

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

**IN THE MATTER OF**  
**AMERICAN TOWERS LLC and**  
**JAMES WARFIELD**

Applicants

Mohammed Alsamna

Alexandra Bull

For the Application

Tracey Themak, Esquire

Attorney for the Applicants

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

OZAH Case No. CU-T-19-01

\*\*\*\*\*

Before: Martin L. Grossman, Hearing Examiner  
Director, Office of Zoning and Administrative Hearings

**HEARING EXAMINER'S REPORT AND DECISION**

**TABLE OF CONTENTS**

|   |    |
|---|----|
| I. STATEMENT OF THE CASE .....  | 2  |
| II. FACTUAL BACKGROUND & SIGNIFICANT ISSUES.....                            | 4  |
| A. The Subject Property.....  | 4  |
| B. Surrounding Neighborhood.....  | 6  |
| C. Proposed Use.....  | 9  |
| 1. Site Plan (Tower and Compound).....                                      | 9  |
| 2. Parking .....  | 14 |
| 3. Landscaping, Lighting and Signage.....                                   | 14 |
| 4. Operations .....   | 16 |
| D. Visual and Property Value Impact .....                                   | 16 |
| E. Need for the Facility .....  | 21 |
| F. Community Response.....  | 28 |
| III. FINDINGS OF FACT AND CONCLUSIONS OF LAW.....                           | 28 |
| A. Necessary Findings (Section 59.7.3.1.E.) .....                           | 28 |
| B. Development Standards of the Zone (Article 59.4) .....                   | 39 |
| C. Use Standards for a Telecommunications Tower (Section 59.3.5.2.C.) ..... | 42 |
| D. Applicable General Development Standards (Article 59.6) .....            | 52 |
| IV. CONCLUSION AND DECISION .....   | 53 |

## **I. STATEMENT OF THE CASE**

On December 14, 2018, American Towers LLC and James Warfield (“the Applicants”) filed an Application for Conditional Use under Zoning Ordinance §59.3.5.2.C.2. to permit construction of an unmanned wireless Telecommunications Tower (“Tower” or “Support Structure”) and related equipment compound at 25723 Woodfield Road (Rt. 124), Damascus, Maryland 20872, in the RNC Zone. The Applicants seek to construct an unmanned wireless telecommunications facility with a 150-foot tall monopole and an associated 75-foot by 75-foot equipment compound area. The subject property is a 78.52 acre Parcel P777 on Tax Map FX42, in Hutchcrofts Range, Damascus, Maryland. The site is on land owned by Co-Applicant James Warfield (Tax Account Number 12-03005112), and the 75-foot by 75-foot compound is leased to Applicant American Towers, LLC (Exhibit 5). The main user will be T-Mobile Northeast LLC (“T-Mobile”). The RNC (Rural Neighborhood Cluster) Zone is a type of Rural Residential Zone that permits telecommunications facilities by conditional use, per Zoning Ordinance §59.3.1.6.

The Montgomery County Transmission Facility Coordinating Group (TFCG or Tower Committee), initially reviewed this matter on April 4, 2018, but the Hearing Examiner informed the Applicants’ counsel that the Zoning Ordinance requires that conditional use applications be filed within 90 days of the TFCG recommendation. Exhibit 40. With the Applicants’ agreement, the application was therefore not accepted for filing until after the Applicants resubmitted the matter for review by the TFCG and obtained a recommendation from that entity. Exhibits 64(a) and (b).

On December 5, 2018, the Tower Committee recommended approval of the proposed Telecom Tower, but only up to a height of 135 feet, based on restrictions in the Zoning Ordinance; however, the TFCG Chair (Marjorie Williams) noted in the minutes that “the Applicant could provide missing or expanded justification for a taller monopole to the Hearing Examiner.” Exhibit

64(a), pp. 9-10. She later expanded on this thought in an email of January 7, 2019, to the Hearing Examiner (Exhibit 53):

The TFCG recognized the need for the taller height during our meeting. It is also better to approve the taller height for future co-location opportunities. We all agree that one taller tower would be more acceptable than more towers in the future. We had recommended 2 previous applications at that location at the taller height, unfortunately due to the applicant not filing an application with OZAH before the zoning change the maximum height decreased.

In addition, the only other tower that is out in that area is at full capacity.

On January 17, 2019, Technical Staff filed a report recommending approval of the application, subject to nine recommended conditions. Exhibit 62. There is no Planning Board review in this type of case in order to permit a schedule that will meet timelines set out by the Federal Communications Commission (FCC) for processing cell tower application.<sup>1</sup>

OZAH issued notice of the public hearing on December 27, 2018, scheduling the matter for February 1, 2019. Exhibit 51.

Neither OZAH nor the Planning Department received any letters of opposition to this application. Exhibit 62, p. 24. However, the Applicants revealed that they met with eleven neighbors, and responded to some concerns raised by them. Exhibit 57(a). Issues raised included need for the cell tower, visual impact, effects on property values, possible adverse health effects from radio frequency emissions, fall zone risks, stormwater management and the public hearing process.

The public hearing convened on February 1, 2019, as scheduled. The Applicants called Mohammed Alsamna, a radio frequency (RF) engineer and Alexandra Bull, a cell tower siting specialist. There were no other witnesses; however, the Applicants agreed to amend their plans to

---

<sup>1</sup> These time limitations are often referred to as the “shot clock.” It creates a presumption that 150 days is a reasonable time period for a local community to process an application for permission to erect a cell tower. However, Applicants can waive the shot clock, as was done in this case, to permit processing to be delayed so that the Applicants would not run afoul of the 90-day provision discussed above for filing the TFCG recommendation.

comply with the recommendations of Technical Staff for a board-on-board fence around the equipment compound, additional screening and a sign not exceeding 2 square feet.

With the consent of the Applicants, the record was held open until February 25, 2019, to allow for the filing of the revised plans by February 15, 2019, and any comments from Technical Staff or the public on the revised plans. The Applicants timely filed the amended plans (Exhibits 78(a)-78(q)) on February 14, 2019, and the only comments were from Technical Staff approving the amended plans (Exhibit 77). The record closed, as scheduled, on February 25, 2019.

For the reasons that follow, the Hearing Examiner finds that the application meets the Zoning Ordinance requirements for approval of a conditional use for a telecommunications tower on the subject property, and he therefore grants the application.

## **II. FACTUAL BACKGROUND & SIGNIFICANT ISSUES**

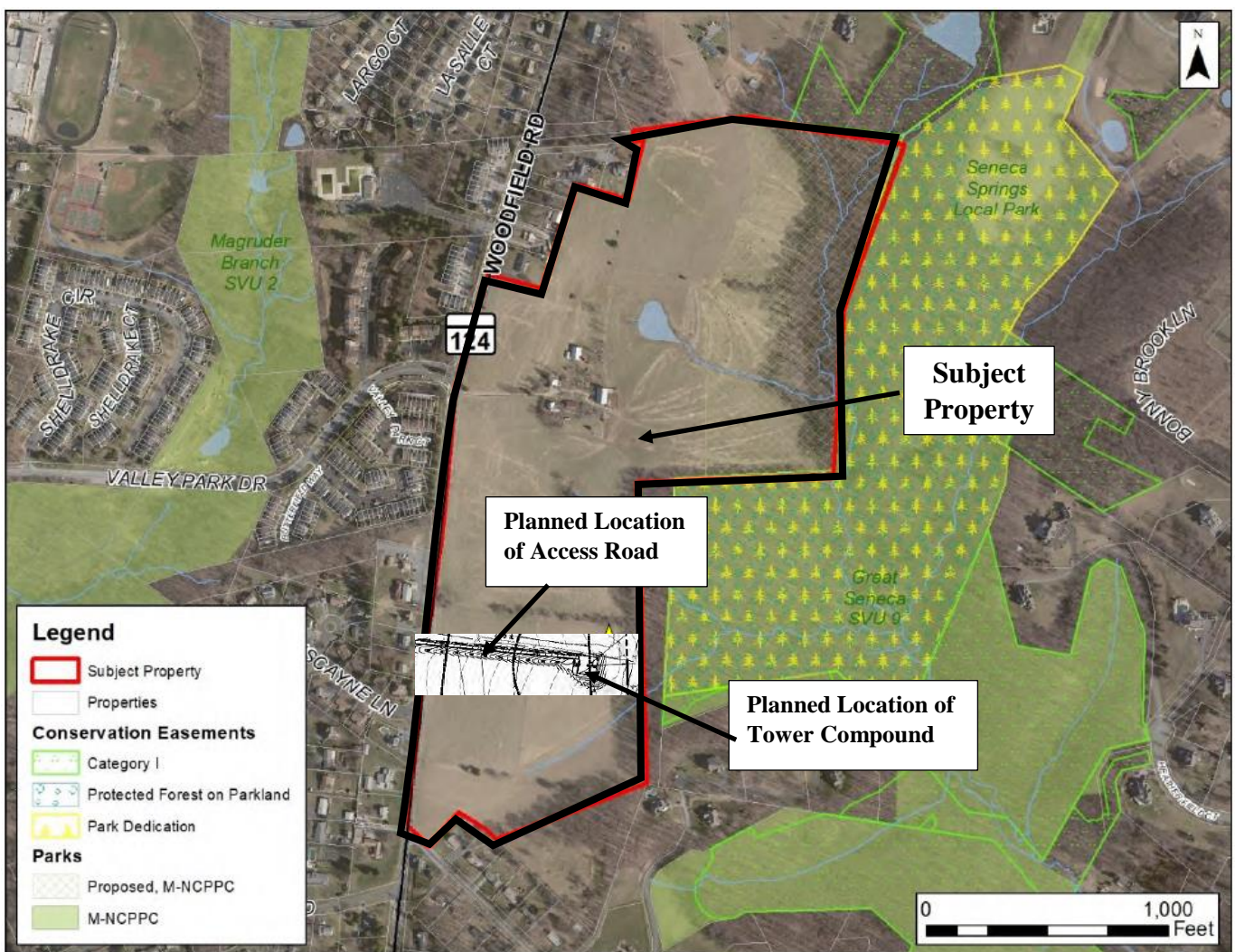
### **A. The Subject Property**

The subject property is described in the report of the Technical Staff (Exhibit 62, pp. 3-4):

The Property is located at 25723 Woodfield Road, just south of Damascus . . . The Property totals 78.52 acres. Most of the Property has been cleared for agricultural fields, and although there are a few steep slopes on the Property, the land generally slopes gently away from the Woodfield Road ridgeline. The access road for the tower begins at about 775 feet elevation at Woodfield Road and drops about 50 feet to the base of the tower at 725 feet elevation. There are some forested lands along the eastern boundary of the Property and project site. Several tributary streams of Great Seneca Creek, begin their runs on the Property. The properties to the east are M-NCPPC parkland containing protected forests. The forested area along the northeastern boundary of the Property is recommended for park dedication by the 2006 Damascus Master Plan ("Master Plan"). Between the cell tower site and the neighboring property to the east is a triangular forested parcel with no apparent owner in the land records.

The property is on the Historical Locational Atlas as the George and Mary Warfield Farm, "a representative sample of a middle income, turn-of-the-century farm complex" thought to have been built around 1905. The proposed tower is approximately 1000 feet from the farm complex.

An aerial photograph of the subject property was included in the Staff Report as Figure 1 (Exhibit 62, p. 3), and it is reproduced below, with the planned location of the tower compound and access road superimposed on it. We have used the term “subject property” to describe the entire 78.52 acre parcel owned by co-Applicant Warfield. The actual conditional use site is the area of the 75-foot by 75-foot compound (*i.e.*, 5,625 square feet), to be leased by American Towers, LLC (Exhibit 5). The lease would also grant an easement for access to the compound through a gravel driveway and for installation and maintenance of utilities.

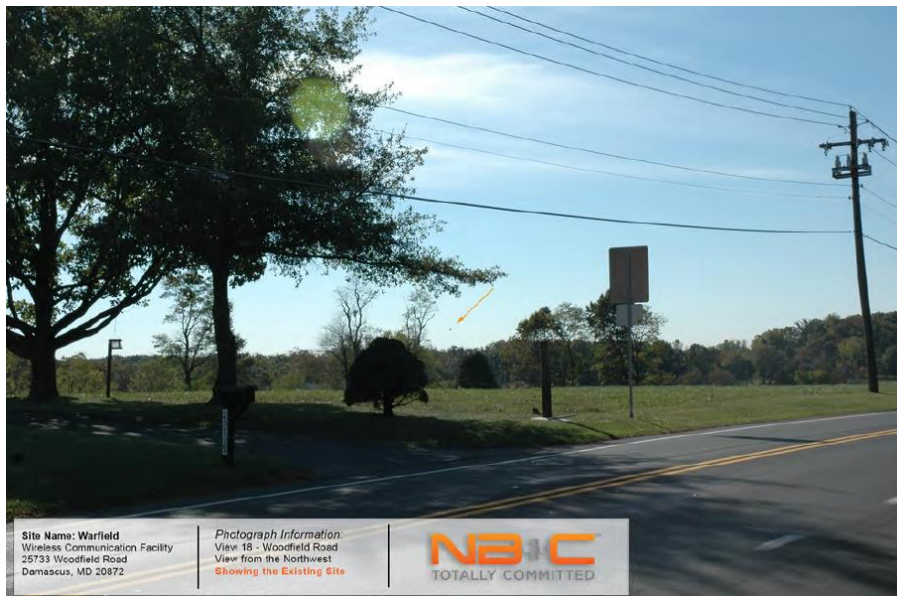


On the next page are two views of the existing site (Exhibits 19(g) and (j)) provided by the Applicant:





**Woodfield Road View  
of the Property from  
the Northwest**



**Woodfield Road View  
of the Property from  
the West**

## **B. Surrounding Neighborhood**

To determine the compatibility of the proposed use, it is necessary to delineate and characterize the “surrounding neighborhood” (*i.e.*, the area that will be most directly impacted by the proposed use). Staff proposed defining the boundaries of the surrounding neighborhood as the area located “within 1500-foot radius of the Property.” Exhibit 62, p. 4. It is clear from the Neighborhood maps provided by Technical Staff (Exhibit 62, pp. 5 and 6) and reproduced below, that they measured the 1,500 foot “radius,” not from the center of the subject property, but from

