are mostly roadways, or the general neighborhood. As conditioned, the facility will be removed in no more than 36 months.

The proposed monopole will not create any traffic, noise, odors, dust, fumes, illumination, or need for additional parking. The monopole does not require any additional parking as it is an unmanned facility and will only be visited by a technician a few times per year. The technician will access the facility by the existing paved entrance on Georgia Avenue and park in the existing paved area. There are no lights on the proposed monopole.

The proposed monopole will not have any impact on health, safety, welfare of neighbors, residents, visitors, or employees. The monopole and equipment area will be surrounded by a chain link fence that will provide safety and security.

Neither Staff nor the Applicant identified any non-inherent adverse effects of the use.

Conclusion: The Hearing Examiner agrees with Staff's analysis of the inherent and non-inherent characteristics of a telecommunications facility. Based on this record, the Hearing Examiner concludes that the proposed use, as conditioned, will not cause undue harm to the neighborhood as a result of adverse effects in any of the categories listed in §59.7.3.1.E.1.g.

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:

The temporary facility is compatible with the neighborhood and will not have any significant visual impact on the area. The Applicant provided renderings of the proposed Facility from several vantage points in the area, and while the top of the facility is visible, the lower portion will be partially screened within the existing conditions of the area including the existing trees and the topography. Approval of the facility will maintain existing emergency and non-emergency wireless services in the area, thereby maintaining the present character of communications and emergency services in the neighborhood. After the antennas are relocated on the WSSC water tank, the facility will be removed, and the area will be returned to its present condition.

Exhibit 28, pg. 15.

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

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 for the reasons discussed above, the Hearing Examiner concludes that the conditional use should be approved, as conditioned in Part IV of this Report and Decision.

B. Conditional Use - Development Standards of the Zone (Article 59.4)

To approve a conditional use, the Hearing Examiner must find that the application meets the development standards of the zone where the use will be located – in this case, the R-60 (Residential - Detached) Zone. Development standards for the R-60 Zone are contained in §59.4.4.9.B. of the Zoning Ordinance.

Conclusion: The Hearing Examiner agrees the proposed Facility is appropriate given the fact that (1) the Site is located on the SHA right-of-way adjacent to the Capital Beltway; (2) the project will not require any grading or permanent buildings or structures; (3) no additional access points are needed; (4) no landscaping is required; (5) the Zoning Ordinance does not require parking spaces for unmanned telecommunication facilities; (6) no lighting or signage is proposed except the sign mandated by the Zoning Ordinance.

Based on this evidence, and having none to the contrary, the Hearing Examiner finds that the application meets the development standards of the R-60 Zone.

C. Conditional Use - Use Standards for a 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. The TFCG initially reviewed this Application and recommended approval of the Applicants' proposal on October 2, 2024. While Planning accepted the Application on January 15, 2025, the Application was submitted to Planning on November 14, 2024, which date is well within the 90 days after the date of the recommendation. This criterion is met.

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. Exhibit 28, pg. 16. 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 Detached zone (R-60). The proposed temporary monopole is set back more than one foot for every foot of height of the temporary pole from all property lines and dwellings. However, the setback from the nearest detached house building is less than 300 feet. For that reason, the Applicant is requesting the Hearing Examiner allow for a temporary reduced setback requirement to a detached house building type from 300 feet to a distance of at least one foot for every foot of height on the temporary pole (155 feet), as allowed by §59-3.5.2.C.2.ii(d) Zoning Ordinance and as further discussed in Finding 2.ii.d below. The temporary pole is set back as follows:

- 182 feet from the northwest Property line;
- 293 feet from the east Property line; and
- 207 feet from the nearest existing dwelling to the north.
- To the south is I-495, Capital Beltway

Exhibit 29, pg. 16.

