

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
Stella B. Werner Council Office Building
Rockville, Maryland 20850
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IN THE MATTER OF

TELECOM CAPITAL GROUP

Applicant

Mark Fisher
Narendra Mangra
Marc Mazullo

For the Application

Edward Donohue, Esq.

Attorneys for the Applicants

Arthur Taylor, Neighbor
– Appeared in Opposition

Kristine Poptanich, Neighbor
– Appeared Opposition

Before: Kathleen E. Byrne, Hearing Examiner

OZAH Case No. CU 24-17

HEARING EXAMINER’S REPORT AND DECISION

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I. STATEMENT OF THE CASE

On June 21, 2024, Telecom Capital Group (“Applicant” or “TCG”) filed an application for conditional use under the Montgomery County Zoning Ordinance (“Zoning Ordinance”) §59-3.3.5.2.C.2.c (Telecommunications Tower) seeking approval for a conditional use for a 160-foot monopole and 3,600 square feet of equipment compound at its base (“Facility”) on the property owned by Juanita Wheatly Breland at 22900 Old Hundred Road, Barnesville, Maryland 20838, Parcel P653 on tax map 11-00916938 (“subject property” or “property”). Exhibits 1 and 21. The property is zoned AR (Agricultural Reserve). Exhibit 26.

The Applicant proposes to construct a new telecommunications tower/monopole and ancillary equipment compound to house Verizon Wireless and have available space for up to 5 additional future wireless carriers. Exhibit 3, pg. 1. TCG leases space on the property from the owner and will construct telecommunications tower in the southeast portion of the property. Exhibit 26.

The Montgomery County Transmission Facility Coordinating Group (TFCG) recommended on March 6, 2024 “...on the condition that application 2021081528 and 2021081533 were reviewed and recommended jointly to demonstrate the need for the tower to be built...” Exhibit 15. Staff of the Montgomery County Planning Department (“Planning Staff” or “Staff”) issued its report on August 9, 2024 recommending approval of the application subject to the following four conditions.

1. The use is limited to Telecommunications Tower per Section 59.3.5.2.C

2. The Applicant must review the tower and associated improvements if it is out of service for more than 12 months.
3. The support structure must be constructed to hold a minimum of three (3) wireless communication carriers.
4. The Applicant must comply with the approved Forest Conservation Plan.

Exhibit 21, pg. 3.

OZAH issued notice of the public hearing on July 2, 2024, for a hearing on Monday, August 19, 2024. Exhibit 20. The public hearing convened on August 19, 2024 at noon. The Applicant presented three witnesses in support of the application:

- Mark Fisher, Managing Member of Telecom Capital Group
- Narendra Mangra, expert witness, a radiofrequency engineer
- Marc Mazullo, expert witness, a civil engineer

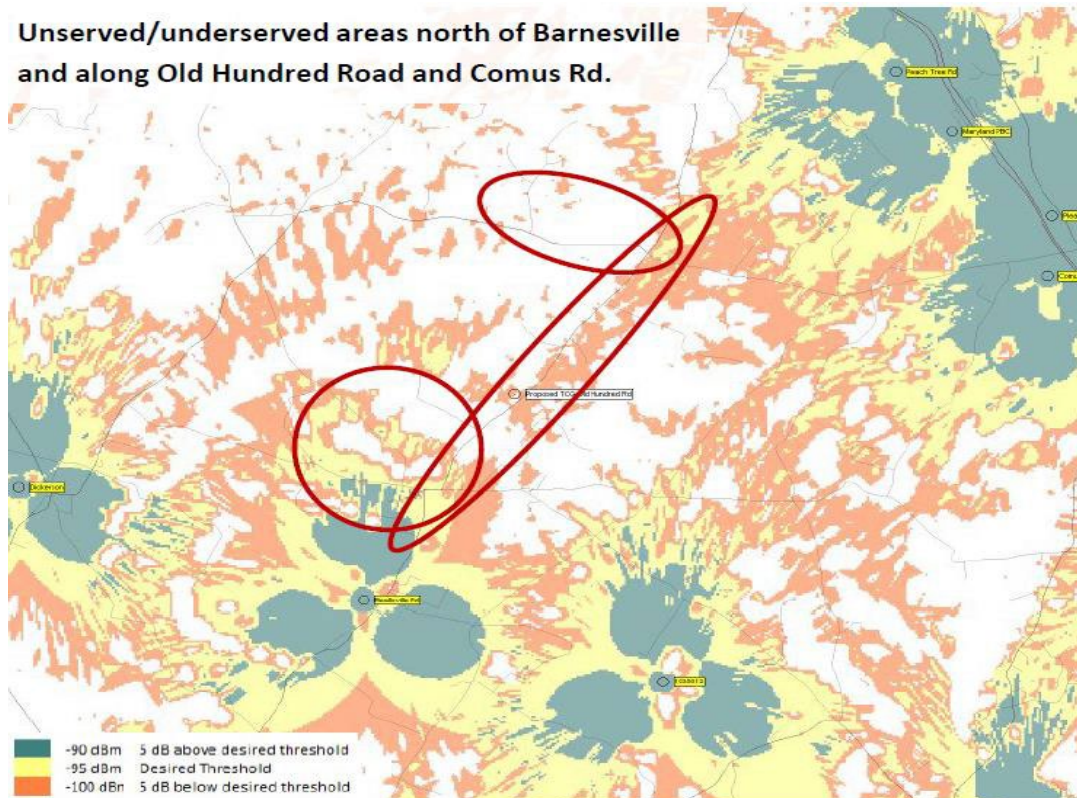
T. 11, 14, 42. Two neighbors, Kristina Poptanich and Arthur Taylor both testified in opposition to the conditional use application. At the conclusion of the hearing, the Hearing Examiner held the record open until Monday, August 26, 2024 to allow for the preparation of a transcript of the proceedings and to allow for the Applicant to submit information regarding additional landscaping around the base equipment. T. 106-107. OZAH received an email with documents attached from the Applicant on August 21, 2024 regarding possible additional landscaping. Exhibits 25-27. On Monday, August 26, 2024, OZAH received the transcript of proceedings from the court reporter and the Hearing Examiner closed the record on the same day.

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, with the conditions of approval listed in Part IV of this Report, under §59-3.3.5.2.C.2.c (Telecommunications Tower) is supported. Therefore, the Hearing Examiner hereby grants the Applicant’s requests.

II. FACTUAL BACKGROUND

A. The Purpose of the Application

The Applicant states that the construction of the Facility at the property is vital to Verizon's area-wide telecommunications network. Exhibit 3, pg. 2. Specifically, the location of the proposed site will significantly improve Verizon's area wide coverage to the "highest degree, enhance citizens and visitor's wireless networks as they work, travel and live in and around Barnesville." *Id.* The proposed facility will be able to support up to 5 carriers. T. 44. Mr. Fisher testified that the installation of the 160-foot-tall monopole is to provide coverage in an area that currently does not have proper coverage for fixed wireless and "people remotely." T. 12. The Applicant's radiofrequency expert, Mr. Mangra opined that very little coverage exists in the area looking at it "from a wireless were(sic) a wireline perspective." T. 20. Mr. Mangra used several graphics to explain "need." Specifically, Mr. Mangra opined that this area has a history of being underserved both wireline, which is copper and fiber, and wireless communications. T. 15. He further explained that the "red circles" depict the lack of both wireline and wireless communications. T. 15. See image on next page. He further opined that the site was chosen to be able to meet the needs of the residential roads. T. 20.