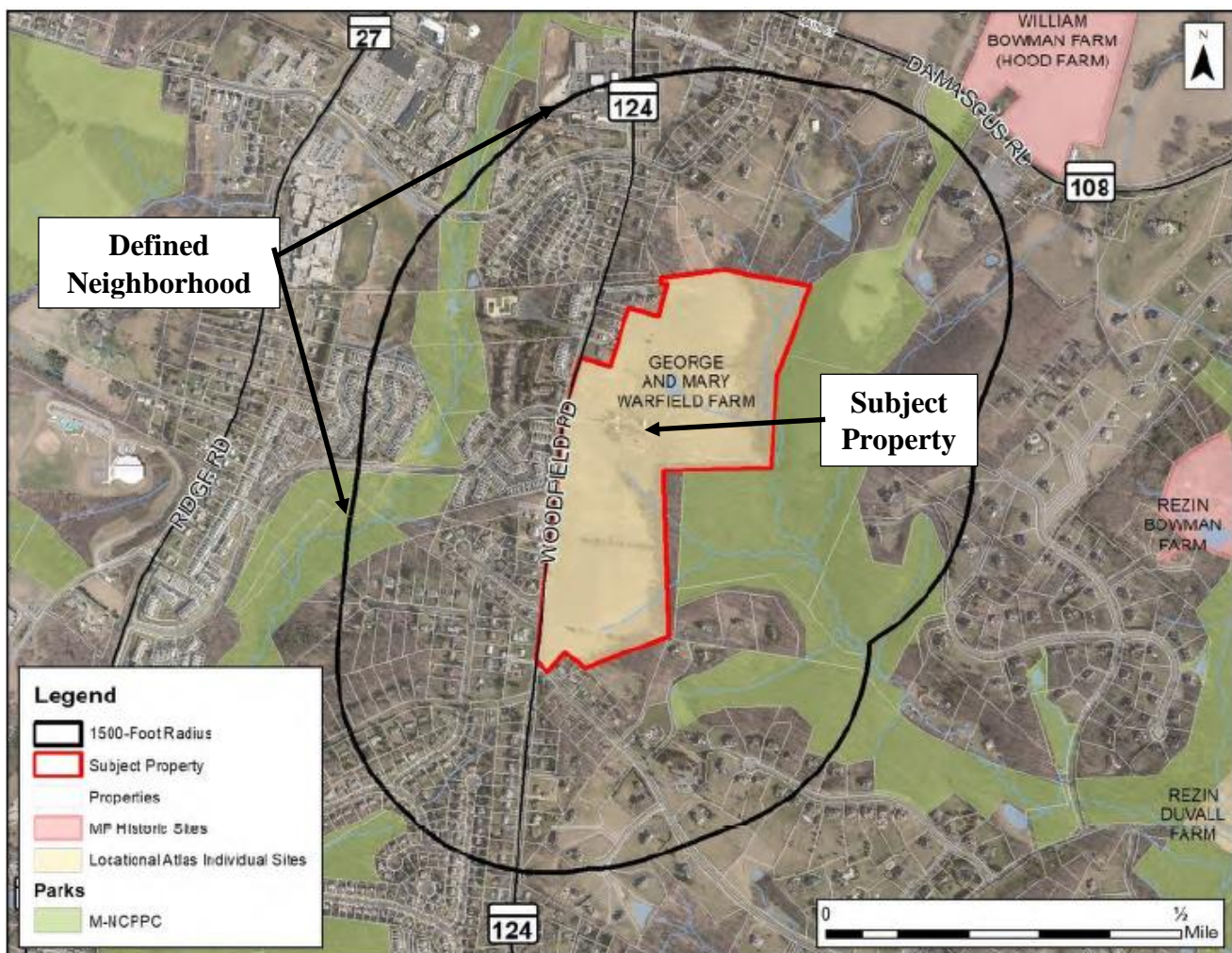
the lot lines of the subject property. The Hearing Examiner accepts Staff's recommended definition of the surrounding area, as it fairly includes the properties that would be most directly impacted by the proposed use.

As described by Technical Staff (Exhibit 62, pp. 4- 5):

... A 1500-foot radius includes the properties that would most likely be impacted by the Proposed Use. The Neighborhood is roughly bounded by the Magruder Branch Stream Valley (Unit 2) Park on the west, Damascus Road (MD108) on the north, the Great Seneca Stream Valley (Unit 9) Park on the east, and areas accessed from Hawkins Creamery Road on the south.

The Neighborhood is composed of a mix of single-family detached houses, townhouses, and forested stream valleys. The northernmost part of the Neighborhood is within the Town Center and contains a car dealer and some apartments. . . .

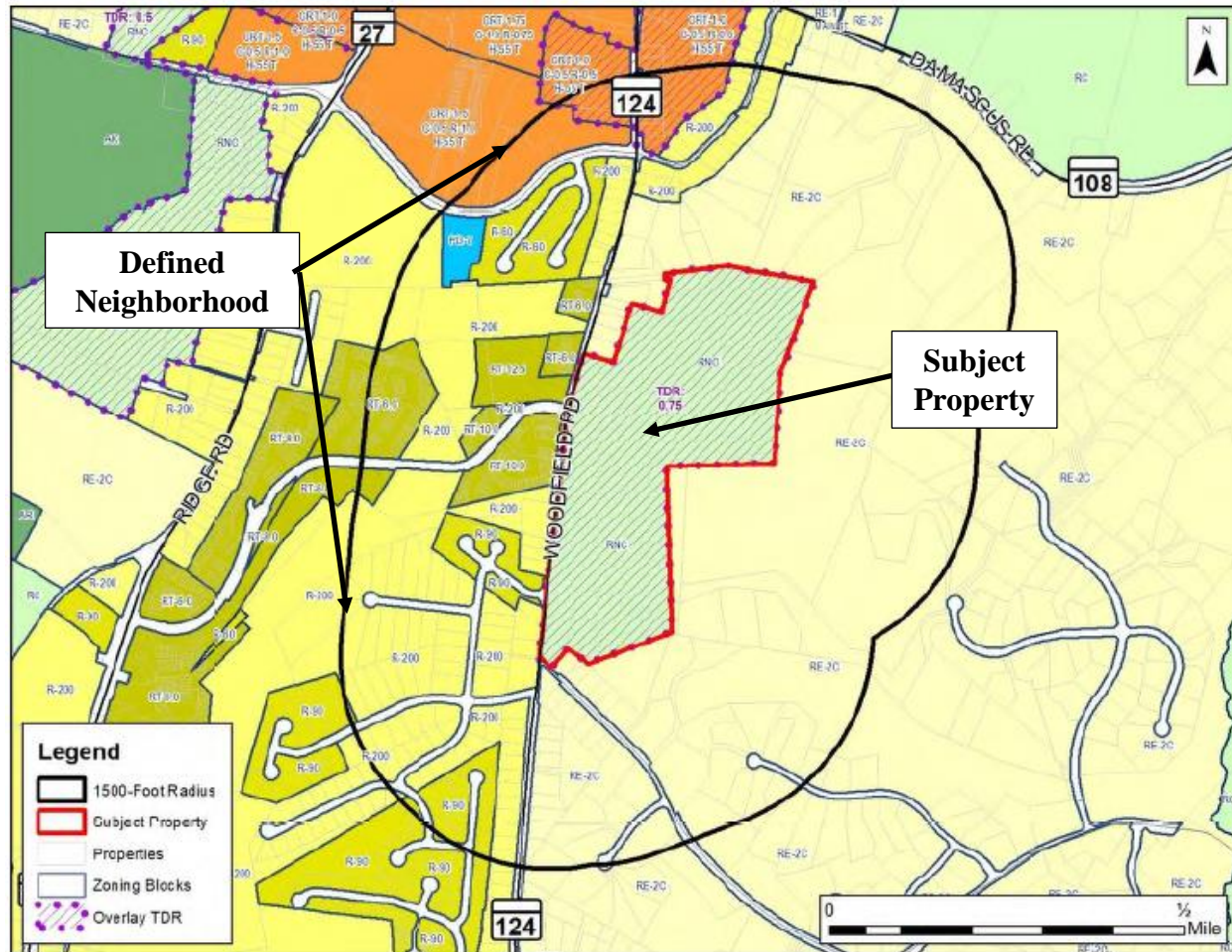
There are no historic sites within the Neighborhood other than the subject Property.





Technical Staff also provided a Zoning Vicinity Map and described the current zoning in the defined neighborhood (Exhibit 62, p. 6):

The abutting properties east of Woodfield Road are all zoned RE-2C. The properties across Woodfield Road are zoned for higher densities of residential development, from R-200 to RT-12.5. The northwesternmost part of the Neighborhood contains CRT-zoned properties within the Damascus Town Center.



Staff identified four other conditional uses/special exceptions in the Neighborhood (Exhibit 62, p. 21):

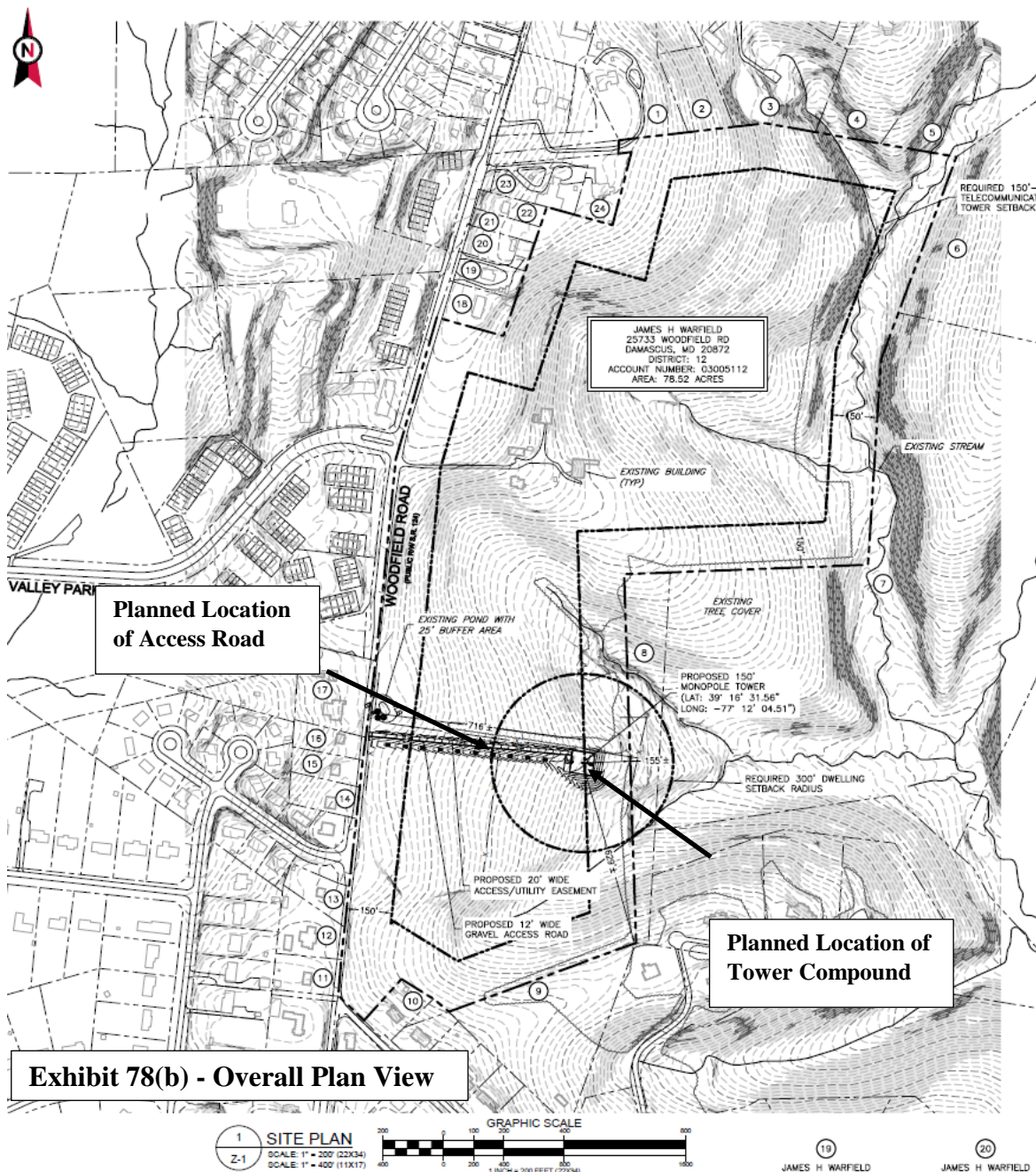
- S-545/CBA1367 for a community swimming pool
- CBA2574 for a home occupation
- S-1321 for an accessory apartment
- S-1204 for a child daycare



## C. Proposed Use

### 1. Site Plan (Tower and Compound)

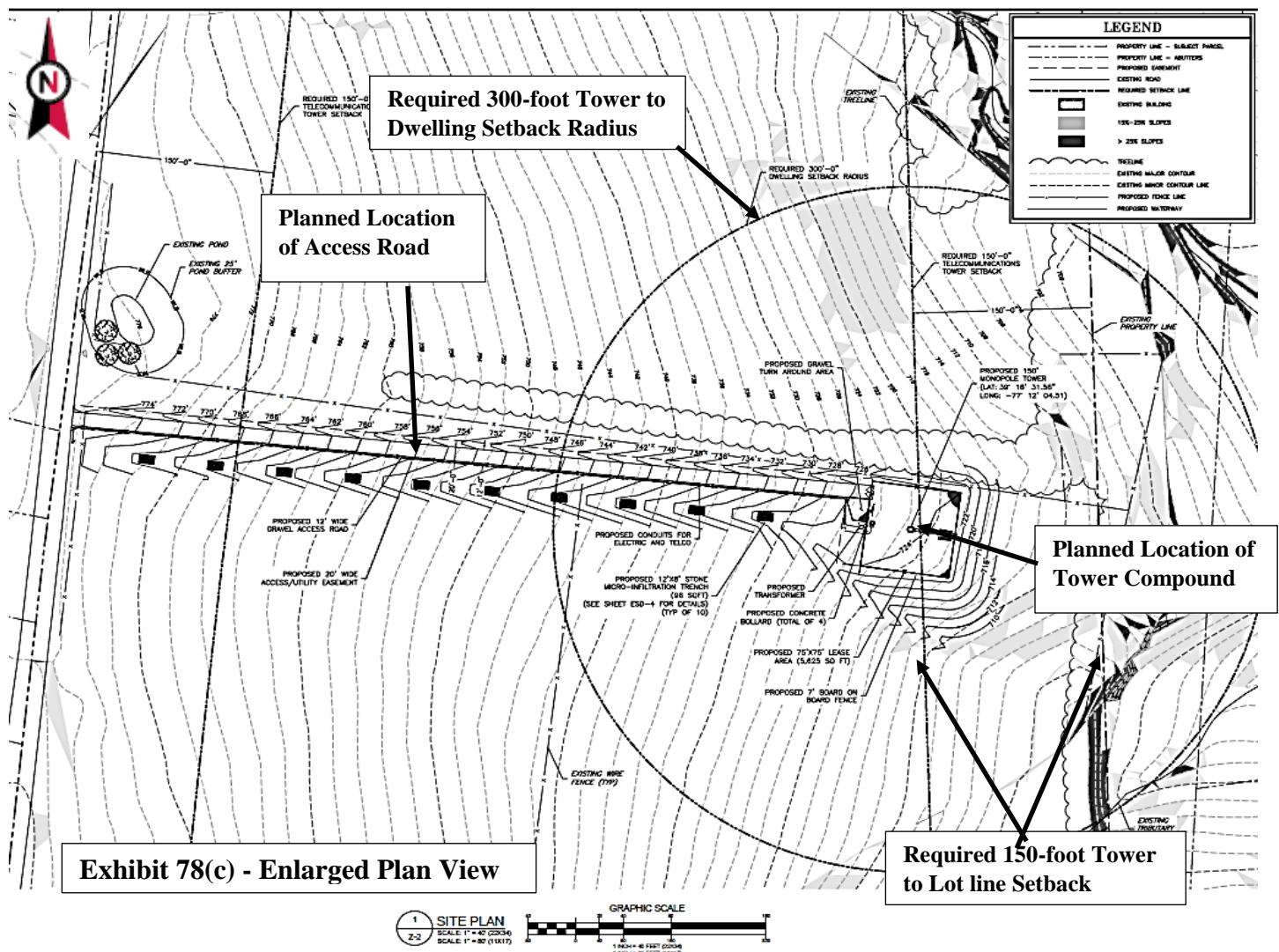
As previously noted, the application seeks conditional use approval to construct a 150-foot tall monopole, with mounted antennas, and necessary supporting ground facilities. All would be contained in a 75-foot by 75-foot equipment compound area, with easements for access, construction and maintenance. The conditional use site plan and details (Exhibits 78(b), (c) and (d) and portions of 78(f) and (g)) are shown below:



| ZONING INFORMATION  |            |            |
|---|------------|------------|
| JURISDICTION: MONTGOMERY COUNTY   |            |            |
| ZONING: RNC - RURAL RESIDENTIAL   |            |            |
| DIMENSION   | REQUIRED ± | PROPOSED ± |
| FRONT YARD SETBACK:   | 150'       | 716'       |
| SIDE YARD SETBACK:  | 150'       | 629'       |
| REAR YARD SETBACK:  | 150'       | 155'       |
| LOT AREA: 78.52 ACRES   |            |            |
| (ALL MEASUREMENTS ARE IN FEET ± UNLESS OTHERWISE NOTED)   |            |            |
| NOTES:  |            |            |
| 1) SITE PLAN IS NOT THE RESULT OF A SURVEY. IT IS BASED ON FIELD MEASUREMENTS AND SCALED ASSESSORS MAPS AVAILABLE. ALL INFORMATION SHOWN IS APPROXIMATE ONLY AND SUBJECT TO ANY CONDITION THAT A SURVEY MAY REVEAL. |            |            |
| 2) ALL SETBACKS SHOWN ARE FROM EXISTING TOWER TO EXISTING PROPERTY LINES.   |            |            |

| LEGEND |                                |
|--------|--------------------------------|
| ---    | PROPERTY LINE - SUBJECT PARCEL |
| ---    | PROPERTY LINE - ABUTTERS       |
| ---    | PROPOSED EASEMENT              |
| ---    | EXISTING ROAD                  |
| ---    | REQUIRED SETBACK LINE          |
|        | EXISTING BUILDING              |
|        | 15%-25% SLOPES                 |
|        | > 25% SLOPES                   |
|        | ABUTTER INFO                   |
| ---    | TREELINE                       |
| ---    | EXISTING MAJOR CONTOUR         |
| ---    | EXISTING MINOR CONTOUR LINE    |
| ---    | PROPOSED FENCE LINE            |
| ---    | PROPOSED WATERWAY              |

The Enlarged Plan View (Exhibit 78(c), below) shows both the required 300-foot Tower to Dwelling Setback Radius and the required 150-foot Tower to Lot Line setback.