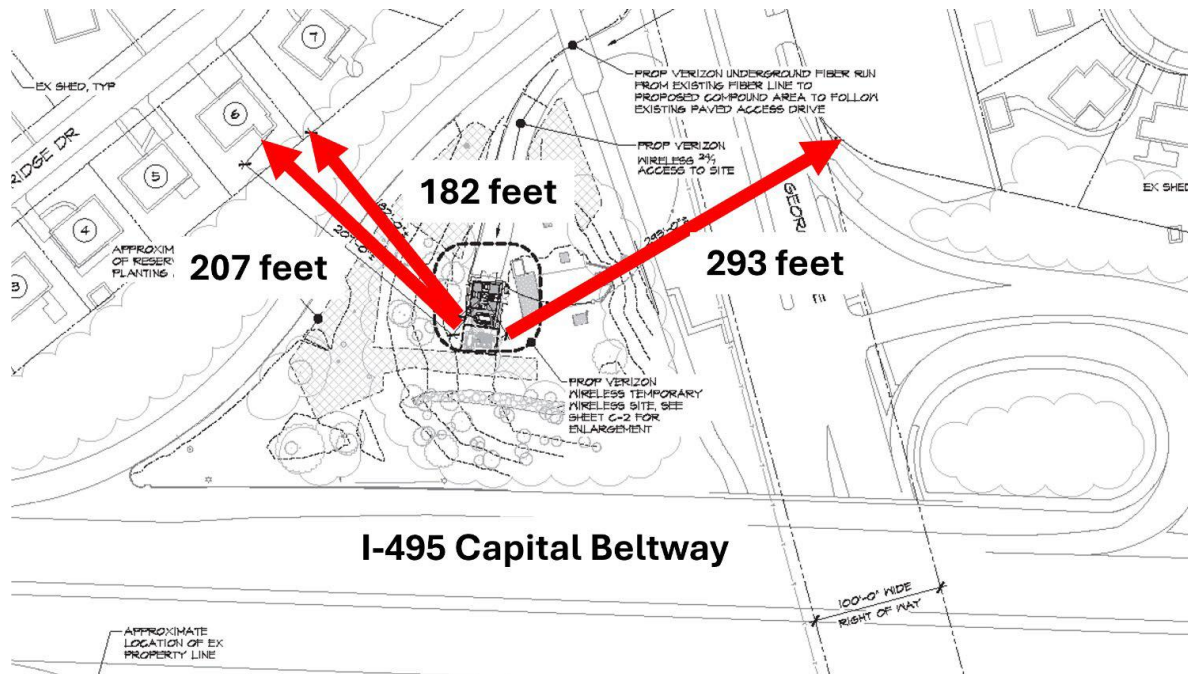


Exhibit 28, pg. 17, Figure 10, Distance from Adjacent Properties

The Hearing Examiner finds the requested reduced setback will be necessary and allowed pursuant to Section 59-3.5.2.C.2.c.ii(d).

(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.

Conclusion: The Property is not in an employment zone. This criterion 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.

Conclusion: The Applicant is requesting a reduction the required minimum setback for the temporary pole from a detached dwelling to not less than a distance of one foot for every foot of height, or 155 feet in this case. The Applicant can achieve a distance of 207 feet between the Facility and the nearest off-site dwelling unit.

The Hearing Examiner agrees with Staff in that by allowing a reduction in setback, the Applicant can locate the Facility in the I-495 right-of-way located with the existing transportation infrastructure taking advantage of the topography of the site by locating the facility in a depression, reducing the impact a ground level. Exhibit 29, pg. 18. The Applicant's expert testified that should the tower fall straight over it would not fall onto any nearby property lines or dwellings. T. 35. Further he stated that the likelihood of the tower falling to be very minimal. T. 35. Despite its temporary nature, the facility is designed to meet all ANSI and other engineering standards, and it will offer no danger to nearby buildings. Exhibit 29, pg. 18.

The reduction of the setback from 300 feet to 207 feet from the nearest dwelling building will be allowed. The Hearing Examiner finds that this criterion is met.

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.

Conclusion: The proposed height of the monopole is 155 feet, which is above the 135-foot maximum. The Hearing Examiner has discretion to permit a monopole higher than 135-feet. Staff determined that due to the location available and the need for all three (3) wireless carriers to re-locate their antennas, the proposed tower must be tall enough to meet the coverage requirements for all three (3) carriers and that the 155. Exhibit 29, pg. 18. The Hearing Examiner agrees with

Staff and finds that the proposed monopole at 155 feet is at the minimum height to provide Verizon, AT&T and T-Mobile with adequate replacement coverage and a reduction in height of the monopole could cause coverage deficiencies. The Hearing Examiner also finds that the requested increase in height is necessary for service, collocation and public safety communication services (including FirstNet). Verizon must certify that the height and location conform with the building permit before the temporary facility comes online. This criterion is met.

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.