Existing service area

Exhibit 21, p. 15, Figure 8 – Existing Service Area

B. The Subject Property

The subject property consists of 40.98 acres identified as Parcel P653 on tax map 11-00916938 with direct access via an existing gravel driveway to Old Hundred Road through an existing driveway. Exhibit 21, pg. 4. Further the property is located on the northwest side of Old Hundred Road (MD109) approximately 0.5 miles northeast of the Town of Barnesville. *Id.* The property is predominantly forested with some cleared areas around the existing improvements which include a house, horse barns, and paddocks for the existing horse farm. *Id.* The Property also contains a pond and stream running through the middle of the property running from

northeast to southwest. *Id.* The location of the Facility on the property is identified with a red star on the image below.

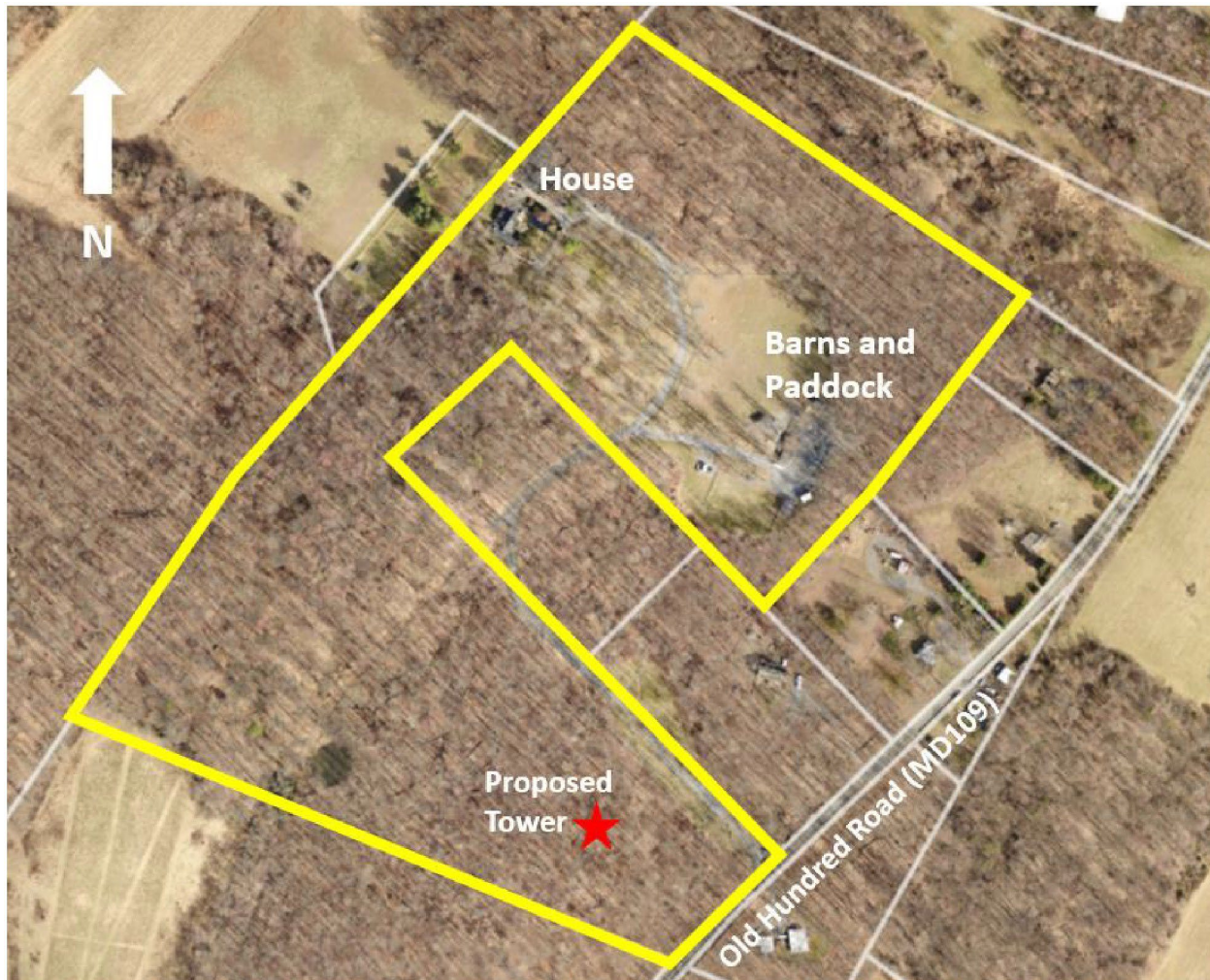


Exhibit 21, p. 5, Figure 2 – Subject Property

C. Surrounding Neighborhood

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

The Staff defined neighborhood is showed on the following page outlined in red with the subject property outlined in yellow. The address of the property is 22900 Old Hundred Road, in Barnesville and it is subject to the 1980 *Functional Master Plan for the Preservation of Agriculture and Rural Open Space* ("AROS Plan"). *Id.* at 3. The Staff defined neighborhood is comprised of low-density residential development and agricultural uses. *Id.* The surrounding properties in the neighborhood are all zoned AR. Staff has identified one potential Special Exception in the neighborhood in GIS but could not find any information in Department of Permitting Services system regarding its existence leading Staff to conclude that this Special Exception may not have been approved or may have been abandoned. *Id.* Staff defined this neighborhood "for purposes of analyzing this Conditional Use and its possible impacts on the character of the surrounding area." *Id.*