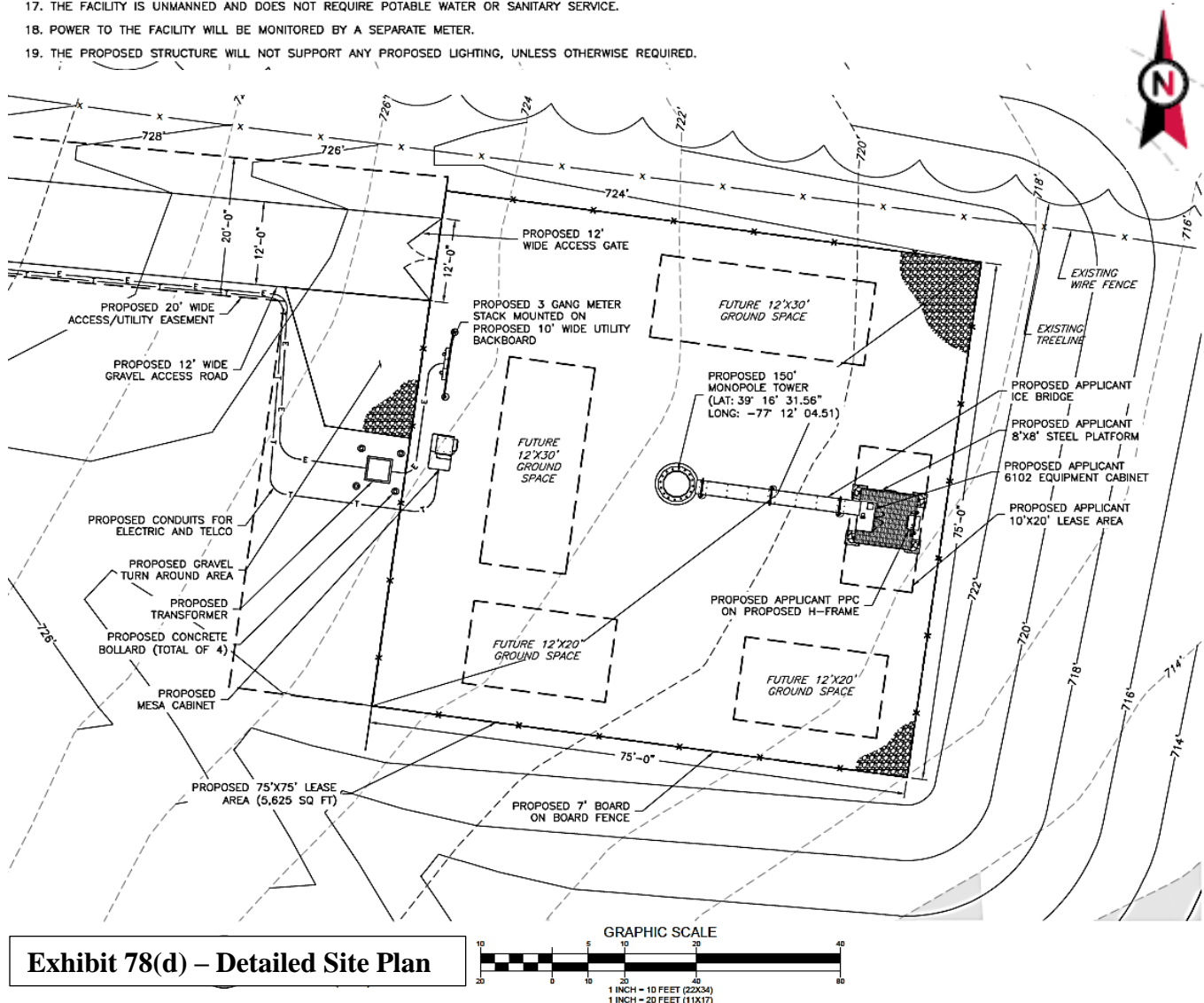




The Detailed Site Plan (Exhibit 78(d), below) shows the proposed Tower and Equipment location, as well as the proposed vacant locations for equipment of four future co-locators.

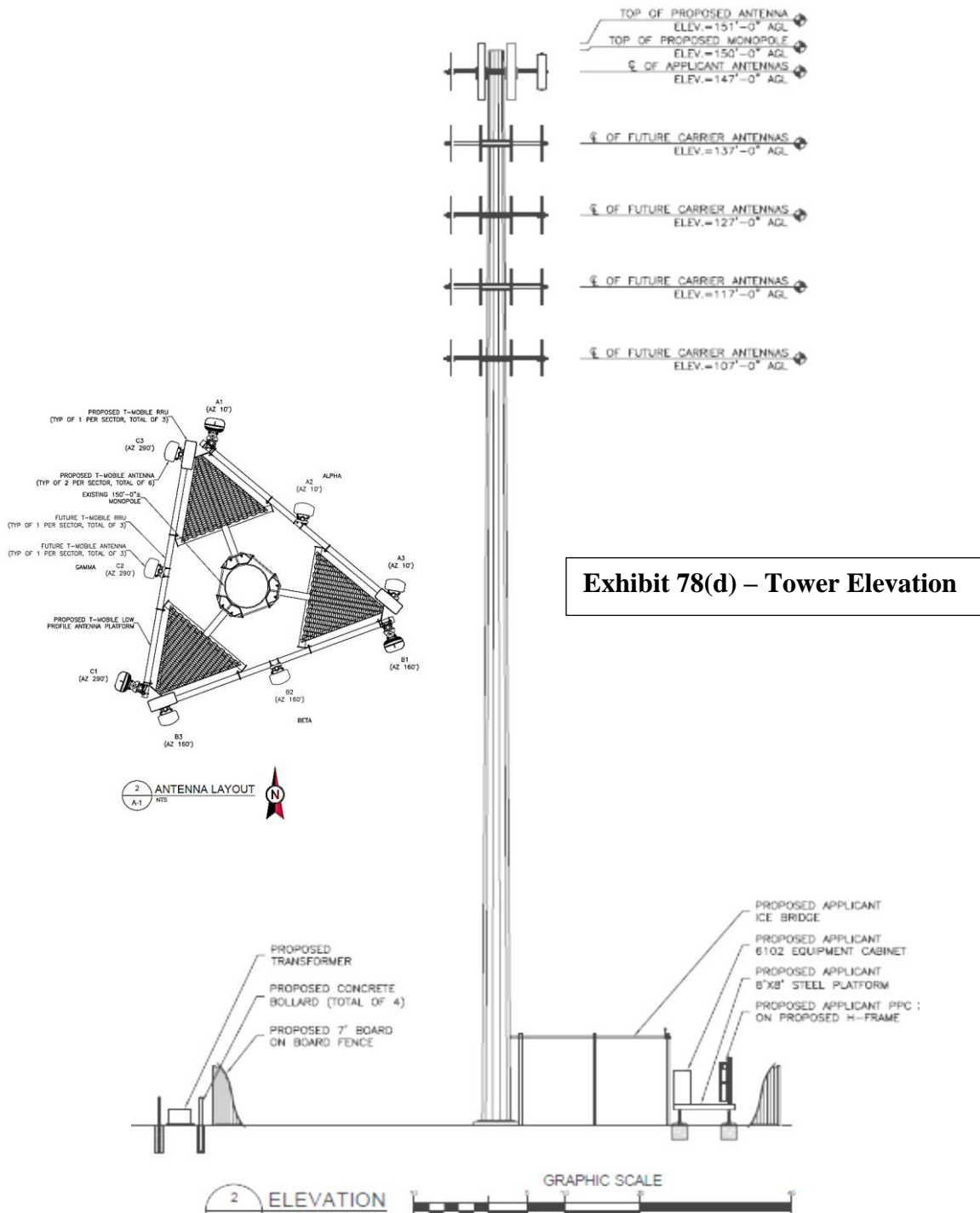
### GENERAL NOTES

1. THE CONTRACTOR SHALL COMPLY WITH ALL APPLICABLE CODES ORDINANCES, LAWS AND REGULATIONS OF ALL MUNICIPALITIES, UTILITIES COMPANY OR OTHER PUBLIC AUTHORITIES.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL PERMITS AND INSPECTIONS THAT MAY BE REQUIRED BY ANY FEDERAL, STATE, COUNTY OR MUNICIPAL AUTHORITIES.
3. THE CONTRACTOR SHALL NOTIFY THE CONSTRUCTION MANAGER, IN WRITING, OF ANY CONFLICTS, ERRORS OR OMISSIONS PRIOR TO THE SUBMISSION OF BIDS OR PERFORMANCE OF WORK. MINOR OMISSIONS OR ERRORS IN THE BID DOCUMENTS SHALL NOT RELIEVE THE CONTRACTOR FROM RESPONSIBILITY FOR THE OVERALL INTENT OF THESE DRAWINGS.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL EXISTING SITE IMPROVEMENTS PRIOR TO COMMENCING CONSTRUCTION. THE CONTRACTOR SHALL REPAIR ANY DAMAGE CAUSED AS A RESULT OF CONSTRUCTION OF THIS FACILITY.
5. THE SCOPE OF WORK FOR THIS PROJECT SHALL INCLUDE PROVIDING ALL MATERIALS, EQUIPMENT AND LABOR REQUIRED TO COMPLETE THIS PROJECT. ALL EQUIPMENT SHALL BE INSTALLED IN ACCORDANCE WITH THE MANUFACTURER'S RECOMMENDATIONS.
6. THE CONTRACTOR SHALL VISIT THE PROJECT SITE PRIOR TO SUBMITTING A BID TO VERIFY THAT THE PROJECT CAN BE CONSTRUCTED IN ACCORDANCE WITH THE CONTRACT DOCUMENTS.
7. CONTRACTOR SHALL VERIFY ANTENNA ELEVATION AND AZIMUTH WITH RF ENGINEERING PRIOR TO INSTALLATION.
8. TRANSMITTER EQUIPMENT AND ANTENNAS ARE DESIGNED TO MEET ANSI/TIA 222-G REQUIREMENTS.
9. ALL STRUCTURAL ELEMENTS SHALL BE HOT DIPPED GALVANIZED STEEL.
10. CONTRACTOR SHALL MAKE A UTILITY "ONE CALL" TO LOCATE ALL UTILITIES PRIOR TO EXCAVATING.
11. IF ANY UNDERGROUND UTILITIES OR STRUCTURES EXIST BENEATH THE PROJECT AREA, CONTRACTOR MUST LOCATE IT AND CONTACT THE APPLICANT & THE OWNER'S REPRESENTATIVE.
12. OCCUPANCY IS LIMITED TO PERIODIC MAINTENANCE AND INSPECTION BY TECHNICIANS APPROXIMATELY 2 TIMES PER MONTH.
13. PROPERTY LINE INFORMATION WAS PREPARED USING DEEDS, TAX MAPS, AND PLANS OF RECORD AND SHOULD NOT BE CONSTRUED AS AN ACCURATE BOUNDARY SURVEY.
14. THIS PLAN IS SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD.
15. NO SIGNIFICANT NOISE, SMOKE, DUST, OR ODOR WILL RESULT FROM THIS FACILITY.
16. THE FACILITY IS UNMANNED AND NOT INTENDED FOR HUMAN HABITATION (NO HANDICAP ACCESS REQUIRED).
17. THE FACILITY IS UNMANNED AND DOES NOT REQUIRE POTABLE WATER OR SANITARY SERVICE.
18. POWER TO THE FACILITY WILL BE MONITORED BY A SEPARATE METER.
19. THE PROPOSED STRUCTURE WILL NOT SUPPORT ANY PROPOSED LIGHTING, UNLESS OTHERWISE REQUIRED.