Conclusion: The issue of visual impact is always a major concern with large telecommunications facilities. Applicant states that the location was chosen to maximize coverage, while minimizing visual impact on the surrounding area. The Facility is located in between existing school buildings which will completely screen the equipment Compound. Staff determined that locating the Facility in a state-owned right-of-way, being painted a light gray, buffered from nearby residential areas by existing state roads and highways and that existing vegetation and topography will assist in minimizing visual impact. *Id.* at 19. Staff also note that the height was chosen to be the least visually intrusive, while providing the minimum height to allow all three wireless carriers to co-locate their antennas to preserve emergency and non-emergency wireless services in this area of Montgomery County. Staff also note that the Facility will be completely removed within thirty-six (36) months so any impacts will be temporary. *Id.* The Hearing Examiner finds the Applicants have minimized the visual impact of the Facility as much as possible. 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.

Conclusion: The Hearing Examiner finds the property owner to be SHA who is also a co-applicant and has authorized this submission. Exhibit 29, p. 19. This criterion is met.

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.

Conclusion: Not applicable. The subject application is for a new use, not a modification.

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.

Conclusion: The Facility is designed for at least three (3) wireless carriers: AT&T, Verizon, and T-Mobile and that while the Applicant is Verizon, both AT&T and T-Mobile support this application. The Hearing Examiner finds that this criterion is met.

viii. 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.

Conclusion: Staff determined, and the Hearing Examiner finds, that the equipment Compound to be sufficient for all three carriers. Exhibit 29, p. 19. No outdoor storage of unrelated equipment or other items is reflected in the plans and such storage is prohibited by a condition in Part IV of this Report and Decision.

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.

Conclusion: To ensure compliance with this provision, the Hearing Examiner has imposed a condition in Part IV of this Report requiring that the support structure 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.

x. The support structure must be identified by a sign 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.

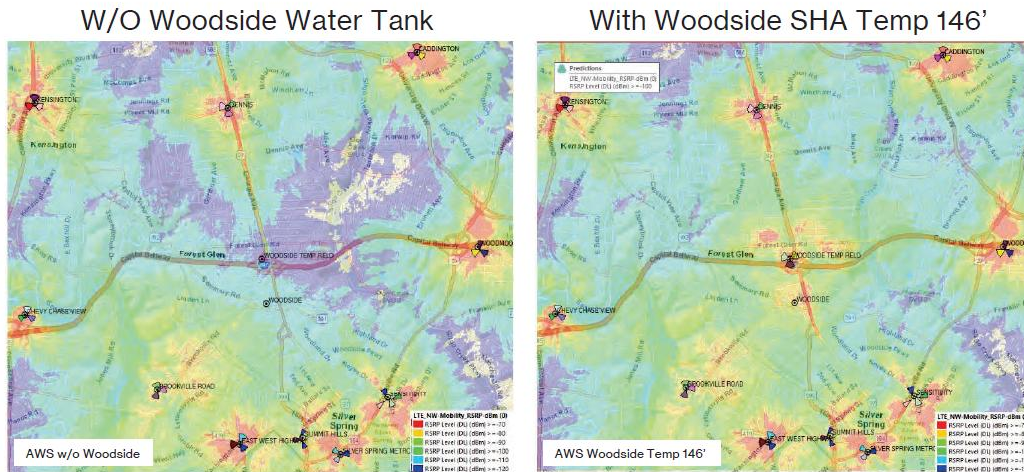
Conclusion: To ensure compliance with this provision, the Hearing Examiner has imposed a condition in Part IV of this Report and Decision, requiring that the support structure be identified by a sign two square feet or smaller, affixed to the support structure or any equipment building and requiring that the sign be updated, and the Hearing Examiner notified within 10 days of any change in ownership.

xi. Each owner of the Telecommunications Tower is responsible for maintaining the wireless communications tower in a safe condition.

Conclusion: To ensure compliance with this provision, the Hearing Examiner has imposed a condition in Part IV of this Report requiring that the Applicants and any owners of the telecommunications facility are responsible for maintaining the facility in a safe condition.

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.

Conclusion: The Applicant provided maps and testimony of its expert, Niculai Alistar, to the extent of both the lack of coverage and diminished capacity without use of the Woodside Water Tank and with replacement coverage at the SHA site. See Exhibit 23 and T. 20-27. Based on the record in this case, the Hearing Examiner finds that there is a need for a telecommunications facility of the proposed height, both for cell phone service needs and collocation requirements, at the location specified in the Applicants' plans. The removal of the antennas will cause significant degradation and "blackout" areas for all three wireless providers in the Silver Spring area.