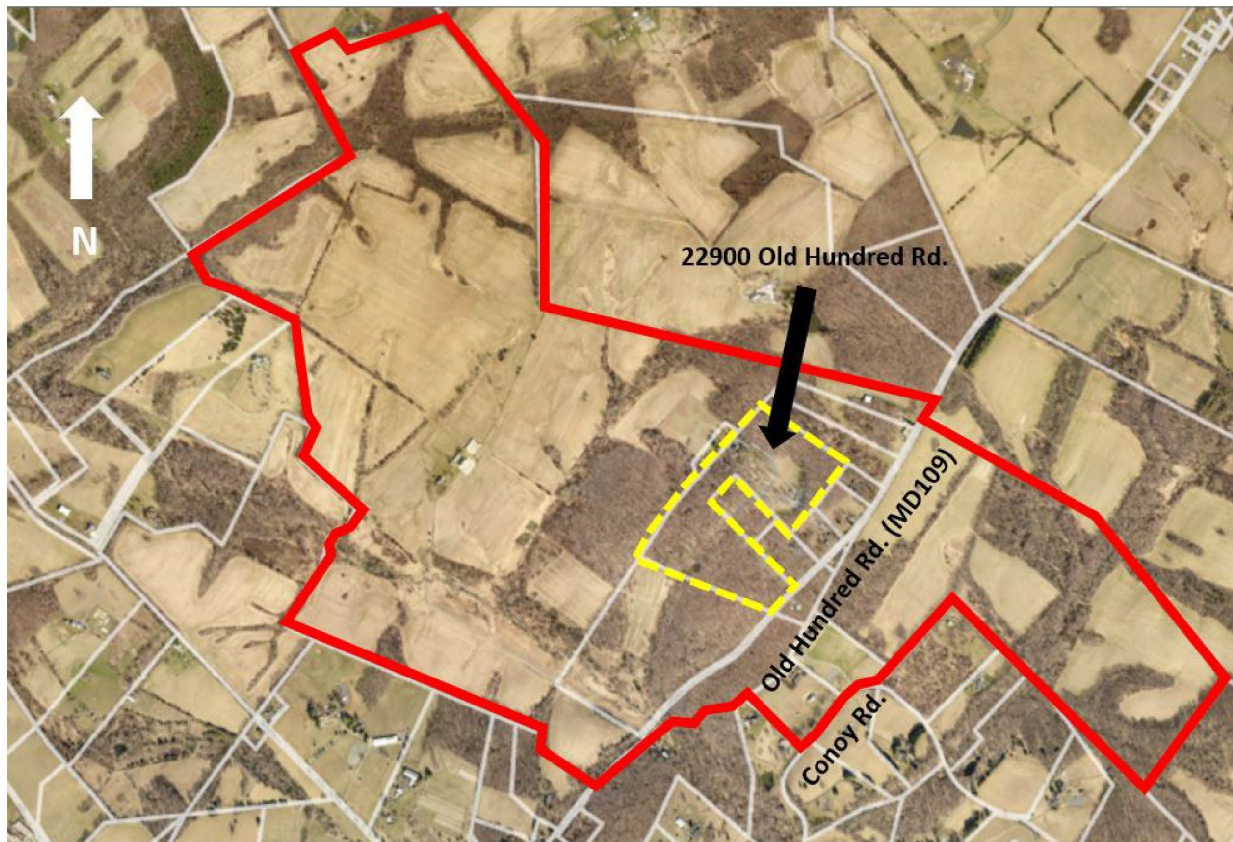
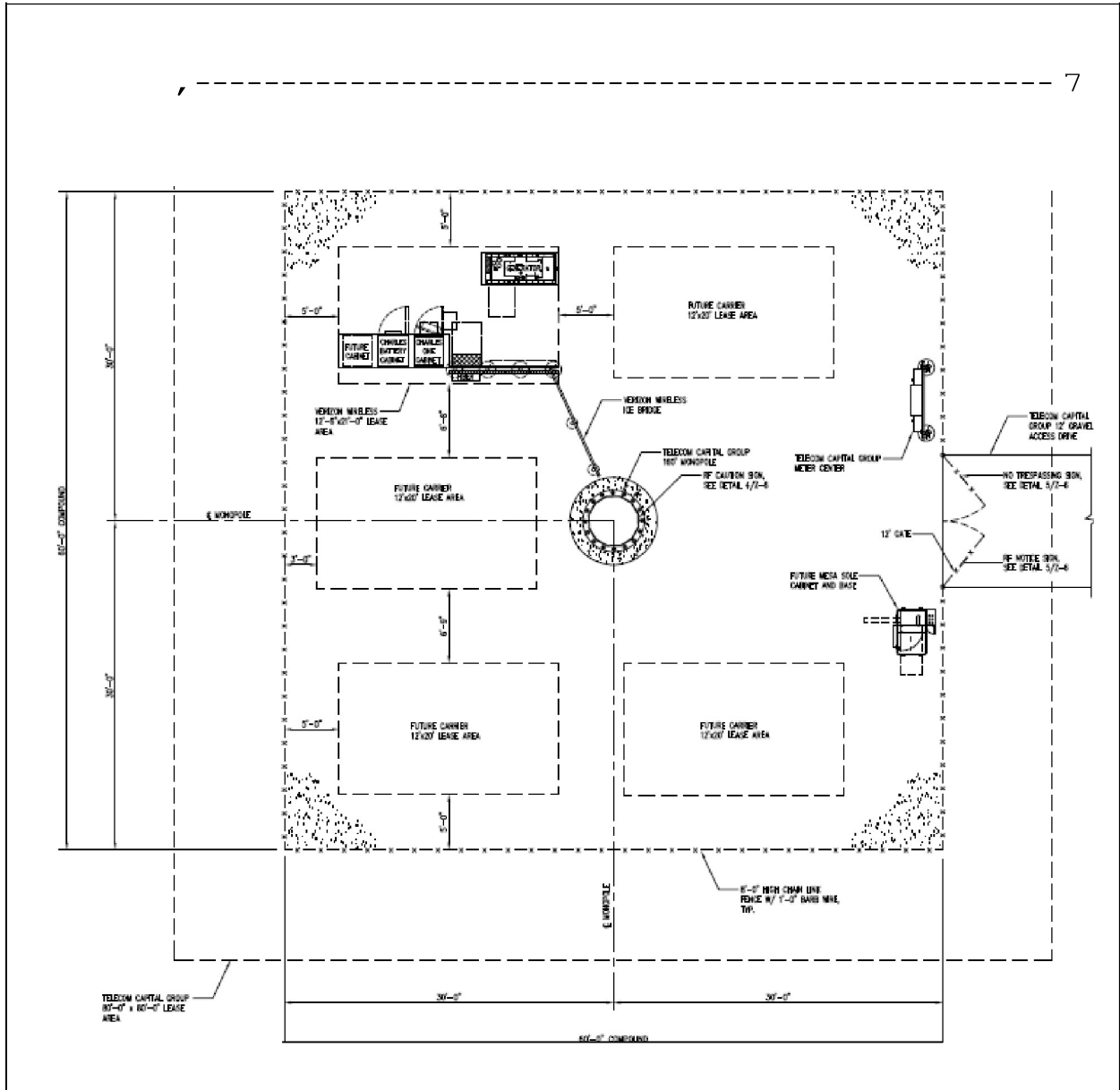


Exhibit 21, p. 4, Figure 1 - Vicinity Map with Staff Defined Neighborhood Outlined in Red



COMPOUND PLAN
SCALE 1/4" = 1'-0"