**Exhibit 78(d) – Detailed Site Plan**





| ANTENNA SCHEDULE |          |                         |                 |                            |                      |                      |            |         |                          |                                |              |
|------------------|----------|-------------------------|-----------------|----------------------------|----------------------|----------------------|------------|---------|--------------------------|--------------------------------|--------------|
| SECTOR           | STATUS   | ANTENNA MANUFACTURER    | ANTENNA MODEL   | ANTENNA DIMENSIONS (HxWxD) | MECHANICAL DOWNTILTS | ELECTRICAL DOWNTILTS | RAD CENTER | AZIMUTH | TMA/RRU QUANTITY & MODEL | CABLE QUANTITY & TYPE          | CABLE LENGTH |
| A1               | PROPOSED | ERICSSON                | AIR32DB B2A/B4A | 56.6"x12.9"x8.7"           | 0' / 0'              | 2' / 2'              | 147°-0"    | 10'     | -                        | (1) PROPOSED 6X12 HYBRID CABLE | 170'         |
| A2               | FUTURE   | FUTURE T-MOBILE ANTENNA | -               | -                          | -                    | -                    | -          | -       | -                        | -                              | -            |
| A3               | PROPOSED | RFS                     | APXVF24         | 93.0"x14.5"x6.9"           | 0'                   | 6'                   | 147°-0"    | 10'     | (1) ERICSSON RRUS11 B12  | (1) PROPOSED 6X12 HYBRID CABLE | 170'         |
| B1               | PROPOSED | ERICSSON                | AIR32DB B2A/B4A | 56.6"x12.9"x8.7"           | 0' / 0'              | 2' / 2'              | 147°-0"    | 160'    | -                        | SHARED HYBRID CABLE WITH ALPHA | -            |
| B2               | FUTURE   | FUTURE T-MOBILE ANTENNA | -               | -                          | -                    | -                    | -          | -       | -                        | -                              | -            |
| B3               | PROPOSED | RFS                     | APXVF24         | 93.0"x14.5"x6.9"           | 0'                   | 6'                   | 147°-0"    | 160'    | (1) ERICSSON RRUS11 B12  | SHARED HYBRID CABLE WITH ALPHA | -            |
| C1               | PROPOSED | ERICSSON                | AIR32DB B2A/B4A | 56.6"x12.9"x8.7"           | 0' / 0'              | 2' / 2'              | 147°-0"    | 290'    | -                        | SHARED HYBRID CABLE WITH ALPHA | -            |
| C2               | FUTURE   | FUTURE T-MOBILE ANTENNA | -               | -                          | -                    | -                    | -          | -       | -                        | -                              | -            |
| C3               | PROPOSED | RFS                     | APXVF24         | 93.0"x14.5"x6.9"           | 0'                   | 6'                   | 147°-0"    | 290'    | (1) ERICSSON RRUS11 B12  | SHARED HYBRID CABLE WITH ALPHA | -            |

NOTES:  
 1. CONTRACTOR TO VERIFY PROPOSED ANTENNA INFORMATION  
 2. CONTRACTOR TO CONFIRM CABLE LENGTHS PRIOR TO CO

**Exhibit 78(f) – Antenna Information**

The Applicants describe the proposed antennas and equipment in their revised Statement of Justification (Exhibit 67(a), p. 2):

The proposed T-Mobile antennas measure approximately 56.6'' high, 12.9'' wide and 8.7'' deep/ 93'' high, 14.5'' wide and 6.9'' deep and will be installed on the proposed monopole at the 147' RAD center.

The T-Mobile equipment cabinet measures approximately 57.18'' high by 51.18'' wide by 27.55'' deep. The equipment compound will be secured by a 7' tall chain link fence.

The addition of the antennas will bring the height of the tower-antenna combination to 151 feet, as shown in the tower diagram on the previous page. The proposed Tower and antennas are also described by Technical Staff (Exhibit 62, pp. 8-10):

Only one set of T-Mobile antennas is proposed at this time, centered at the 147-foot mark of the tower, but the tower can support four additional sets of antennas for future co-locators, with mounting locations every 10 feet below the top position. . . . The equipment compound can accommodate the necessary support structures for each of the five arrays of antennas; only the single T-Mobile equipment will be installed as part of this Application.

\* \* \*

The base elevation of the monopole tower is 724 feet. This is approximately 50 feet lower than the elevation of Woodfield Road at the start of the access drive for the project. The access drive is 12 feet wide and about 700 feet long and runs just to the south of an existing tree line on the Property. Although the equipment compound will be far from Woodfield Road or any house, it will be screened by the existing trees and proposed new landscaping. At 150 feet in height, however, the tower will be visible from many directions, particularly along Woodfield Road.

\* \* \*

The Applicant proposes to surround the equipment compound with a chain-link fence topped by barbed wire. The total fence height is 7 feet. . . .

Although the Applicants originally proposed a chain link fence, both the Tower Coordinator and the Technical Staff recommended requiring a board-on-board fence. Exhibit 62, p. 12. The Hearing Examiner agrees, and the Applicants have as well. Tr. 6-7. They have submitted an amended plan showing a board-on-board fence. (Exhibits 78(c) and (d), which Staff approved (Exhibit 77).

## **2. Parking**

Zoning Ordinance §59.6.2.4 sets no minimum or maximum parking requirement for a telecommunications tower conditional use, and the Applicant is not seeking any authorization for a parking facility. Since the device is not manned, and requires maintenance visits only once or twice a month (Exhibit 62, p. 10), a parking facility is apparently unneeded. Technical Staff confirms that the Zoning Ordinance sets no parking requirements for this type of use. Exhibit 62, p. 20.

## **3. Landscaping, Lighting and Signage**

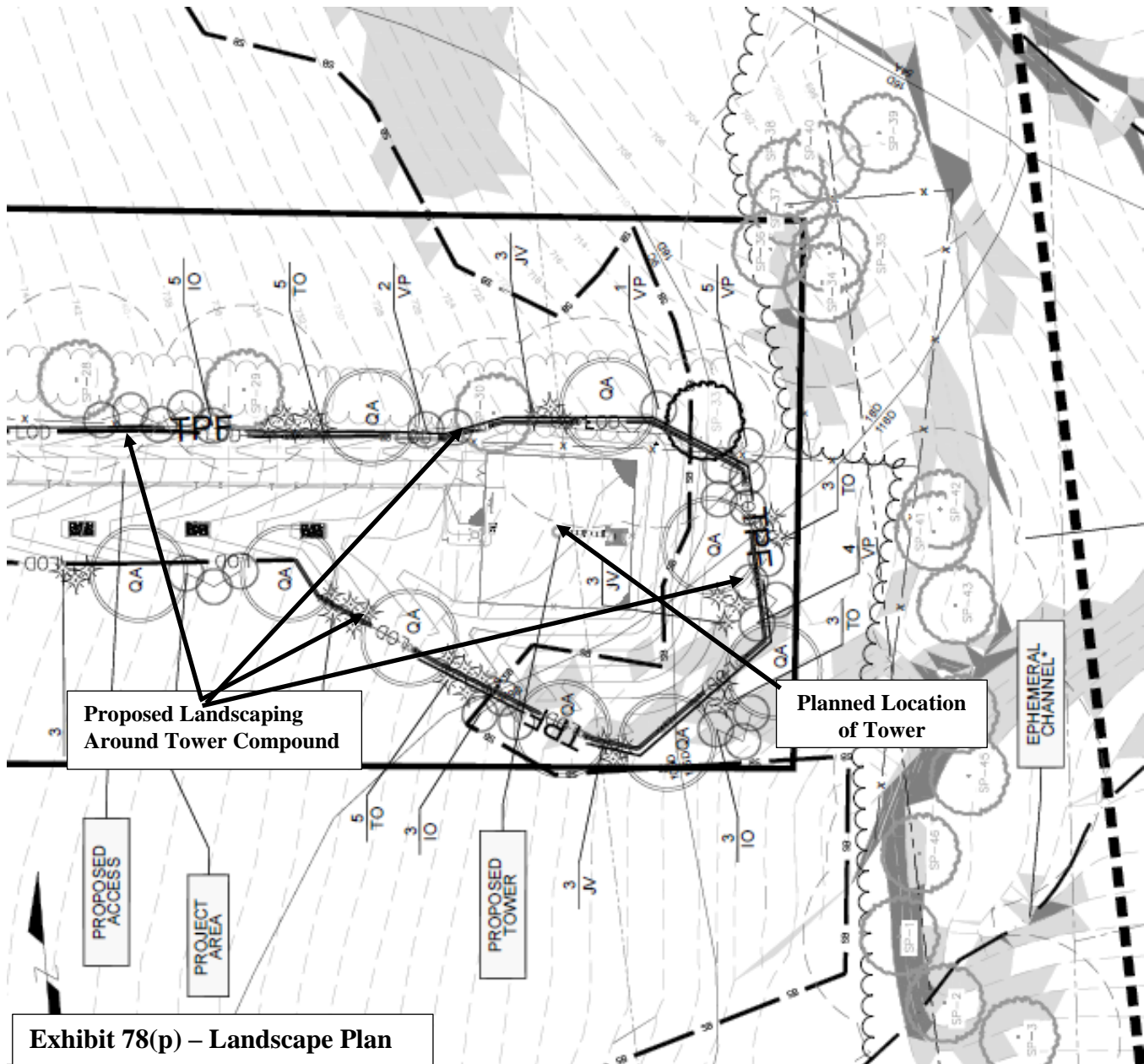
Zoning Ordinance §59.3.5.2.C.2.c.iv. provides, *inter alia*, “Screening under Division 6.5 is not required.” However, the visibility of a telecommunications tower is always a concern in terms of compatibility, so both Technical Staff and the Hearing Examiner do examine issues relating to landscaping and screening.

As described by Technical Staff (Exhibit 62, p. 10 and 16),

The Applicant proposes 5 trees and 40 shrubs in their landscape plan . . . Note that much of the landscaping is proposed on the wooded east side of the project, downhill from the equipment compound. . . . Much of the proposed landscaping is “behind” and downhill from the equipment compound and would not serve to screen the facility. Staff recommends [four] additional evergreen trees to provide further screening when viewed from Woodfield Road.

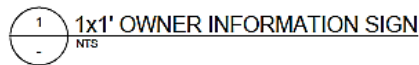
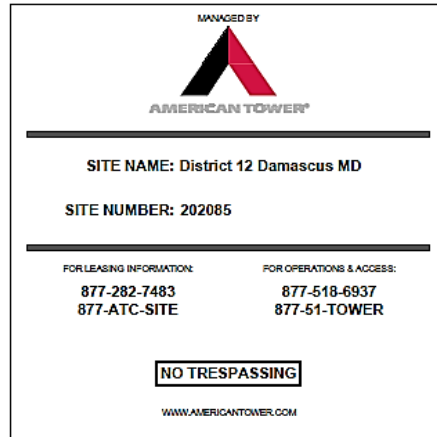
The Applicants have agreed to add the additional screening recommended by Technical Staff (Tr. 6-7), and submitted a revised Landscaping Plan showing the additional evergreen trees (Exhibits 78(p) and (q)). The significant portion of Applicants’ landscape plan is reproduced on the next page. The Applicants also assert in their Revised Statement of Justification (Exhibit 67(a), p. 3) that “The stealth monopole will not have any lighting.” That fact is also noted in Line No. 19 of the General Notes of the Detailed Site Plan (Exhibit 78(d)). Thus, there is no lighting plan.





Finally, the Applicants had originally proposed an owner identification sign that measured 2 feet by 2 feet (*i.e.*, 4 square feet) in their Landscape Plan Notes & Details (Exhibit 36). While Technical Staff noted that a sign of that size was not unreasonable (Exhibit 62, pp. 16-17), Zoning Ordinance §59.3.5.2.C.2.c.x. limits the size of the sign to 2 square feet, so the proposed sign size must be reduced accordingly. The Applicants agreed to do so (Tr. 6-7) and have submitted a revised

Landscape Notes and Details Plan (Exhibit 78(q)) showing the proposed sign as one square foot. It is reproduced below:



#### 4. Operations

The proposed facility will be unmanned and in continuous operation 24 hours a day, seven days per week. The only visits to the site will be for emergency service and regular maintenance.

Proposed operations at the site were described by Technical Staff (Exhibit 62, p. 10),

The Proposed Use will operate 24 hours per day, but will not create noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity on the Property. The facility will not be lighted and will be unmanned, with maintenance visits scheduled only once or twice per month. The facility will not require water or sewer service, and electric and telephone service is already available at the site. The Applicant states that the facility will not cause any interference with other wireless signals or electronic devices in the area.

Given these facts, as stated by Staff, “There will be no significant impact to transportation and no mitigation is required.” Exhibit 62, p. 19.

#### D. Visual and Property Value Impact

The most significant issue regarding a telecommunications tower in an area with nearby residences is its visual impact upon the neighbors. In some cases involving proposed cell towers,

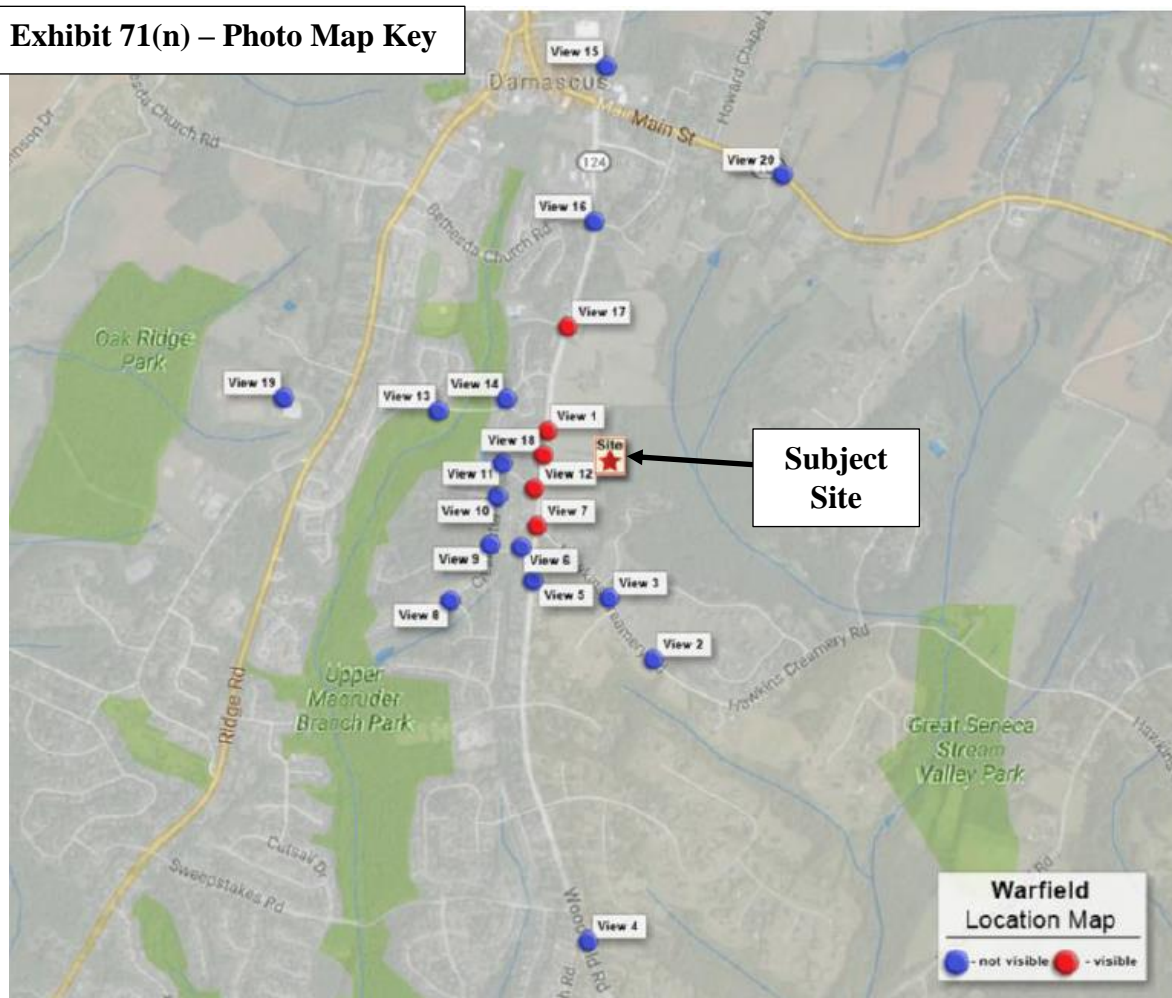
the visual impacts also give rise to concerns about potential effects on property values of the nearby residences. The subject site in this case is located on a large plot of land (78.52 acres) in a rural residential zone, where housing is somewhat distant from the proposed tower location. Although the questions of visual impact and effects on property values were addressed by the Applicants' representatives at a meeting with the community (Exhibit 57(a) and Tr. 59-61), there have been no submissions from neighbors in opposition to this proposal. The only other evidence regarding potential impacts on property values comes from Technical Staff, which concluded (Exhibit 62, p. 24):

Staff does not believe that the addition of the tower, antennas, and equipment compound (as conditioned with board-on-board fence) to the vistas will negatively impact the use, peaceful enjoyment, economic value, or development potential of properties in the Neighborhood.