Note: The Woodside site (as well as the temp site) is not only a coverage site, but more importantly a “capacity” site. Without the Woodside site, “capacity” of the surrounding cell sites would suffer with overall wireless service in the broader area adversely impacted.

Exhibit 23 – Coverage & Capacity Map

D. Conditional Use - Applicable 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.

E. Temporary Use

The Zoning Ordinance allows for the approval of a “Temporary Use” if: (1) the use is temporary in nature; (2) the use is established for a fixed period with the intent to discontinue the use when that time is up; (3) the use does not involve construction or alteration to any permanent structure; and (4) the use requires a temporary use permit under Chapter 8. See *Zoning Ordinance*, §59-3.3.1.4(A).

Conclusion: According to the Applicant and confirmed by Staff, AT&T, Verizon, and T-Mobile are required to remove their antennas from the nearby WSSC water tank to allow the tank to be refurbished by WSSC. Applicant states the refurbishment by WSSC will take up to twenty-four (24) months, after which time per the terms of the existing lease agreements AT&T, Verizon, and T-Mobile all intend to relocate their respective antennas back onto the WSSC water tank. If all goes to schedule with the refurbishment, the temporary Facility will be in use for a period of no more than twenty-four (24) months. The temporary Facility will not require any land disturbance and will not involve construction or alteration to any permanent structure. When the Temporary Use is no longer needed, the Facility will be completely removed and the Property will be returned to its present state. Exhibit 6, pg. 2, 4-5 and Exhibit 29, p. 12.

The Hearing Examiner agrees that the Facility is a Temporary Use.

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 Verizon Wireless and Maryland Department of Transportation State Highway Administration regarding the property owned by Maryland Department of Transportation State Highway Administration on the right-of-way at Interstate 495 and Georgia Avenue, Silver Spring, Maryland 20910 for:

- A. for approval of a conditional use under Zoning Ordinance §59-3.3.5.2.C.2.c (Telecommunications Tower) for a temporary telecommunications tower,
- B. for approval under Zoning Ordinance §59-3.3.1.4 (Temporary Use) for temporary use for a temporary telecommunications tower,
- C. for a reduced setback to the nearest detached house building type from the required 300 foot setback to 207 feet which is a distance of at least one foot for every foot in height on the temporary pole (155 feet for this monopole) per §59-3.3.5.2.C.2.c.(d), and
- D. for approval of the installation of a 155-foot monopole above the maximum height of 135 feet,

are hereby **GRANTED**, subject to the following conditions:

1. The approvals herein are valid for a period of thirty-six (36) months after the date of this Report and Decision and shall expire at 11:59PM on March 17, 2028.
2. The Telecommunications Tower on the site must conform to the various Site Plans as submitted with this application.
3. The Telecommunications Tower, which includes the support structure and antenna, must be no taller than one hundred fifty-five (155) 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 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.
5. In accordance with *Zoning Ordinance* §59.3.5.2.C.2.c.vii., the support structure must provide space for the antennas of minimum of three (3) wireless communication carriers, including the Applicant, AT&T and T-Mobile.
6. When the WSSC water tank refurbishment is completed, but no later than the expiration of this Report and Decision, the antennas and associated equipment shall be relocated to their original location, Washington Suburban Sanitary Commission's North Woodside Water Tank located on Seminary Place.
7. 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.
8. 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.
9. 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.
10. Applicants must comply with Forest Conservation Exemption No. 42025074E, as approved by M-NCPPC staff on November 15, 2024.
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 assessed by the Department of Permitting Services.

Issued this 18th day of March 2025.



Kathleen E. Byrne
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

Any party of record may file a written request to present an appeal and oral argument before the Board of Appeals, within 10 days after the Office of Zoning and Administrative Hearings issues 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.

Contact information for the Board of Appeals is listed below, and additional procedures are specified in *Zoning Ordinance* §59.7.3.1.F.1.c.

Montgomery County Board of Appeals
100 Maryland Avenue, Room 217
Rockville, MD 20850
(240) 777-6600

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

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

NOTIFICATION MEMOS TO:

Douglas Sampson, Esq.
Robert Kroenberg, Deputy Director, Planning Department
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Carrie Sanders, Planning Department
Greg Nichols, Manager, at DPS
Victor Salazar, Division Chief, DPS
Michael Coveyou, Director, Finance Department
Washington Suburban Sanitary Commission
Montgomery County Public Schools
Barbara Jay, Executive Director, Montgomery County Board of Appeals
Elana Robinson, Esq. Associate County Attorney