Exhibit 21, p. 8, Figure 4: Plan View of Compound Area

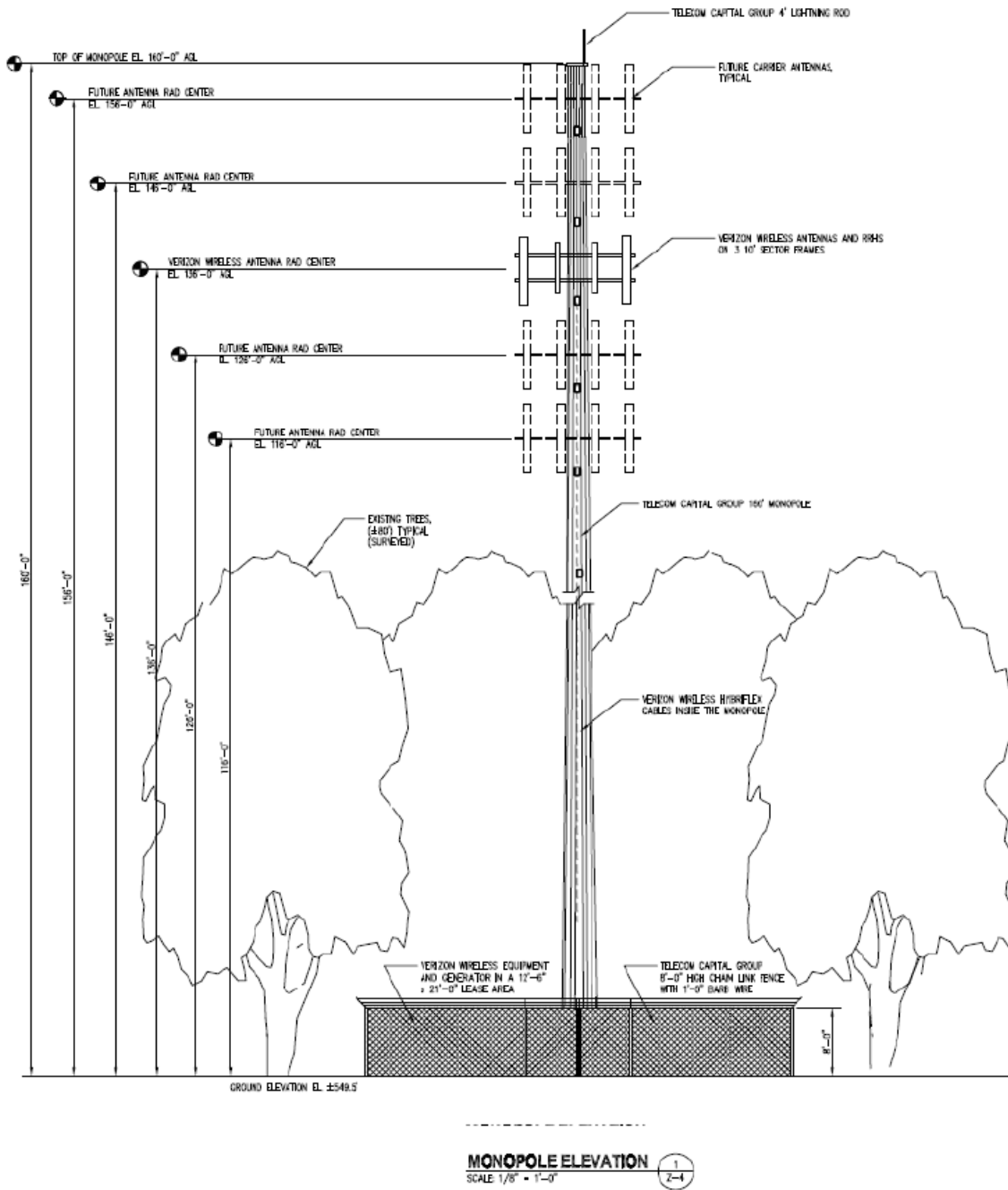


Exhibit 21, p. 8, Figure 5 – Monopole Elevation

Mr. Mazullo, the Applicant’s civil engineering expert testified that the location of the facility as being on the east side of the property close to Old Hundred Road and that the physical size of the compound for the Facility will be 60’ x 60’ with the area leased for the project

measured at 80' x 80'. T. 44. Further stating that “overall the project will take up about 10,000 sq. ft. of land space between the driveway, the parking, and the compound.” T. 44 Staff identified note the 160-foot monopole will be setback 259 feet from the front property line along Old Hundred Road and that the equipment located within the “compound” area will be surrounded by a chain link fence measuring 60 feet in length and 60 feet in width. Exhibit 21, pg. 5. The Facility will be unmanned and uninhabited and the only traffic to the facility would be for routine maintenance or emergency repair, which is expected to be only one or two visits per month. *Id.*

2. Parking and Access

The Zoning Ordinance contains no parking requirements for a telecommunications tower and the Applicants do not seek authorization for parking. *Zoning Ordinance*, §59.6.2.4. As stated in the Applicant’s Statement of the Case, no on-site personnel are required and once the telecommunications facility is constructed, the only traffic to the facility would be for routine maintenance or emergency repair, which is expected to be only 1-2 visits per month. Exhibit 3, pg. 6. Vehicles will access the site from a new gravel drive off the existing gravel driveway from Old Hundred Road will contain no parking space. *Id.* Staff confirmed that Applicant will construct a new driveway spur off the existing onsite driveway approximately 200 feet from the existing entrance on Old Hundred Road and that the Zoning Ordinance sets no parking requirements for this type of use. Exhibit 21, pgs. 5 and 24. Mr. Mazullo testified that the compound and the 160-foot monopole will be built a little to the northwest of an existing old logging trail road and that the Applicant is using part of that logging trail road, improving that, to providing access down to the site and a parking space for a turnaround. T. 46.

3. Landscaping, Lighting and Signage

The Applicants do not propose any lighting nor any signage. Exhibit 21, pg. 22. *Zoning Ordinance*, §59-3.3.5.2.C.2.c.iv. provides, inter alia, “Screening under Division 6.5 is not required; however, the Hearing Examiner may require the support structure to be less visually obtrusive by the use of screening, coloring, stealth design or other visual mitigation options...” The proposed tower and compound will be surrounded by existing forested area that should minimize visual impacts from the road. Exhibit 21, pg. 18. Staff recommend if forest is removed between the tower and Old Hundred Road in the future, the applicant should provide screening around the tower compound. *Id.* at 19. In response to questions from Ms. Poptanich, counsel for the Applicant replied that the team felt there was sufficient tree cover to screen the compound, but that could be addressed. T. 99. The Hearing Examiner held the record open to receive information about the possibility of additional landscaping from the Applicant T. 107. Via email dated August 21, 2024, the Applicant provided the stormwater management plan, existing tree plan and an additional plan for added landscaping. Exhibits 25-27. The Applicant points out that these new trees will be placed within the existing limits of disturbance and that Staff recommend additional landscaping be provided between the compound and the Old Hundred Road in the event of clearing of additional. Exhibit 27 and Exhibit 21, pg. 19. See additional tree planting plan on following page.