In the absence of any evidence of negative impacts on property values, the Hearing Examiner finds that there will be none in this case. We now turn to visual impacts.

To evaluate the visual impact, Applicants submitted photo simulations of the proposed tower at the proposed location from 20 different viewing sites in and around the neighborhood. The photographs of the site were taken based on the results of an on-site balloon test conducted by Alexandra Bull, an expert in cell tower siting. Ms. Bull testified that a balloon test involves raising a balloon to the height of the proposed tower, photographing it from the various sites in areas of particular concern and where it might be most visible, and then simulating the proposed tower at those locations. Tr. 41-42. These simulations include both the simulated tower with just the Applicants' antennas and simulations of the tower with four co-locators' antennas, in addition to the Applicants' antennas. These photos and tower simulations are collected in Exhibit 71, with a photo map key showing the locations of the 20 views in Exhibit 71(n). The map key and a sampling of these photo-sims are reproduced on the following pages:



**Exhibit 71(n) – Photo Map Key****Exhibit 71(o) – Site from Woodfield Road, looking east, with simulated tower and just the Applicants' antennas**



**Exhibit 71(o) – Site from Woodfield Road, looking east, with simulated tower and Co-locators' Antennas plus the Applicants' antennas**



**Exhibit 71(q) – View from Biscayne Lane (View 12)**



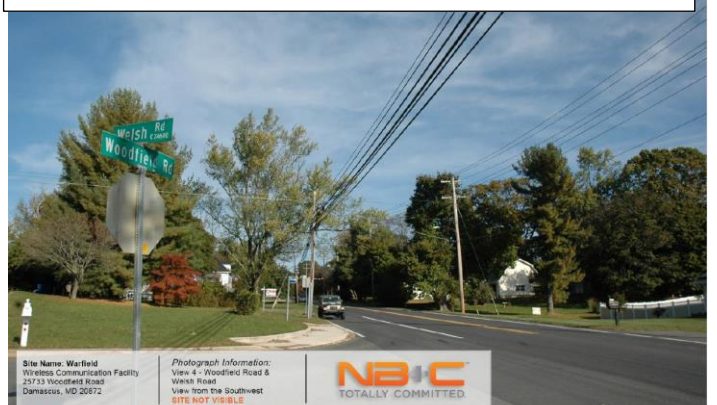
**Exhibit 71(q) – View from the Northwest (View 17)**



**Exhibit 71(y)–View from Hawkins Creamery Rd (View 2)**



**Exhibit 71(aa) – View from Welsh Road (View 4)**





**Exhibit 71(dd) – View from Clearwater Dr. (View 8)****Exhibit 71(ff) – View from Clearwater Dr. (View 10)****Exhibit 71(ii) – View from Valley Park Dr. (View 14)****Exhibit 71(kk) – View from Mt Vernon Ave. (View 18)**

As is apparent, the tower and antennas will be visible in the distance from some locations, especially right along Woodfield Road, but not from other locations. As stated by Alexandra Bull, the Applicants' tower siting expert (Tr. 44-45):

. . . So you can see in those locations that there's a heavy presence of residential in some of those photos, and it's an area where you won't be able to see the structure. And again, you can see that there is some densely wooded areas which help to conceal the structure effectively. . . .

. . . [A]long Woodfield Road there will be visibility of this tower, but the photos that we took in that community to the west of Woodfield Road, we found that in a lot of locations it was not visible, which should be beneficial to the residents in that area.

Technical Staff made the following comments regarding the visibility of the proposed cell tower at the proposed location based on the photo simulations shown above (Exhibit 62, p. 10):

Although the equipment compound will be far from Woodfield Road or any house, it will be screened by the existing trees and proposed new landscaping. At 150 feet in height, however, the tower will be visible from many directions, particularly along Woodfield Road.

Staff revisited this analysis later in its report (Exhibit 62, pp. 23-24):

The support structure—a monopole in this case—will be 150 feet high. It is virtually impossible to hide a 150-foot tall pole that includes a set of antennas at the top. However, as mentioned above, the Applicant has mitigated the visual impacts of the facility to the extent possible by locating it downhill from and at a significant distance from Woodfield Road. The heavy woods between the tower and houses to the northeast, east, and southeast should prevent any view of the tower from the homes themselves. Landscaping and fencing should help any view of the compound from the road.

The Hearing Examiner agrees with Technical Staff. Although the 150 foot tower will be visible from some locations, it's location on a large plot of land, as well as the sound screening and the distance from any residences, will significantly reduce any visual impacts of the tower, and in fact will eliminate any such impacts from many of the nearby residential areas.

### **E. The Need for the Proposed Facility**

Section 59.3.5.2.C.2.c.xii of the Zoning Ordinance provides:

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.

As noted by Technical Staff (Exhibit 62, p. 10),

The Applicant states that the location of the proposed facility will significantly improve T-Mobile's coverage in the area, especially along Woodfield Road (MD-124) and Ridge Road (MD-27). According to the Applicant, the tower is necessary for T-Mobile to fulfill its service requirements and provide in-building coverage.



The Montgomery County Transmission Facility Coordinating Group (TFCG or Tower Committee), initially reviewed this matter on April 4, 2018, but the Hearing Examiner informed the Applicants' counsel that the Zoning Ordinance requires that conditional use applications be filed within 90 days of the TFCG recommendation. Exhibit 40. With the Applicants' agreement, the application was therefore not accepted for filing until after the Applicants resubmitted the matter for review by the TFCG and obtained a recommendation from that entity. Exhibits 64(a) and (b).

On December 5, 2018, the Tower Committee recommended approval of the proposed Telecom Tower, but only up to a height of 135 feet, based on restrictions in the Zoning Ordinance; however, the TFCG Chair (Marjorie Williams) noted in the minutes that "the Applicant could provide missing or expanded justification for a taller monopole to the Hearing Examiner." Exhibit 64(a), pp. 9-10. She later expanded on this thought in an email of January 7, 2019, to the Hearing Examiner (Exhibit 53):

The TFCG recognized the need for the taller height during our meeting. It is also better to approve the taller height for future co-location opportunities. We all agree that one taller tower would be more acceptable than more towers in the future. We had recommended 2 previous applications at that location at the taller height, unfortunately due to the applicant not filing an application with OZAH before the zoning change the maximum height decreased.

In addition, the only other tower that is out in that area is at full capacity.

The issue of need for the proposed telecommunications facility was further addressed in the Applicants' revised Statement of Justification (Exhibit 67(a), pp. 2-3) and at the OZAH hearing on February 1, 2019, through the testimony of Mohammed Alsamna, the Applicants' Radio Frequency (RF) Engineer. We begin with the Applicants' Statement of Justification at pp. 2-3, which is quoted at length on the next two pages:

### NEED FOR FACILITY

The proposed facility is a vital component of T-Mobile's area-wide wireless telecommunications network. Because wireless communications facilities operate at low power levels, wireless service providers such as T-Mobile must locate antenna sites according to a network design based on interconnecting cells (coverage areas) so that a wireless call can be seamlessly handed off from one wireless communications facility to the next as a user travels throughout and lives in the area. Without a sufficient number of wireless communications facilities, calls will drop and disconnect as the user approaches the outer limits of a cell, or the cell they are utilizing becomes overrun by other users. In order to achieve maximum efficiency from each wireless communications facility in the network, the carrier attempts to locate wireless communications facilities at optimum locations within each cell so that it can attain the broadest pattern of signal distribution and the widest possible spacing between its wireless communications facilities.

The location of the proposed facility will significantly improve T-Mobile's area wide coverage and provide coverage to the area around 9763 Hawkins Creamery Road – east of Upper Magruder Branch Park; west of Great Seneca Stream Valley Park; north of Greenel Road; and south of Largo and Lasalle Courts. The proposed facility will, to the highest degree, enhance citizens' and visitors' wireless networks as they work, travel and live in and around this area of Damascus.

The proposed monopole will ensure that T-Mobile can deploy their wireless services and begin to provide seamless and improved coverage of its Personal Communication Services (PCS) network. In order to fulfill its service requirements, both coverage and capacity, and to provide in-building coverage, T-Mobile needs to locate a new telecommunications facility in this area. Seamless coverage areas for wireless communication are necessary for public convenience and service. Additionally, availability of wireless communications benefits the public safety and welfare by facilitating communication with police, fire and rescue operations in times of emergency. The propagation maps submitted with the CUP illustrate the gaps in coverage in T-Mobile's network in this area that would be closed with the proposed Facility.

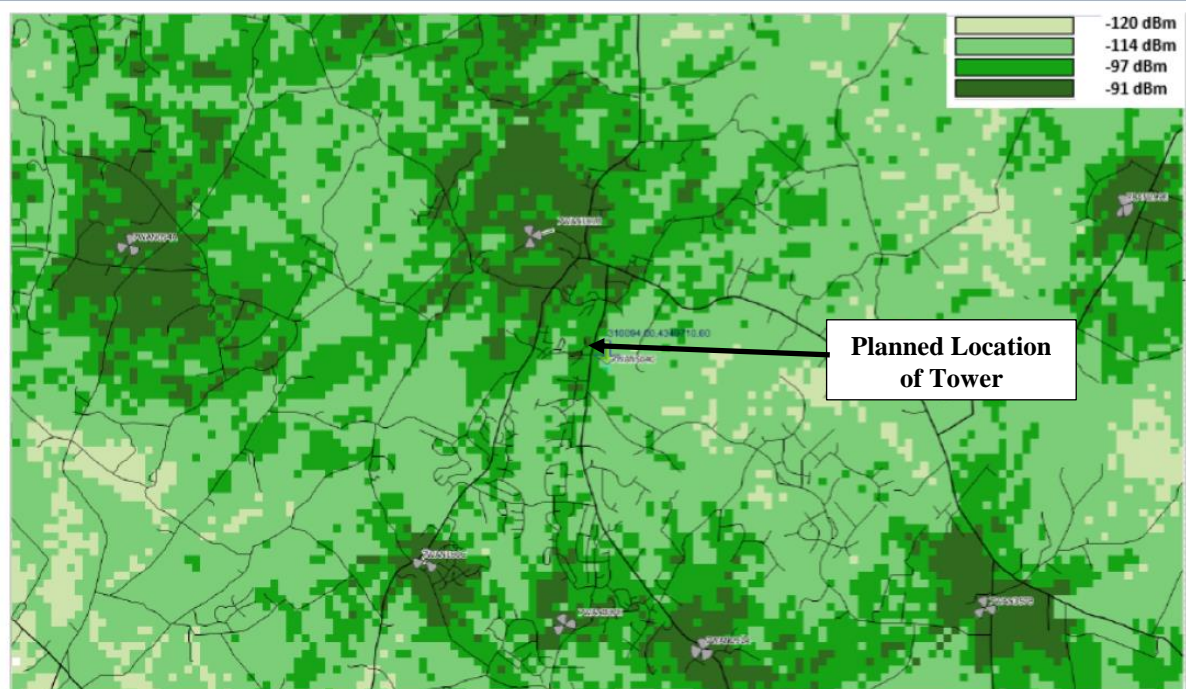
In its evaluation of the need for service in the area and in completing an examination of possible site locations, American Towers has selected the Property as an appropriate location for its Facility, due to the lack of alternative locations in the applicable search ring. The existing self-support tower and watertank propagation maps show that these locations are very close to the existing T-Mobile site WAN181 and therefore provide redundant coverage. The existing self-support tower and the watertank lack coverage to the south which does not provide T-Mobile customers adequate seamless coverage along roads leading south toward T-Mobile existing sites. The propagation maps show that the proposed location for T-Mobile WAN504 will provide the needed seamless coverage along RT 124 Woodfield Road and RT27 Ridge Road. The proposed location will also provide increased in building coverage for residents near Moyer Road park in-between RT 27 and RT 124 which the existing

self-support tower and watertank do not. See attached Parcel Analysis and propagation maps for the self-support structure and watertank.

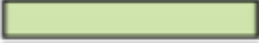



A macro site is proposed here instead of a distributed antenna system or DAS network due to the coverage area targeted. DAS networks are best implemented in public rights-of-way where there is consistent existing infrastructure at regularly spaced intervals to allow for the transfer of signal propagation from one node to the next. Each node can transmit no more than one half of a mile and a central hub base station is still required. DAS nodes also require the permission of the infrastructure's owner (typically a utility company) as well as the installation of miles of fiber optic cable. In addition, DAS networks provide what may best be described as a linear solution to coverage problems. While a DAS network may enhance coverage along roadways, it would not be able to provide the coverage desired to penetrate into the residential neighborhoods and homes within the target area. Similarly, small cell solutions are not an alternative at the subject site as they cannot handle the capacity of a macro site and are limited in the number of frequencies and carriers that can use them. The support structure proposed here at 150' allows for more room for future collocators and for greater propagation of signal.

The above-quoted statement from the Applicants' revised Statement of Justification was buttressed by the testimony of RF Engineer, Mohammed Alsamna (Tr. 14-15, 21-38), and cell signal coverage maps (Exhibits 71(g) through 71(m)). Exhibit 71(g) shows the current cell signal coverage, without the proposed tower, and it is reproduced below:

## REASON FOR REPLACEMENT SITE COVERAGE MAPS – EXISTING MID-BAND



The color scale in the upper right corner of the coverage maps shows the level of coverage depicted on each coverage map. Tr. 21-23:

|   |                 |   |
|---|-----------------|---|
|  | <b>-120 dBm</b> | <b>-120 dBm indicates cell coverage for a person outdoors</b>                 |
|  | <b>-114 dBm</b> | <b>-114 dBm indicates cell coverage for a person in a car</b>                 |
|  | <b>-97 dBm</b>  | <b>- 97 dBm indicates cell coverage for a person in a home</b>                |
|  | <b>-91 dBm</b>  | <b>- 91 dBm indicates cell coverage for a person in a commercial building</b> |

As can be seen from the above coverage map, the existing cell towers in the general area provide in-vehicle coverage for the area around the proposed site, and some in-home coverage, but no coverage inside commercial buildings near the proposed site.

Using cell-signal coverage maps (Exhibits 71(g) through 71(m)) to demonstrate his point, Mr. Alsamna testified that a telecommunications tower at the proposed height of 150 feet<sup>2</sup> and at the proposed location was necessary in order to ensure cell phone coverage in the area, not only for those in cars and in homes, but also in commercial buildings. Tr. 21-38. As stated by Mr. Alsamna, in response to the Hearing Examiner's questions (Tr. 30-31):

MR. GROSSMAN: All right. All right. So given the -- your analysis of the current coverage and what is being proposed, in your mind or your -- in your expert opinion is there a basis -- a need for the proposed tower at the height of 150 feet with the RAD center being at 147 feet?

MR. ALSAMNA: Yes. It's -- and it's because we have a very significant gap in coverage and also the trees in the -- around the tower is about -- what -- 100 feet or -- so we need to have enough height so we can -- so the signal or the RF propagate through the trees into the customers.

So if we're at lower height, then most of the signal is just going to go through the trees and it wouldn't get to the customers and it wouldn't cover the whole area that we have in question or the gap area that we have in question right now.

MR. GROSSMAN: And in your opinion will this proposed tower satisfy those concerns and give you the missing coverage?

MR. ALSAMNA: Yes. At 150.

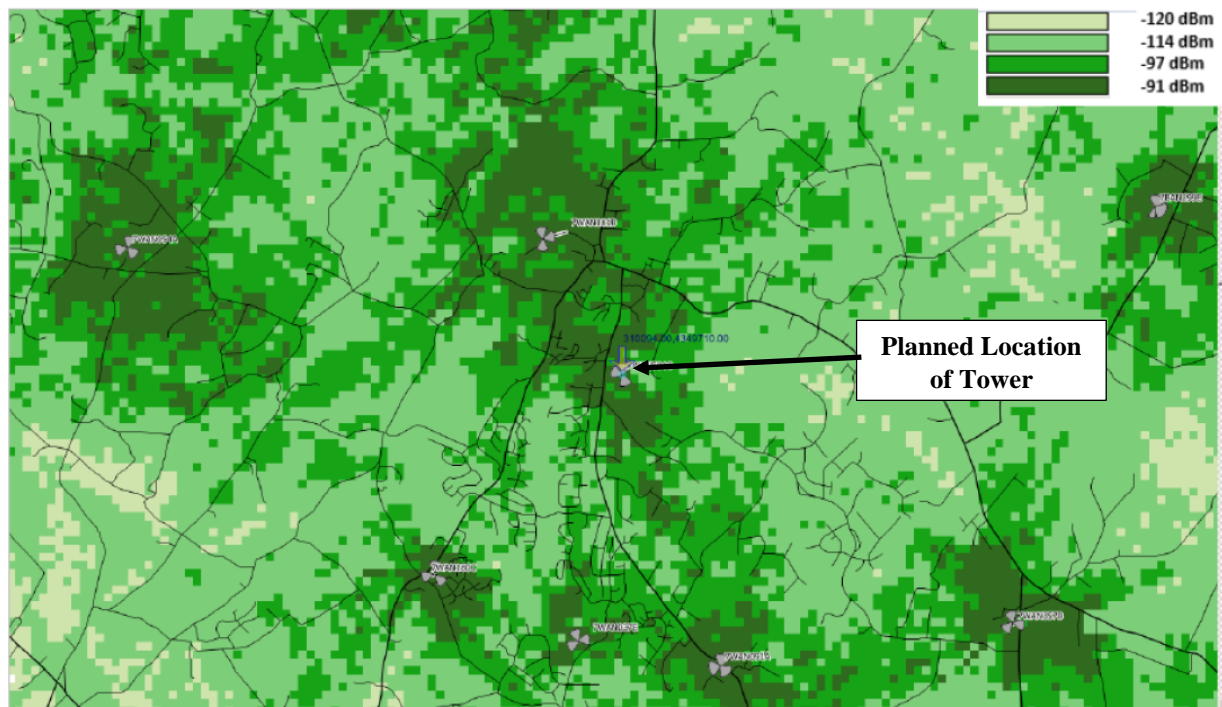
---

<sup>2</sup> Mr. Alsamna testified that the largest antenna the Applicants propose to use is approximately 8 feet in length. Since its center would be installed at the 147-foot level of the proposed tower, the antenna would extend upward another 4 feet, bringing the height of the tower with the antennas mounted to 151 feet (Tr. 14-15), as shown in Exhibit 78(d) – Tower Elevation, reproduced on page 12 of this Report and Decision.



Coverage Map Exhibit 71(j), reproduced below, shows the projected cell coverage with the proposed facility at the subject site, and the main antenna attached at the 147 foot level:

## REASON FOR REPLACEMENT SITE COVERAGE MAPS – MID-BAND AT 147'



As can be readily seen, the proposed telecommunications facility would significantly increase cell phone coverage, and provide coverage in commercial buildings where there was none before.

Mr. Alsamna further testified that there were no other alternative sites available to provide the needed coverage (Tr. 35-36):

MR. ALSAMNA: Yeah. We looked at every possible co-location in the area, and they either had full capacity or they don't work for us. They don't provide the coverage we need in the area to height or other issues, and I think they also can talk about leasing and other issues that might -- we might had when we were looking for sites in the area.

Again, for T-Mobile it's always easier and better to look for an existing structure to just mount antenna. It's easier in term of everything, and it's faster to build. So that's what we always do. We try to look for an existing structure that would work for us and fill the gap that we have in the area. And for this specific location we could not find any. That's why we proposing this location as a new tower.

Technical Staff agreed that the proposed cell tower would significantly improve coverage; that other colocation options in the area would not be suitable; and that these factors demonstrate the need for the proposed facility (Exhibit 62, pp. 17-19):

The Tower Coordinator's report indicates that the other colocation options in the area would not be suitable for the antennas proposed with this Application. The Applicant's propagation maps show that the proposed location "will provide the needed seamless coverage along RT124 Woodfield Road and RT27 Ridge Road. The proposed location will also provide increased in building coverage for residents ... in between RT27 and RT145" which the other possible colocation facilities do not (quotations are from the Application to the Tower Committee, included with the Tower Coordinator's report).

Coverage maps provided by the Applicant . . . indicate the change in coverage that can be expected by the new tower and antennas. . . . The darker the color, the stronger the signal.

The proposed antennas significantly increase residential and commercial in-building coverage, which are targeted by the -97 and -91 dBm power levels, respectively. The lack of available alternative locations in the area and the increase in coverage, especially in-building coverage for residents, demonstrate the need for the proposed facility.

The Hearing Examiner agrees with this assessment and with the conclusion of the TFCG Chair that the need for colocation facilities provided by the proposed tower more than justifies increasing the generally permitted height of the proposed cell tower from 135 feet allowed by Zoning Ordinance §59.3.5.2C.2.c.iii. to 151 feet, to the top of the highest antenna.

*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. . . .*

That section also allows the additional height if "needed for service." Based on the undisputed testimony of RF engineer Alsamna, the Hearing Examiner also finds that the additional height up to 151 feet will permit better service because it will avoid the signal being blocked by surrounding trees. Tr. 30-31.

In sum, the Applicants have demonstrated a need for a telecommunications facility of the proposed height, both for cell phone service needs and colocation requirements.

### **F. Community Response**

Neither OZAH nor the Planning Department received any letters of opposition to this application. Exhibit 62, p. 24. However, the Applicants revealed that they met with eleven neighbors, and responded to some concerns raised by them. Exhibit 57(a) and Tr. 59-61. Issues raised included need for the cell tower, visual impact, effects on property values, possible adverse health effects from radio frequency emissions, fall zone risks, stormwater management and the public hearing process. Apparently, any community concerns were alleviated by this meeting because there has been no community opposition to this application; nor did anyone other than the Applicants' witnesses appear for the hearing.

### **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. Pre-set legislative 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 Conditional Use allowed under *Zoning Ordinance* Section 59.3.5.2.C.2.

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 the conditional use proposed in this application conforms to the general and specific standards for approval. Therefore, the Hearing Examiner hereby grants the application.

#### **A. Necessary Findings (Section 59.7.3.1.E.)**

The general findings necessary to approve a conditional use are found in Section 59.7.3.1.E of the *Zoning Ordinance*. Standards pertinent to this review, and the Hearing Examiner's

conclusions for each finding, are set forth below:<sup>3</sup>

***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: Technical Staff reports that “The only previous approval found for the site is the Final Forest Conservation Plan, which was required by the application requirements for a Telecommunications Tower per Section 59.7.3.1.B.k.vii.”<sup>4</sup> Exhibit 62, p. 20. The Forest Conservation Plan was filed as Exhibits 37, 38 and 39. According to Staff, “The current Application does not require an amendment to the approved FFCP.” Exhibit 62, p. 20. Based on this information, the Hearing Examiner finds that this provision has been satisfied.

***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 an analysis of the standards of the RNC (Rural Neighborhood Cluster) Zone contained in Article 59-4, the use standards for a Telecommunications Tower conditional use contained in Article 59-3, and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively). Based on the analysis contained in those discussions, the Hearing Examiner finds, as did Technical Staff (Exhibit 62, p. 24), that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6.

---

<sup>3</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 arguably apply to this application. Section 59.7.3.1.E.1. contains seven subparts, a. through g.

<sup>4</sup> The correct citation to this provision is Section 59.7.3.1.B.2.k.vii.



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

Conclusion: The Subject Site is within the Neighborhood Transition Area in the 2006 *Damascus Master Plan*, which makes specific reference to this property (Master Plan pp. 27-28). Technical Staff discusses the Master Plan on pages 6-7 of its report and analyzes its application to this case on pages 20-21 of its report (Exhibit 62). The following excerpt is from Staff's initial description of the Master Plan:

. . . The Master Plan cites the Property's proximity to the Town Center as a justification for an increase in density. It describes the Warfield farm as "the most visually significant developable property in close proximity to the Town Center. . . . The property contains historic structures and presents one of the most important remaining vistas along the approach to Damascus on Woodfield Road." The Master Plan recommends cluster development to protect the environmental features on the site and to preserve rural vistas. It also recommends the dedication of seven acres of very high-quality forest located along the northeastern edge of the Property. This forested area is connected to a much larger forest stand on parkland in the Great Seneca Stream Valley Park, but does not abut the proposed tower site.

The Master Plan shows a proposed park trail crossing the area of the Property recommended for future parkland acquisition and connecting with a proposed non-park connector trail that would continue across the remainder of the Property to Woodfield Road (p. 79). This future trail would connect the Great Seneca Stream Valley Park to the Magruder Branch Stream Valley Park and Little Bennett Creek headwaters. However, the 2016 Countywide Park Trails Plan no longer shows the proposed connection across the Property.

The Master Plan includes the following "Guideline for Rural Vista Protection":

The visual character of the Rural Areas surrounding Damascus are unique as they are the highest elevations in the County. When special exceptions are proposed in Transition and Rural Areas within the Damascus Master Plan area, their review should take into special consideration the preservation of these long vistas that are a part of the unique character of this community. Any proposed land use that would impede those vistas should be discouraged unless it serves an important public purpose. (p. 103)

The Applicants state, in their revised Statement of Justification (Exhibit 67(a), p. 4), that "The proposed monopole is consistent with the Damascus Master Plan and the goals stated therein

for community facilities. This Facility will enhance the living and working experience of those in the area.” Alexandra Bull, the Applicants’ expert in site acquisition for cell towers and land use relating thereto, testified that, in her opinion, the proposed use would be “consistent with the Damascus Master Plan.” Tr. 54.

However, in the Hearing Examiner’s view, the Master Plan’s goal of protecting the rural vista in this area gives rise to his most serious concern about this application. A 150-foot telecommunications tower can hardly be thought of as preserving the rural vistas. On the other hand, the Master Plan clearly waffles on this vista-protection goal by adding the proviso that impeding the vista should be discouraged “unless it serves an important public purpose.” Master Plan, p. 103. In this day and age, providing adequate cell service clearly is “an important public purpose.”

Technical Staff addresses the vista concern in its analysis (Exhibit 62, pp. 20-21):

The Master Plan recommended a zoning change to increase the density to allow up to 71 dwelling units to be built on the Property with the provision of transferable development rights. The RNC zone subsequently applied to the Property allows for the preservation of open space by clustering the houses into small neighborhoods surrounded by the open space. One of the requirements of the RNC zone is that the Master Plan must specify reasons for recommending that zone. In this case, the cluster development as recommended to protect the environmental features on the site and to preserve rural vistas. Most significantly, the Master Plan describes the Property as having “one of the most important remaining vistas along the approach to Damascus on Woodfield Road.” The Master Plan also includes a guideline to use when reviewing special exception applications that discourages impeding the vistas in the area containing the Property unless it serves an important public purpose.

It would be impossible to build a cell tower on the Property that would not have some impact on the vista described in the Master Plan. However, the Master Plan also envisioned building up to 71 houses on the Property, which would also impact the vista from Woodfield Road. A cell tower, which can be seen “through,” or “around,” arguably impedes less of an existing vista than dozens of structures. The Applicants have placed the tower as far from Woodfield Road as possible and at a base elevation 50 feet lower than the road, and with additional landscaping around the equipment compound, all of which help mitigate the visual impact of the tower. Staff has also recommended replacing the proposed chain-link/barbed wire fence with a board-on-

board fence to mitigate the appearance of the equipment compound when viewed from Woodfield Road. Furthermore, improved cell service in an area could be considered to serve an important public purpose by providing better service and more choices to the residents and visitors in the service area of the new tower. The Applicant has been unable to find other locations in the area where they can co-locate with existing carriers and still provide sufficient coverage in the desired area and have mitigated the visual effects of the tower to the extent possible.

Based on this analysis, Technical Staff concluded that “The Proposed Use substantially conforms to the recommendations of the Master Plan.” Exhibit 62, p. 21.

Since the Planning Department is the drafter of master plans and is generally responsible for their application once approved by the County Council, the Hearing Examiner must give considerable weight to the Planning Department’s interpretation of its own regulations. As stated in *Watkins v. Secretary, Dept. of Public Safety and Correctional Services*, 377 Md. 34, 46, 831 A.2d 1079, 1086 (2003), “We must respect the expertise of the agency and accord deference to its interpretation of a statute that it administers.” See also, *Kor-Ko Ltd. v. Maryland Department of the Environment*, 451 Md. 401, 152 A.3d 841 (2017).

As Staff pointed out, the Applicants have placed the tower as far from Woodfield Road as possible, with a base elevation 50 feet lower than the road, and with landscaping around the equipment compound, all of which will help to mitigate the visual impact of the tower. The Applicants also agreed to Staff’s recommendation for replacing the originally proposed chain-link/barbed wire fence with a board-on-board fence and for adding additional landscaping to mitigate the appearance of the equipment compound when viewed from Woodfield Road. These changes are reflected in the amended plans the Applicants filed on February 14, 2019 (Exhibit 78(a)-78(q)).

There is no evidence or expert opinion in this record contrary to Technical Staff’s analysis of the Master Plan and Ms. Bull’s expert opinion. Given this circumstance, as well as the enhanced

screening and the Hearing Examiner's own finding that the proposed cell tower will "serve[] an important public purpose," the Hearing Examiner concludes that the proposed facility will substantially conform with the recommendations of the Damascus Master Plan.

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

Conclusion: For the reasons stated in the previous section, 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 2006 *Damascus Master Plan*. As noted by the Technical Staff (Exhibit 62, p. 21),

The Proposed Use will be in harmony with the character of the surrounding neighborhood. The Use will not result in any notable negative impact on the residential neighborhood since it will generate close to no traffic, does not require parking, and will not generate noise or smells. The proposed use will be operated in such a manner that it will not interfere with the orderly use, development, and improvement of properties in the Neighborhood of the plan.

***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: Technical Staff advises that there are four other conditional uses/special exceptions in the defined neighborhood (Exhibit 62, p. 21)):

- S-545/CBA1367 for a community swimming pool
- CBA2574 for a home occupation
- S-1321 for an accessory apartment
- S-1204 for a child daycare

The Hearing Examiner agrees with Staff's observation (Exhibit 62, p. 22) that all the existing special exceptions "are very different uses from each other and from the Proposed Use." Therefore, evaluating the proposed use in conjunction with existing and approved conditional uses in the



neighborhood and in any neighboring Residential Detached zone, the Hearing Examiner finds that the proposed use will not increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the nature of the area.

***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: Technical Staff did not indicate that the proposed use will require approval of a preliminary plan of subdivision. Therefore, the Hearing Examiner must determine whether the proposed use will be served by adequate public services and facilities. By its nature, an unmanned and unoccupied telecommunication tower, such as the one proposed in this case, would have no significant impact on schools, police and fire protection, water, sanitary sewer, and public roads. Because it will be visited only once or twice a month for routine inspections and maintenance, it will impose no undue burdens on local parking spaces or roadways.