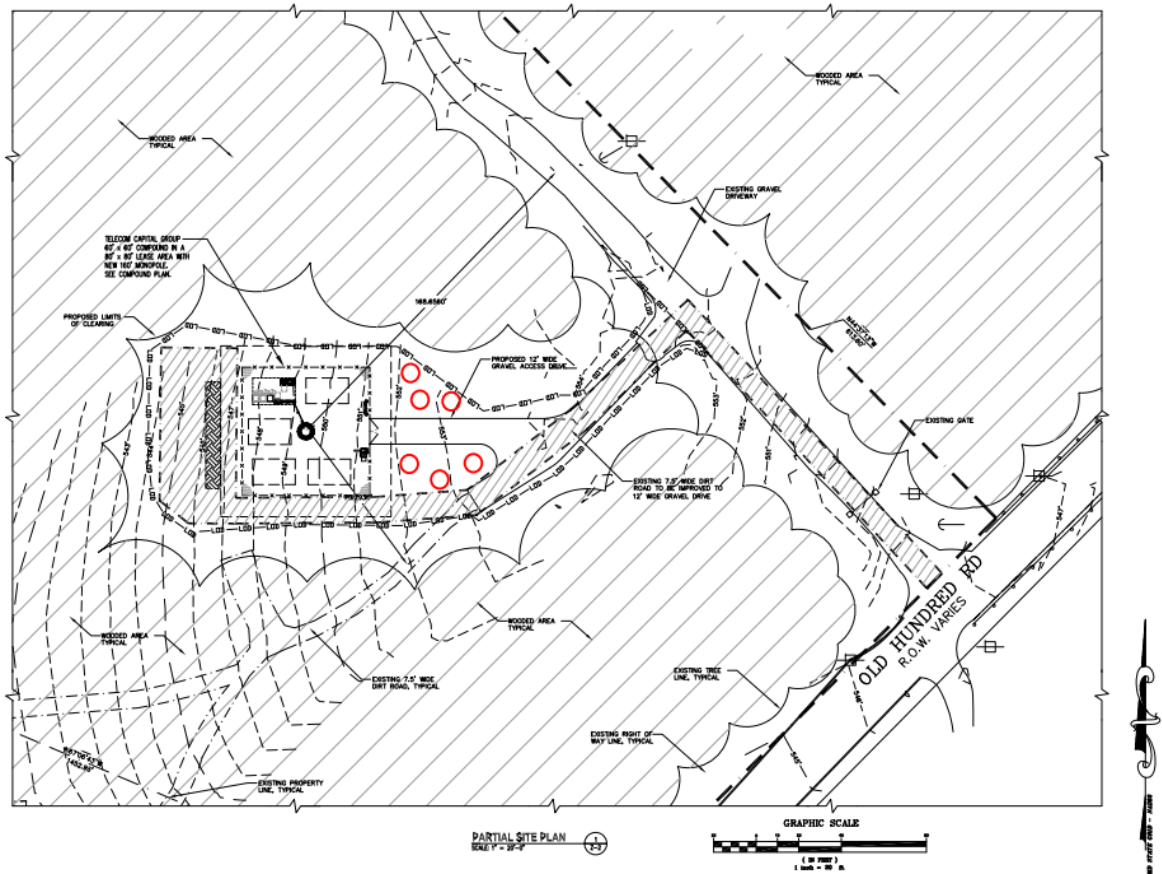


Exhibit 27, Additional Tree Planting Plan.

E. Visual Impact & Location Choice

One of the most significant issues for community regarding telecommunication towers is the visual impact upon the neighbors. The Applicant has located the tower on the heavily forested section of a 40-acre parcel and is located 259 feet from the road to minimize the visual impacts. Exhibit 21, pg. 18. According to Staff “[t]he proposed tower will be screened by existing trees, so it will have a limited visual impact, and will not cause any objectionable noise, fumes, or illumination or decrease in the economic value of surrounding properties.” Exhibit 21, p. 24.

Applicant submitted several photographs from several vantage points identifying the view from those points back to the tower location. Mr. Mazullo testified that to create the photo simulation of what it would look like when the cell tower is constructed he place a tethered balloon up in the air to the height of the tower and took approximately 154 photos from several preselected locations. T. 55. Ultimately 8 locations were chosen. See photo key map below.

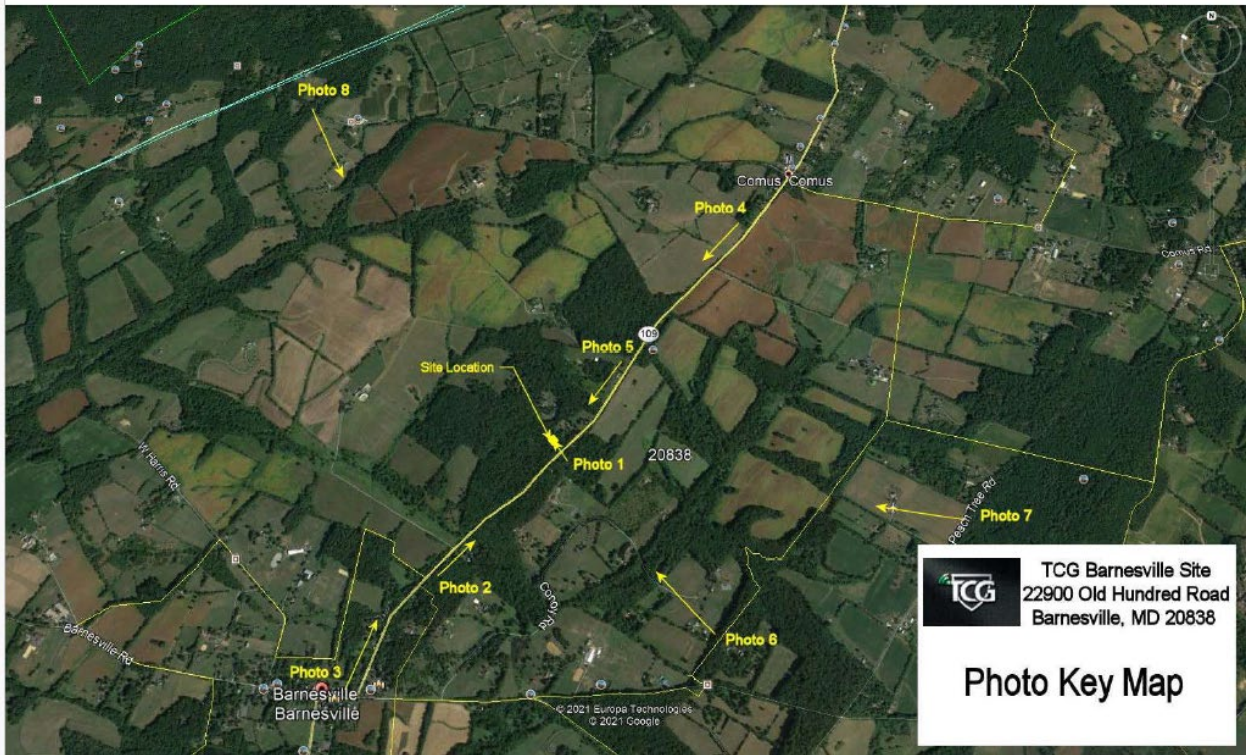


Exhibit 9 – Photo Key Map

Mr. Mazullo took the photos on July 7, 2021 with members of the community present. T. 54. The balloon remained in the air for additional time at the request of the some of the community members T. 61. He went back and looked at the same locations again on August 16, 2024 to see if any changes occurred over the last 3 years and found the landscape to be essentially the same. T. 63. Two of the photo simulations are pictured on the following page.



Exhibit 10 – Photo 2



Exhibit 10 – Photo 6

All three witnesses for the Applicant testified to how this specific location was chosen. Mr. Mangra opined when looking for an ideal location he looks at a terrain profile and tree/foliage coverage and the geometries of an area are part of the consideration for the location of a site. T. 15-16, 30-31. He stated that this area has a lot of rolling hills and that Old Hundred Road is actually on the higher elevation and that the pole sited at this location with an antenna height of 156 will meet the needs residential roads. T. 16, 20. Mr. Fisher explained the process his company goes through when trying to select a site. He discussed the “optimum location” and then the “alternate locations” in a search ring factoring in elevations, county zoning and whether or not there is a willing property owner. T. 38-39. He further stated that sometimes it’s not necessarily the most optimum location, but it’s the only location given the various factors at play to install a tower. T. 39. Mr. Mazullo discussed at length the tree cover and ground elevation in the surrounding area related to the distance of the monopole. T. 54-60. Staff note no reduction in setbacks are required with the chosen location. Exhibit 21, pg. 13.