Staff also notes that “The Application proposes to manage stormwater runoff, particularly from the access road, according to the County’s SWM regulations.” Exhibit 62, p. 23. Given these

circumstances, Technical Staff found, and the Hearing Examiner agrees, that that the proposed development will be served by adequate public services and facilities.

*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.*

Conclusion: 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, alone, are not a sufficient basis for denial of a conditional use. However, non-inherent adverse effects in the listed categories, alone or in conjunction with inherent effects in those categories, are a sufficient basis to deny a conditional use. Nevertheless, the existence of a non-inherent adverse effect does not mean that an application for a conditional use must be denied. Rather, it means that it can result in denial if the Hearing Examiner finds that such a non-inherent adverse effect, either alone or in combination with inherent adverse effects, creates “undue harm to the neighborhood” in any of the categories listed in Zoning Ordinance §59.7.3.1.E.1.g.

Analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a Telecommunications Tower Conditional Use. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics identified *or* adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects then must be analyzed, in the context of the subject property and the surrounding neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

In analyzing potential adverse effects, Technical Staff considered the size, scale, scope, light, noise, traffic and environmental effects of the proposed use. Staff determined that the following physical and operational characteristics are necessarily associated with (*i.e.*, are inherent in) a Telecommunications Tower facility (Exhibit 62, p. 23):

- antennas installed on or within a support structure with a significant height;
- visual impacts associated with the height of the support structure;
- an equipment compound at the base of the tower that may be enclosed within a fence;
- radio frequency emissions;
- vehicle trips for maintenance; and
- noise and emissions associated with back-up generators or other mechanical equipment.

Technical Staff analyzed the potential adverse effects on the neighborhood, as follows (Exhibit 62, pp. 23-24):

The support structure—a monopole in this case—will be 150 feet high. It is virtually impossible to hide a 150-foot tall pole that includes a set of antennas at the top. However, as mentioned above, the Applicant has mitigated the visual impacts of the facility to the extent possible by locating it downhill from and at a significant distance from Woodfield Road. The heavy woods between the tower and houses to the northeast, east, and southeast should prevent any view of the tower from the homes themselves. Landscaping and fencing should help any view of the compound from the road. The Applicant does not propose back-up generators for the facility, and only two trips per month for maintenance are envisioned (or ten total monthly trips if all

5 antenna locations are occupied). Local government agencies are disallowed from considering the harmful effects of radio frequency transmissions.

The only non-inherent adverse effect Staff finds associated with the Application is the Master Plan guideline to preserve the rural vistas on the Property. This issue was discussed at length above, but Staff does not believe that the addition of the tower, antennas, and equipment compound (as conditioned with board-on-board fence) to the vistas will negatively impact the use, peaceful enjoyment, economic value, or development potential of properties in the Neighborhood.

The Conditional Use generates almost no traffic and does not have a parking requirement. There is no noise, odors, dust, or illumination associated with the Application. The Proposed Use, provided all requirements and conditions of the use are satisfied, will have no adverse impacts on the health, safety, or welfare of neighboring residents, visitors, or employees.

The Hearing Examiner once again agrees with Technical Staff's analysis. Local officials are prohibited by federal law from deciding, based on health concerns regarding RF radiation, that a telecommunications facility is inappropriate, as long as it complies with Federal Communications Commission (FCC) regulations.

Section 704(a)(7)(B)(iv) of the Telecommunications Act of 1996, 47 USC §332(c)(7)(B)(iv), provides:

*No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communications] Commission's regulations concerning such emissions.*

The Applicants assert in their revised Statement of Justification for this application (Exhibit 67(a), p. 1) that they will be leasing the telecommunications facility to T-Mobile Northeast LLC ("T-Mobile") to provide wireless services, and T-Mobile "holds a license issued by the Federal Communications Commission ("FCC") to provide personal communication service ("PCS") and Broadband service respectfully, throughout the greater Baltimore-Washington, DC metropolitan areas, including all sections of Montgomery County."

The Applicants RF Engineer, Mohammed Alsamna, testified, in connection with potential health impacts on the surrounding area, that the proposed facility will comply with FCC regulations on emissions. In fact, he stated that the radiation levels were “. . . about 1 percent of the permitted limit.” Tr. 37-38. There is no contrary evidence in this record, and the Hearing Examiner must therefore conclude that radiation health impacts from this facility are not an issue in this case.

The only significant remaining issue is the potential visual impact of the proposed tower and its effects on the neighbors. This issue was discussed at some length in Part II.D. of this Report and Decision, and we concluded there:

Although the 150 foot tower will be visible from some locations, it's location on a large plot of land, as well as the sound screening and the distance from any residences, will significantly reduce any visual impacts of the tower, and in fact will eliminate any such impacts from many of the nearby residential areas.

Although the visual impact on the rural vistas must be considered a non-inherent adverse effect, this issue has already been addressed in connection with the Master Plan language upon which it is based. Moreover Section 59.7.3.1.E.1.g. is mostly concerned with potential impacts on people and properties in the neighborhood, and Staff correctly points out that the addition of the tower, antennas, and equipment compound is not likely to negatively impact the use, peaceful enjoyment, economic value, or development potential of properties in the neighborhood. Moreover, the proposed use will generate almost no traffic, does not have a parking requirement, and will produce no noise, odors, dust, or illumination.

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.***

Conclusion: This provision is inapplicable since the proposed structure will not be located in a Residential Detached zone.

- 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. 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 zone where the use will be located – in this case, the Rural Neighborhood Cluster (RNC) Zone. Development standards for the RNC Zone are contained in §59.4.3.5. of the Zoning Ordinance. We begin with the stated “Intent” of the RNC Zone:

##### ***Intent Statement***

***1. The intent of the RNC zone is to preserve open land, environmentally sensitive natural resources, and rural community character through clustering of residential development in the form of small neighborhoods that provide neighborhood identity in an open space setting. A master plan must recommend the RNC zone, and must provide development guidelines and recommendations regarding density, and the location and rationale for preserving the rural open space.***

***2. It is also the intent of the RNC zone to implement the recommendations of the applicable master plan, such as maintaining broad vistas of open space, preserving agrarian character, or preserving environmentally sensitive natural resources to the maximum extent possible, and to ensure that new development is in harmony with the policies and guidelines of the applicable master plan and is compatible with existing development in adjoining communities.***

Technical Staff interpreted the RNC Zone's Intent Statement and the Applicants' compliance therewith as follows (Exhibit 62, p. 12):

The first part of the intent statement is intended for residential development, so does not apply to this Application. The second part of the intent statement, however, does apply to the proposed facility. The Master Plan recommended the RNC zone for the Property in order to "enable better environmental protection and preserve rural vistas," as well as to "protect the historic farm site and existing forest, and to replicate the small town lot patterns across Woodfield Road" (p. 27)

The Applicants have placed the facility at the edge of the open space on the property to minimize the visual impact the tower will have from Woodfield Road. The tower site is also more than 900 feet from the historic farm structures on the Property and is screened from those structures by a line of trees. The Applicant has also proposed additional landscaping around the equipment compound. . . . [Staff recommended a board-on-board fence around the equipment compound and additional landscape screening, which the Applicants agreed to and implemented in their revised plan set (Exhibits 78(a)-(q).]

By locating the structure downhill from Woodfield Road and away from the farm house and stream buffers, and by providing the recommended screening, the Application meets the intent of the RNC zone as outlined in the Master Plan to protect sensitive environmental features and to preserve the rural vistas in the area to the extent possible. The Historic Preservation Section reviewed the plans and concluded that the proposed facility would not constitute a substantial alteration to the Property. . .

Interpretation of the RNC Zone's intent statement in conjunction with this conditional use application raises the same issues addressed in the discussion of compliance with the Damascus Master Plan, and the Hearing Examiner's conclusion is the same – the proposed cell tower will clearly impose on the rural vista, but it will be located and screened to minimize this effect and it will serve an important public purpose, thus substantially conforming with the recommendations of the Damascus Master Plan. It therefore also satisfies the RNC Zone's statement of intent.

In addition to compliance with the Zone's Statement of Intent, the Hearing Examiner must consider whether the application meets the specific development standards of the RNC Zone, contained in Zoning Ordinance §59.4.3.5.C.

Most of the development standards for the RNC Zone relevant to this application were set forth by Technical Staff in a Table on page 12 of the Staff Report (Exhibit 62), which is reproduced below:

**Table 1. RNC Zone, Standard Method Development Standards.**

| <b>Development Category</b>      | <b>Standard (RNC)</b> | <b>Proposed</b> |
|----------------------------------|-----------------------|-----------------|
| Minimum site area                | 5 acres               | 78.52 acres     |
| Lot width at front building line | 100 ft.               | ~2,800 ft.      |
| Lot width at front lot line      | 25 ft.                | ~2,300 ft.      |
| Maximum lot coverage             | 10%                   | 1.9%*           |
| Accessory structure setbacks:    |                       |                 |
| • Front                          | 80 ft.                | 80 ft.          |
| • Side                           | 15 ft.                | 15 ft.          |
| • Rear                           | 15 ft.                | 15 ft.          |

\* Based on 1.47-acre LOD; completed project area is smaller.

While Staff's Table demonstrates compliance with the listed development standards, a few words should be said about one of the standards not mentioned in Staff's Table – the requirement for 60% of the site to be “rural open space.” That term is defined in Zoning Ordinance §59.6.3.4.A.2. as “land that is managed as farmland or in a natural state as allowed under Section 6.3.4.B.1.d.” Section 59.6.3.4.A.1.b. provides that “All development in the RNC zone must provide rural open space.” Moreover, under Section 6.3.4.A.4.b.xxvii., a telecommunications tower is “prohibited in any rural open space area” in the RNC Zone.

Thus, we must determine whether the land on which the Applicants propose to build the telecommunications tower is rural open space. If it is, then this application must be denied. The Hearing Examiner could find nothing in this record designating this particular portion of the 78.52 acre Warfield property as rural open space, and Technical Staff indicated in its report (Exhibit 62, p. 20) that, “The only previous approval found for the site is the Final Forest Conservation Plan.”

What is clear from the Applicants' Overall Plan View (Exhibit 78(b)) is that the vast majority of the Warfield property is undeveloped land, with only one small building, located about 1,000 feet north of the proposed location of the cell tower, being shown on the plan. Thus, there

is more than sufficient land on the 78.52 acre site that is not currently developed and will not be occupied by the proposed 75 foot by 75 foot telecommunications tower compound and its access path, in order for any future development to meet the statutory requirement that the property preserve 60% of the land as rural open space. In order to ensure compliance with the requirements of Zoning Ordinance Sections 59.4.3.5.C. and 59.6.3.4.A.1.b., the Hearing Examiner has imposed a condition in Part IV of this Report and Decision, requiring that any future development of this property preserve 60% for rural open space.

Conclusion: The Hearing Examiner finds that, as conditioned, the application complies with the Development Standards of the RNC Zone.

### **C. Use Standards for a Telecommunications Tower (Section 59.3.5.2.C.)**

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

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

##### ***1. Defined***

***a. Telecommunications Tower means any structure, other than a building, used to provide wireless voice, data, or image transmission within a designated service area. Telecommunications Tower includes one or more antennas attached to a support structure, and related equipment, but does not include amateur radio antenna (see Section 3.5.14.A and Section 3.5.14.B, Amateur Radio Facility), radio or TV tower (see Section 3.5.2.B, Media Broadcast Tower), or an antenna on an existing structure (See Section 3.5.14.C, Antenna on Existing Structure).***

***b. Antenna Dimension means an antenna, and any enclosure containing the antenna, in which the total combined size of the antenna within any enclosure meets the following dimensions:***

| <b><i>Standard</i></b> | <b><i>Maximum Length on Any Side (in feet)</i></b> | <b><i>Maximum Volume (in cubic feet, excluding any equipment cabinet)</i></b> |
|------------------------|--|---|
| <b><i>A</i></b>        | <b><i>4 feet 2 inches</i></b>                      | <b><i>6 cubic feet</i></b>  |
| <b><i>B</i></b>        | <b><i>4 feet 2 inches</i></b>                      | <b><i>46 cubic feet</i></b>   |
| <b><i>C</i></b>        | <b><i>6 feet</i></b>                               | <b><i>30 cubic feet</i></b>   |
| <b><i>D</i></b>        | <b><i>9 feet</i></b>                               | <b><i>13 cubic feet</i></b>   |
| <b><i>E</i></b>        | <b><i>15 feet</i></b>                              | <b><i>1 cubic foot</i></b>  |

Conclusion: The proposed support structure will be constructed to provide wireless communications services within a designated area. Attached to the support structure will be panel antennas measuring 56.6" x 12.9" x 8.7" and 93" x 14.5" x 6.9" (Exhibit 67(a), p. 2). Translating the heights and volumes into feet and cubic feet, respectively, yields shorter antennas 4.72 feet high and 3.68 cubic feet in volume and taller antennas 7.75 feet high and 5.38 cubic feet in volume. These antennas thus satisfy standards C and D, respectively, in the above table. The Applicants' plan does not include amateur radio antenna, a radio or TV tower, or an antenna on an existing structure.

In sum, the Hearing Examiner finds that the proposed support structure meets the definition of a telecommunications tower.

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

***a. Where a Telecommunications Tower is allowed as a limited use in the Agricultural zone, Rural zone, Rural Cluster zone, Employment zones, and Industrial zones, and the tower is not a replacement tower that complies with 59.3.5.2C.2.b, it must satisfy the following standards:***

***i. Antennas are limited to the following:***

***(a) an antenna that satisfies one of the Antenna Dimensions standards in Section 59.3.5.2.C.1.b ;***

***(b) satellite or microwave dish antennas with a maximum diameter of 8 feet.***

Conclusion: The Hearing Examiner finds that the Applicants' plan complies with this section since the proposed antennas meet the standards of Section 59.3.5.2.C.1.b., as discussed above, and no dish antennas are proposed.

***ii. Signs or illumination on the antennas or support structure are prohibited unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.***

Conclusion: The Hearing Examiner finds that Applicants' plan complies with this section since there will be no illumination on the tower (Exhibit 67(a), p. 3), unless required by law or regulation, and the only sign will be a one square foot identification sign required by Section 59.3.5.2.C.2.c.x. (Exhibit 78(q)).



***iii. In the AR, R, and RC zones, the tower must be located within an overhead transmission line right-of-way and is a maximum height of 179 feet. The tower must be a minimum of 300 feet from any dwelling. A Telecommunications Tower conditional use application may be filed with the Hearing Examiner to deviate from this standard.***

Conclusion: Not applicable. The proposed tower is not in the AR, R, or RC zones.

***iv. In the LSC, IL, IM, and IH zones, the tower is a maximum height of 179 feet with a setback of one foot for every foot of height from the property lines of all properties zoned Agricultural, Rural Residential, or Residential.***

Conclusion: Not applicable. The proposed tower is not in the LSC, IL, IM, or IH zones.

***v. In the GR and EOF zones, the tower is a maximum height of 130 feet with a setback of one foot for every foot of height from the property lines of all properties zoned Agricultural, Rural Residential, or Residential. A Telecommunications Tower conditional use application may be filed with the Hearing Examiner to deviate from this standard.***

Conclusion: Not applicable. The proposed tower is not in the GR, or EOF zones.

***b. In the Commercial/Residential, Industrial, and Employment zones, where a Telecommunications Tower is allowed as a limited use and the tower would replace a pre-existing utility pole, streetlight pole, or site plan approved parking lot light pole, the tower is allowed if it satisfies the following standards:***

Conclusion: Not applicable. The proposed tower is not in the Commercial/Residential, Industrial, or Employment zones.

\* \* \*

***c. Where a Telecommunications Tower is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 3.5.2.C.2.a, limited use standards, Section 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 County 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.***

---

<sup>5</sup> The Hearing Examiner has omitted the remainder of the text of Subsection 59.3.5.2.C.2.b. since its terms do not apply to the subject RNC Zone.

Conclusion: The Hearing Examiner finds that the requirements of this section have been met. The Transmission Facility Coordinating Group (TFCG) reviewed this application and recommended approval of the Applicants' proposal on December 6, 2018, subject to a review by the Hearing Examiner of the proposed tower height. Exhibits 64(a) and (b). Applicants filed the TFCG recommendation with OZAH on January 24, 2019, more than 5 days before the OZAH hearing, which took place on February 1, 2019. The subject application was filed on December 14, 2018, so the TFCG report was only 8 days old when the case was filed.

*ii. 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: Technical Staff reports that "The Project is not located in any scenic setback indicated in a master plan." Exhibit 62, p. 14. Based on this information, the Hearing Examiner finds that this standard has been satisfied.

*(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 Applicants' revised plan (Exhibit 78(c) - Enlarged Plan View, reproduced on page 10 of this Report and Decision) clearly shows that the proposed tower will be at least 300 feet from any existing dwelling, which is the greater of the two possible setbacks.

*(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: Not applicable. The proposed tower is not in an Employment Zone.

*(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: Not applicable. The Applicants have not requested a reduced setback, and the Hearing Examiner has not authorized any such setback reduction.

*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 Applicants seek authorization for a combined tower and antenna height of 151 feet, which is greater than the 135-foot general limit imposed by this provision; however, this provision also gives the Hearing Examiner authority to approve a tower plus antenna height of up to 179 feet, if it is demonstrated that the additional height “is needed for service, collocation, or public safety communication purposes.” The TFCG discussed the height question on December 5, 2018, and reported the following (Exhibit 64(a), pp. 9-10):

Marjorie Williams noted that this application was recommended by the TFCG twice previously at 150'; that the Applicant had not constructed the monopole before the recommendations expired; and that the application was being reviewed for a third time because zoning changes that took effect June 4, 2018, now restrict the height of any new installations in this zone to 135' unless a Hearing Examiner grants an increase based on specific justifications. Jay O'Neill summarized the application and the Coordinator's findings. Alexandra Bull with NB&C on behalf of T-Mobile indicated that T-Mobile cannot go lower than a RAD Center of 147'. Tracy Themak of Donohue & Stearns added that a 135' height would be less desirable for collocation, that this area lacks coverage, and that she had a copy of the historical approval from

the Maryland Historical Trust and the M-NCPPC's Historic Preservation Section (meeting a condition of the recommendation). Mohammad Alsamna, T-Mobile's RF Engineer, noted that the extra height T-Mobile is requesting would give it the flexibility to adjust the signal with antenna downtilt. Marjorie Williams explained that although the Committee understood the stated need for a taller monopole for coverage in the area and to provide a colocation opportunity, the Committee could not recommend an overall structure height higher than 135' because of the new zoning requirements. She indicated that the Applicant could provide missing or expanded justification for a taller monopole to the Hearing Examiner.

As a result of this discussion, the TFCG voted to recommend approval of the facility up to 135 feet, "with any overall structure height exceeding 135' subject to Hearing Examiner approval." Exhibit 64(b). TFCG Chair (Marjorie Williams) later expanded on this thought in an email of January 7, 2019, to the Hearing Examiner (Exhibit 53):

The TFCG recognized the need for the taller height during our meeting. It is also better to approve the taller height for future co-location opportunities. We all agree that one taller tower would be more acceptable than more towers in the future. We had recommended 2 previous applications at that location at the taller height, unfortunately due to the applicant not filing an application with OZAH before the zoning change the maximum height decreased.

In addition, the only other tower that is out in that area is at full capacity.

In reviewing this issue, Technical Staff made the following observation (Exhibit 62, p. 15):

The Tower Coordinator's report [Attachment A to the Staff Report (Exhibit 62)] questioned the Applicant's request for a 150-foot tower given the limitation of 135 feet without justification to exceed this height. The report, using the analysis of coverage provided by the Applicants, noted that there was only a *miniscule* difference in coverage between antennas mounted at the proposed 147-foot level and the 127-foot level. It was noted at the subsequent Tower Committee meeting, however, that the TFCG had twice previously recommended approval at 150 feet; the Committee only questioned the height now due to the revised height limit (without further justification) in the Zoning Ordinance, which was reduced in June 2018 from 155 feet to 135 feet. The Applicant and representatives of T-Mobile stated that the 150-foot height is justified because of the lack of coverage in the area and the need to provide co-location opportunities. Marjorie Williams, Chair of the TFCG, indicated via email [Exhibit 53] that the Committee recommended approval at the taller height primarily for future co-location opportunities, which also serves to reduce the need for more towers in the future. Ms. Williams also noted that the only other tower in the area is already at full capacity. T-Mobile's engineer also mentioned that a taller tower would provide greater flexibility in adjusting the signal.

Staff concluded that "The requested additional height of 15 feet is justified by the opportunity to

provide more locations on a single pole for multiple carriers rather than needing several slightly shorter towers in the area.” Exhibit 62, p. 15.

At the OZAH hearing, the Applicants’ RF Engineer, Mohammed Alsamna, testified that a telecommunications tower at the proposed height of 150 feet<sup>6</sup> and at the proposed location was necessary in order to ensure cell phone coverage in the area, not only for those in cars and in homes, but also in commercial buildings. Tr. 21-38. Mr. Alsamna used cell-signal coverage maps (Exhibits 71(g) through 71(m)) to demonstrate his point, which he emphasized in response to the Hearing Examiner’s questions (Tr. 30-31):

MR. GROSSMAN: All right. All right. So given the -- your analysis of the current coverage and what is being proposed, in your mind or your -- in your expert opinion is there a basis -- a need for the proposed tower at the height of 150 feet with the RAD center being at 147 feet?

MR. ALSAMNA: Yes. It's -- and it's because we have a very significant gap in coverage and also the trees in the -- around the tower is about -- what -- 100 feet or -- so we need to have enough height so we can -- so the signal or the RF propagate through the trees into the customers.

So if we're at lower height, then most of the signal is just going to go through the trees and it wouldn't get to the customers and it wouldn't cover the whole area that we have in question or the gap area that we have in question right now.

MR. GROSSMAN: And in your opinion will this proposed tower satisfy those concerns and give you the missing coverage?

MR. ALSAMNA: Yes. At 150.

The evidence supports this assessment and the conclusion of the TFCG Chair that the need for colocation facilities provided by the proposed tower more than justifies increasing the generally permitted height of the proposed cell tower from 135 feet allowed by Zoning Ordinance §59.3.5.2C.2.c.iii. to 151 feet (to the top of the highest antenna). That section also allows the additional height if “needed for service.” Based on the undisputed testimony of RF engineer Alsamna, the

---

<sup>6</sup> Mr. Alsamna testified that the largest antenna the Applicants propose to use is 8 feet in length. Since its center would be installed at the 147-foot level of the proposed tower, the antenna would extend upward another 4 feet, bringing the height of the tower with the antennas mounted to 151 feet (Tr. 14-15), as shown in Exhibit 78(d) – Tower Elevation, reproduced on page 12 of this Report and Decision.



Hearing Examiner also finds that the additional height up to 151 feet will permit better service because it will avoid the signal being blocked by surrounding trees. Tr. 30-31. Given these findings, the Hearing Examiner concludes that a total tower-antenna height of 151 feet is warranted.

Finally, the Hearing Examiner has imposed the following condition in Part IV of this Report and Decision to ensure compliance with the second part of this provision:

At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection pursuant to the building permit, the Applicants must certify to the Department of Permitting Services that the height and location of the support structure is in conformance with the height and location of the support structure as authorized in the building permit.

***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, and the Hearing Examiner has addressed this issue at length in Part II.D. of this Report and Decision. As stated by Technical Staff (Exhibit 62, p. 15), “The tower and equipment compound are located more than 700 feet from the road and 50 feet lower in elevation than the road in the interior of a large parcel.” Staff revisited this issue later in its report (Exhibit 62, pp. 23-24):

. . . It is virtually impossible to hide a 150-foot tall pole that includes a set of antennas at the top. However, as mentioned above, the Applicant has mitigated the visual impacts of the facility to the extent possible by locating it downhill from and at a significant distance from Woodfield Road. The heavy woods between the tower and houses to the northeast, east, and southeast should prevent any view of the tower from the homes themselves. Landscaping and fencing should help any view of the compound from the road.

In addition to the landscaping and fencing the Applicants originally proposed, they agreed to additional plantings and a board-on-board fence recommended by Technical Staff, as reflected in

the Applicants' amended plans (Exhibits 78(a)-(q)). With this additional screening, Technical Staff concluded (Exhibit 62, p. 16):

The location of the equipment compound, the existing vegetation, the proposed landscaping, and the recommended board-on-board fence should be sufficient to minimize the visual impact of the support structure. Staff does not find visual mitigation of the tower itself to be necessary.

The Hearing Examiner agrees with Technical Staff. Although the 150 foot tower will be visible from some locations, it's location on a large plot of land, as well as the sound screening and the distance from any residences, will significantly reduce any visual impacts of the tower, and in fact will eliminate any such impacts from many of the nearby residential areas. In sum, the Hearing Examiner finds, in accordance with this provision, that the support structure will be located and screened to minimize its visual impact.

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

Conclusion: The property owner, James Warfield, is a co-applicant, as required by this provision.

***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: This provision is more than satisfied, as the proposed support structure is designed to hold up to five providers' antennas (*i.e.*, four, plus the Applicants' antennas), and it is required by a condition in Part IV of this Report and Decision.

***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: As stated by Technical Staff (Exhibit 62, p. 16) and shown on the Applicants' plans (Exhibit 78(d)), the proposed equipment compound can accommodate the equipment of up to five potential providers (*i.e.*, four, plus the Applicants' equipment). 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 and Decision, 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. At present, the Applicants' plans call for an identification sign one square foot in size, which is compliant with this provision.

***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 and Decision, 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 Hearing Examiner discussed the issue of the need for, and the location of, the proposed facility at length in Part II. E. of this Report and Decision. That discussion is incorporated herein, by reference. Based on that discussion and 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 colocation requirements, at the location specified in the Applicants' plans. As stated by Technical Staff (Exhibit 62, p. 19), "The lack of available alternative locations in the area and the increase in coverage, especially in-building coverage for residents, demonstrate the need for the proposed facility."

**D. Applicable General Development Standards (Article 59.6)**

Conclusion: Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. Technical Staff states (Exhibit 62, p. 20), "No general development requirements under Article 59-6 (parking, landscaping and lighting, screening, and signs) are required as part of this Application." That may be a bit of an overstatement, but Zoning Ordinance §59.3.5.2.C.2.c.iv. does provide that "Screening under Division 6.5 is not required . . ." for this type of conditional use. Moreover, the requirements of the General Development Standards need be satisfied only "to the extent the Hearing Examiner finds necessary to ensure compatibility." *Zoning Ordinance*, §59.7.3.1.E.1.b.

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. The issue of screening has been addressed at length in connection with screening issues that are peculiar to tall cell towers. 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 [he] finds 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 American Towers LLC and James Warfield (CU-T-19-01) for a conditional use under Section 59.3.5.2.C of the Zoning Ordinance to install and operate a telecommunications tower and related equipment, at 25723 Woodfield Road in Damascus, Maryland, is hereby **GRANTED**, subject to the following conditions:


1. All uses on the site must conform to the Conditional Use Plans approved by the Hearing Examiner.
2. The Applicants must comply with the following conditions of approval of Final Forest Conservation Plan (FFCP) SC2018009, approved October 10, 2018:
  - a. The Applicants must comply with all required site inspections by M-NCPPC staff per Section 22A.00.01.10 of the Forest Conservation Regulations.
  - b. Within seven months of the date of the Hearing Examiner’s Opinion approving Conditional Use Application CU-T 19-01, the Applicant must plant three, three-inch caliper shade trees on site per the FFCP.



- c. Prior to the start of any clearing or grading on the property, the Applicant must receive approval from the M-NCPPC Office of the General Counsel of a Certificate of Compliance for an off-site forest mitigation bank for an equivalent of 0.3 acres.
3. The Applicants must maintain the landscape plantings to ensure healthy growth. Any plant material planted in fulfillment of this condition that dies or becomes diseased shall be promptly replaced by the Applicants.
4. Any requirements of the Department of Permitting Services for stormwater management must be fulfilled prior to issuance of sediment and erosion control permits.
5. In accordance with Zoning Ordinance §59.3.5.2.C.2.c.iii., the Hearing Examiner has approved a telecommunications support structure not to exceed 150 feet in height (and up to 151 feet to the top of the highest antenna) to maximize colocation availability and improve service. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection pursuant to the building permit, the Applicants must certify to the Department of Permitting Services that the height and location of the support structure is in conformance with the height and location of the support structure as authorized in the building permit.
6. In accordance with Zoning Ordinance §59.3.5.2.C.2.c.vii. and the Applicants' plans (Exhibits 78(a)-(q)), the support structure must provide space for the antennas of five providers, including the Applicants.
7. In accordance with Zoning Ordinance §59.3.5.2.C.2.c.viii., the equipment compound must provide a sufficient area for the equipment of a total of five providers, including the Applicants, and no outdoor storage of equipment or other items unrelated to the conditional use is permitted.
8. 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.
9. In accordance with Zoning Ordinance §59.3.5.2.C.2.c.x., the telecommunication facility must display a contact information sign, two square feet or smaller, affixed to the outside of the support structure or equipment building. This sign must identify the owner and the maintenance service provider of the support structure and any attached antenna, and it must provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Hearing Examiner notified within 10 days of any change in ownership.
10. In accordance with Zoning Ordinance §59.3.5.2.C.2.c.xi., the Applicants and all owners of the telecommunications facility are responsible for maintaining the facility in a safe condition.
11. There must be no antenna lights or stroboscopic lights unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.

12. Any future development of this 78.52 acre Warfield property must preserve 60% of the land as rural open space, as required by Zoning Ordinance Sections 59.4.3.5.C. and 59.6.3.4.A.1.b.
13. The Applicants and any successors in interest must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the conditional use premises and operate the conditional use as granted herein. The Applicants and any successors in interest shall at all times ensure that the conditional use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements, including the annual payment of conditional use administrative fees assessed by the Department of Permitting Services.

Issued this 5<sup>th</sup> day of March, 2019,



---

Martin L. Grossman  
Hearing Examiner

#### NOTICE OF RIGHT TO REQUEST ORAL ARGUMENT

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.

The Board of Appeals may be contacted at:

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/>.

NOTICES TO:

American Towers, LLC, Applicant  
James Warfield, Owner and Co-Applicant  
Tracy Themak, Esquire  
Barbara Jay, Executive Director  
Montgomery County Board of Appeals  
All parties of record  
Charles Frederick, Esquire, Associate County Attorney  
Diane Schwartz-Jones, Director, Department of Permitting Services  
Ehsan Motazed, Department of Permitting Services  
Greg Nichols, Manager, SPES at DPS  
Gwen Wright, Director, Planning Department  
Jamey Pratt, Planning Department  
Alexandre Espinosa, Director, Finance Department  
Marjorie Williams, Chair, TFCG