F. Community Response

Staff received no letters of correspondence as of August 9, 2024. *Id.* at 9. Two community members testified in opposition of the conditional use application: Mr. Arthur Taylor and Ms. Kristine Poptanich. Mr. Taylor raised the following concerns. 1) Is there an actual need for a cell tower? 2) A cell tower in the agricultural preserve seems counter to the purpose of the agricultural preserve. 3) Whether the chosen location is appropriate. T.91-93. Ms. Poptanich raised the following concerns. 1) Health issues associated with cell towers. 2) Economic damage to property owners neighboring cell towers. 3) The uniqueness of the agricultural preserve with this location containing a cluster of houses, i.e. why does it have to be located on this site. 4) The visual impacts from Sugarloaf. In addition, Ms. Poptanich stated she sent a letter to Planning and was concerned it was not reached and that fact leads her to be concerned that others sent

letters that were not received. T. 95-97. Neither Mr. Taylor nor Ms. Poptanich submitted any written documentation nor provided any expert or additional testimony in support of the concerns they raised.

The Applicant specifically addressed several of Mr. Taylor and Ms. Poptanich's concerns. As stated above, the Applicant's experts testified at length to the need and chosen site location. Mr. Donohue, Applicant's attorney, reminded the Hearing Examiner that she cannot base her decision on the application based on "health effects." T. 86. With that said, Mr. Mangra explained that the carrier would need to satisfy the SEC's emissions tests and meet the standards established. T. 87. Regarding compatibility with the rural surroundings Mr. Mangra opined that wireless connectivity has the ability expand agriculture and that today the FCC is looking into precision agriculture to make sure there is adequate coverage to promote that industry. T. 102. Fisher added to that discussion and explained that with wireless communication precision agriculture can use less pesticides because of the sensor technology and many tractors are run off of wireless technology. T. 103. Regarding the Sugarloaf view shed, Mr. Mazullo determined the proximity from the mountain to the base of the tower is 2.3 miles. T. 100. Ms. Poptanich provided no expert testimony nor any evidence at all regarding her assertion that property values would suffer as a result of the installation of the monopole.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A conditional use is a zoning device that authorizes certain uses provided that predetermined legislative standards are met. These standards are both specific and general. General standards are those findings that must be made for almost all conditional uses. *Zoning Ordinance*, §59.7.3.1.E. Specific standards are those which apply to the particular use requested

-- in this case, a Telecommunications Tower allowed under *Zoning Ordinance* §59.3.5.2.C.2. These standards are listed below with the Hearing Examiner's findings on each standard.

A. Conditional Use - Necessary Findings (§59.7.3.1.E.)¹

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

E. Necessary Findings

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

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

Conclusion: Planning Staff note that there are no previous approvals for this site. This section is not applicable. Exhibit 21, p. 20.

b. satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6

Conclusion: This subsection requires the proposed development to meet the standards of the AR (Agricultural Reserve) Zone contained in Article 59-4, the specific use standards for a Telecommunications Tower contained in Article 59-3, and the applicable development standards contained in Article 59-6. Each of these Articles is discussed below in separate sections of this Report and Decision (Parts III.B, C, and D, respectively). The Hearing Examiner finds that a telecommunications tower is allowed as a conditional use in the AR Zone and that the application satisfies the requirements of Articles 59-3, 59-4 and 59-6 of the Zoning Ordinance.

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

The Property is located within the 1980 *Functional Master Plan for the Preservation of*

¹ As this use is covered by Sections 59.7.3.1.E 5 and 59.7.3.1.E.6. they are inapplicable to this Application and are not discussed.

Agriculture and Rural Open Space ("AROS Plan") within the "Western Sector" analysis area in the AROS Plan. *Id.* at 22. The Master Plan does not contain any specific recommendations for the property. *Id.* The Master Plan does recommend ways to address the loss of productive farmland in the county. *Id.* Staff note that the area of the proposed conditional use is predominately wooded and determined that the proposed telecommunications conditional use would not create a loss of productive farmland.

Conclusion: The Hearing Examiner agrees with Staff that that the installation of the telecommunications tower will not create a loss of productive farmland and that the application substantially conforms to the Master Plan. The Hearing Examiner finds that this criterion is met.

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

Staff found that the proposed tower meets the above criterion:

The telecommunications tower will not in any way impair the preservation of farmland or open space and will serve those living, working, and traveling through this agricultural and rural area. The tower is setback 259 feet from the front lot line so as not to visually impact the neighborhood. The proposed tower and compound will be surrounded by an existing forest and therefore should have minimal visual impact from the public road. The proposal is harmonious with and will not alter the character of the surrounding neighborhood.

Exhibit 21, pg. 22.

Conclusion: The Hearing Examiner has already discussed conformance to the Master Plan. For the reasons stated in there and here, the Hearing Examiner finds that the proposed use will be in harmony with the character of the neighborhood and will not alter the surrounding neighborhood in a manner inconsistent with the Plan. While the tower cannot be fully screened from view above the tops of the tree line, nothing in the record suggests that the use will have a notable negative impact on the area since it generates no traffic, does not require parking, and will not generate noise or smells. The extensive tree cover on the ground and 259-foot setback will screen the

compound from the road and neighbors. As discussed above in Section II, the opposition raised concerns regarding the compatibility of a cell tower in an agricultural area. The Hearing Examiner finds the testimony of the Applicant's experts persuasive in that modern agricultural uses rely on wireless communication. The Hearing Examiner finds this criterion for approval is met.

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

Conclusion: The Hearing Examiner notes the use is not in a residential detached zone. Planning determined that there are no other conditional uses/special exceptions in the identified neighborhood. While the approval of this one conditional use will now create the total number conditional uses to "1" in the surrounding neighborhood, it will not adversely impact the agricultural nature of the surrounding area. The Hearing Examiner agrees with Planning's assessment finds that this criterion for approval is met.

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

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

ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities,

including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and

Conclusion: Staff determined the site will not require public services other than power and that the proposed access road can be used for access by EMS and stormwater management facility maintenance. Exhibit 21, pg. 23. By its nature, an unmanned and unoccupied telecommunication tower would have no significant impact on schools, police and fire protection, water, sanitary sewer, and public roads. Old Hundred Road is identified as a Rustic Road. With that said, the use will generate sporadic vehicle visits to the site, meaning that the person trip is well below the LATR review. *Id.* The Hearing Examiner finds that the proposed development will be served by adequate public services and facilities and will not adversely impact the Rustic Road designation. The Hearing Examiner finds that this criterion is met.

g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;***
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or***
- iii. the health, safety, or welfare of neighboring residents, visitors, or employees.***

This standard requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” *Zoning Ordinance*, §59.1.4.2. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.*

Staff concluded that:

Inherent aspects of a Tower include the maintenance trips and the height of the Tower. The Project will not be detrimental to surrounding properties and these inherent aspects have been addressed. The proposed tower will be screened by existing trees, so it will have a limited visual impact, and will not cause any objectionable noise, fumes, or illumination or decrease in the economic value of surrounding properties. The proposed use will have no adverse effect on road congestion or safety, as no on-site personnel are required. Once the telecommunications facility is constructed, the only traffic to the facility would be for routine maintenance or emergency repair, which is expected to be only 1-2 visits per month. There will be no noise generated by this Site. The equipment is located on a secure foundation and the antennas and transmission lines are silent. There will be no offensive odors emitted by the equipment, transmission lines, or antennas. The Site will not cause any vibrations.

The Property itself does not pose any conditions which would create non-inherent effects and the proposed Tower will be setback 259 feet from the front property line and is screened by the existing, mature forest.

The Conditional Use generates almost no traffic and does not have a parking requirement Section 59.6.2.4.B. There is no noise, odors, dust, or illumination associated with the Application during post-construction operation. All requirements and conditions of the use are satisfied, and the Project will have no adverse impacts on the health, safety, or welfare of neighboring residents, visitors, or employees.

Exhibit 21, p. 24.

Conclusion: The Hearing Examiner agrees with Staff that the inherent effects of a telecommunications tower include maintenance trips and the height of the tower creating a visual impact. The support structure—a monopole in this case—will be 160 feet high. It is virtually impossible to hide any pole that includes a set of antennas at the top at any height that pushes above the tops of the existing tree line. Because the compound will be screened at ground level from the existing trees, the street level visual impact is minimized. The Hearing Examiner agrees with Staff that there are no non-inherent adverse effects with this use. While the Hearing Examiner recognizes the arguments made by the opposition regarding the fact that the monopole will be visible above the tree line, as specified in §59.7.3.1.E.1.g., quoted above, inherent adverse effects

are not a sufficient basis for denial of a conditional use. Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a conditional use, but there are no non-inherent adverse effects with this use. The Hearing Examiner agrees with Staff's analysis of the inherent and non-inherent characteristics of a telecommunications facility. Based on this record, the Hearing Examiner concludes that the proposed use, as conditioned, will not cause undue harm to the neighborhood as a result of adverse effects in any of the categories listed in §59.7.3.1.E.1.g.

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

Conclusion: The Hearing Examiner agrees with Staff and finds that this property is located in an AR zone not within a Residential Detached zone and this section does not apply.

- 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.

- 4. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.***

Conclusion: The Hearing Examiner finds this Application is not an agricultural conditional use; therefore, this finding does not pertain to this application.

B. Conditional Use - Use Standards for a Telecommunications Tower (§59.3.5.2.C.2.c.)

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

C. Telecommunications Tower

...

2. Use Standards

...

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

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

Conclusion: The Hearing Examiner finds that the requirements of this Section have been met. The Applicant received the initial recommendation from TFCG on April 6, 2022. The Applicant then updated the recommendations on March 6, 2024, and the TFCG recommended approval pending Conditional Use approval. This criterion is met.

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

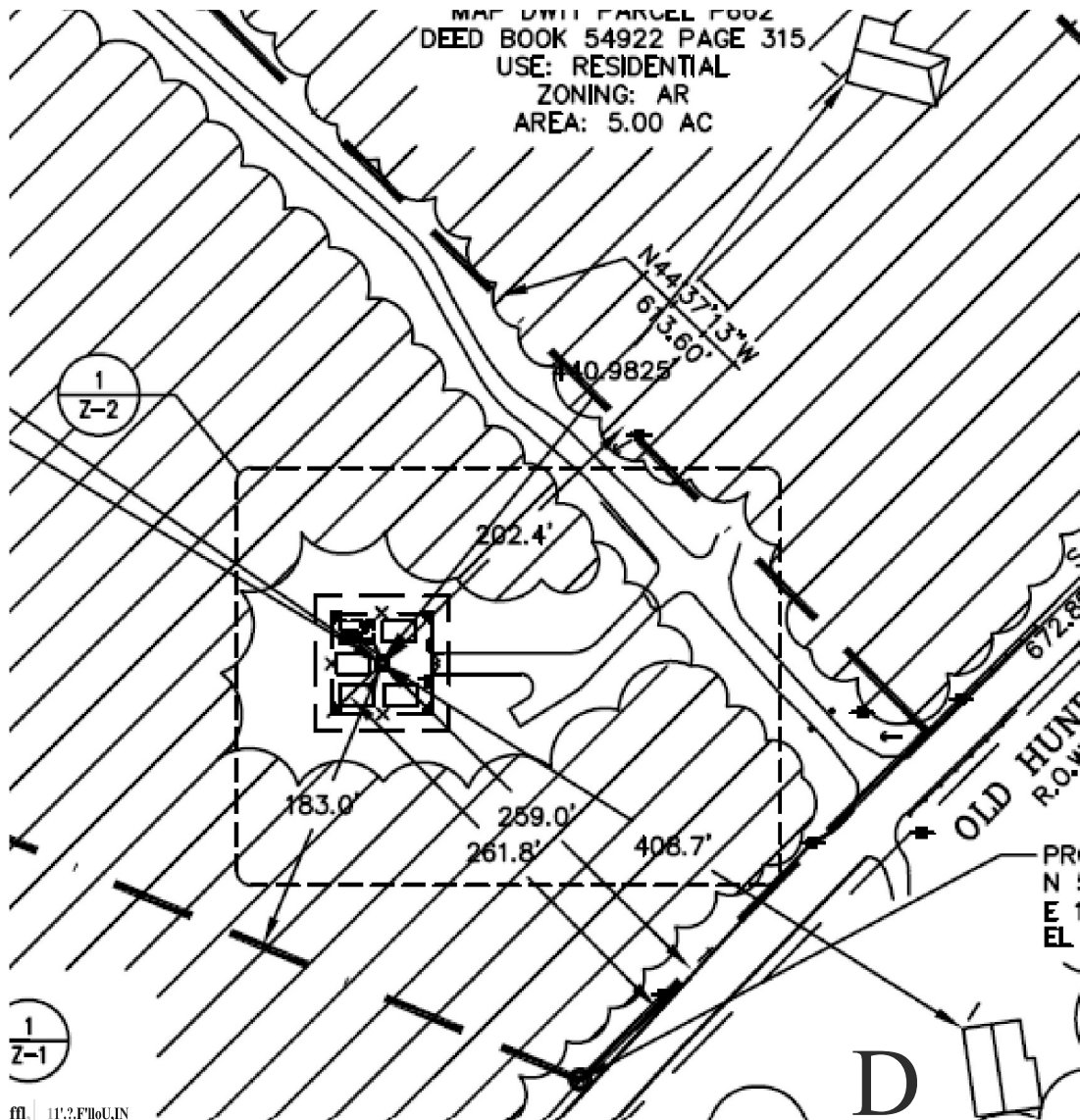
(a) A Telecommunications Tower is prohibited in any scenic setback indicated in a master plan.

Conclusion: Staff advises that the structure is not located in any scenic setback. Exhibit 21, p.

11. Having no evidence to the contrary, the Hearing Examiner finds that this criterion is met.

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

Conclusion: The proposed tower is 160 feet high and must have a required minimum setback from any dwelling of 300 feet. The closest dwelling is 408 feet. The Hearing Examiner finds this criterion is met. See image on following page.



Staff Report, Figure 6, Exhibit 21, pg. 12 – Distance from closest dwelling,

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

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

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

Conclusion: The proposed height of the monopole is 160 feet

Staff state as follows:

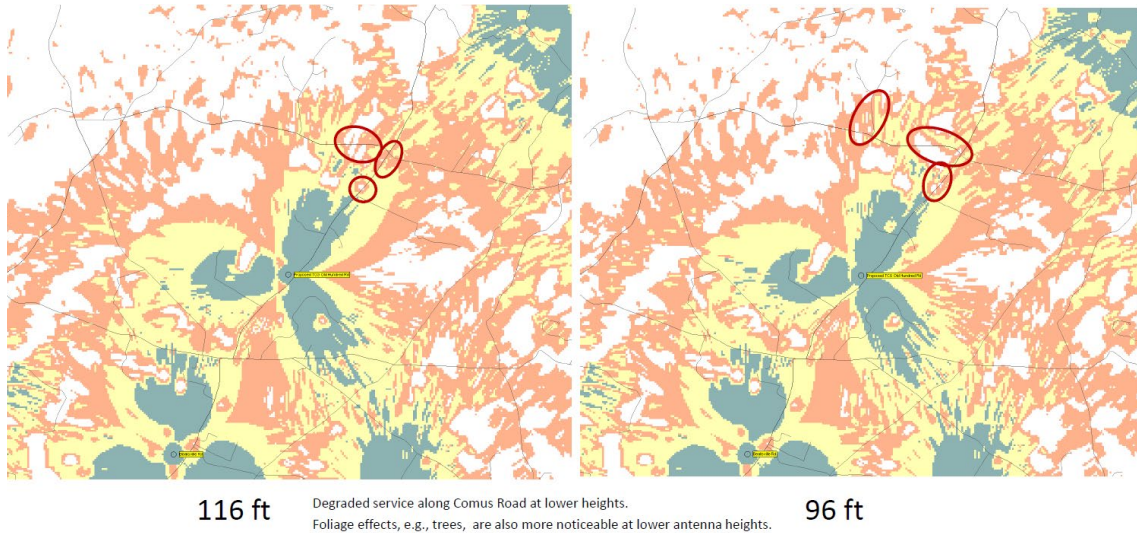
The Site is designed to serve Barnesville, Old Hundred Road, Comus Road, Barnesville Road and Beallsville Road. Figure 7 shows how these areas are underserved or even unserved by the current cellular coverage in this area. This is especially important for citizens who may not have landlines and rely totally on cellular service for all their communication needs including needing to contact the Emergency Communications Center (911) when an emergency arises and therefore provides an important public purpose. Propagation demonstrating the need for the minimum height of 160 feet for VZW are included with this Application. The proposed height will also allow for the collocation of additional carriers and reduce and/ or eliminate the need for additional sites in the area.

Exhibit 21, pg. 14. See propagation images on the following page. As stated above Mr. Mangra, the Applicant's expert opined that 156 feet to be the minimum height necessary for the cellular antenna requiring the installation of a 160-foot monopole. T. 27. As a condition of this approval, the Applicant must certify that the height and location conform with the building permit before the facility comes online. The Hearing Examiner finds this criterion is met.

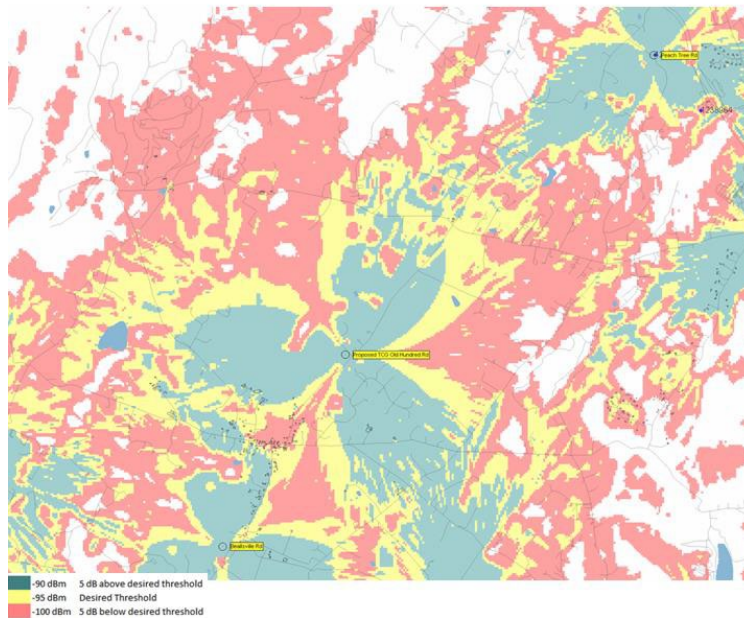
iv. The support structure must be located to minimize its visual impact. Screening under Division 6.5 is not required, however, the Hearing Examiner may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after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

Conclusion: The issue of visual impact is always a major concern with large telecommunications facilities. The Applicant's expert opined states that the monopole must be 160 feet with the wireless carrier equipment installed at 156 feet to be the minimum height necessary to achieve the

coverage and the minimum height necessary to satisfy the Code. T. 29. The Facility is screened by existing trees and the monopole is 160 feet high, which is the shortest possible height at which the proposed site “can close the identified gap in coverage.” Exhibit 3, p. 3.



Staff Report, Exhibit 21, pg. 16, Figure 9 – Propagation at 115 feet and 96 feet



Staff Report, Exhibit 21, pg. 16, Figure 9 – Propagation at 115 feet and 96 feet

The Hearing Examiner finds the Applicants have minimized the visual impact of the Facility as much as possible. The Hearing Examiner finds that this criterion is met.

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

Conclusion: Juanita Wheatey Breland is the property owner and a co-applicant with Telecom Capital Group. Exhibit 21, p. 19. This criterion is met.

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

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

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

(a) that collocation at the proposed location is not essential to the public interest; and

(b) that construction of a lower support structure with fewer wireless communication carriers will promote community compatibility.

Conclusion: The Facility is designed for at least five (5) wireless carriers with primary carriers being Verizon, AT&T and T-Mobile all requiring a 160-foot height. *Id.* and T. 73. The Hearing Examiner finds that this criterion is met.

viii. The equipment compound must have sufficient area to accommodate equipment sheds or cabinets associated with all the carriers. Outdoor storage of equipment or other items is prohibited.

Conclusion: Staff determined that the equipment Compound has sufficient, designated areas for the equipment sheds or cabinets of the five carriers. Exhibit 21, p. 19. The Hearing Examiner agrees with Staff and finds this criterion to be met.

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

Conclusion: To ensure compliance with this provision, the Hearing Examiner has imposed a condition in Part IV of this Report requiring that the support structure be removed at the cost of the owner of the Telecommunications Tower when the Telecommunications Tower is no longer in use by any wireless communication carrier for more than 12 months.

x. The support structure must be identified by a sign 2 square feet or smaller, affixed to the support structure or any equipment building. The sign must identify the owner and the maintenance service provider of the support structure or any attached antenna and provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Hearing Examiner notified within 10 days of any change in ownership.

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

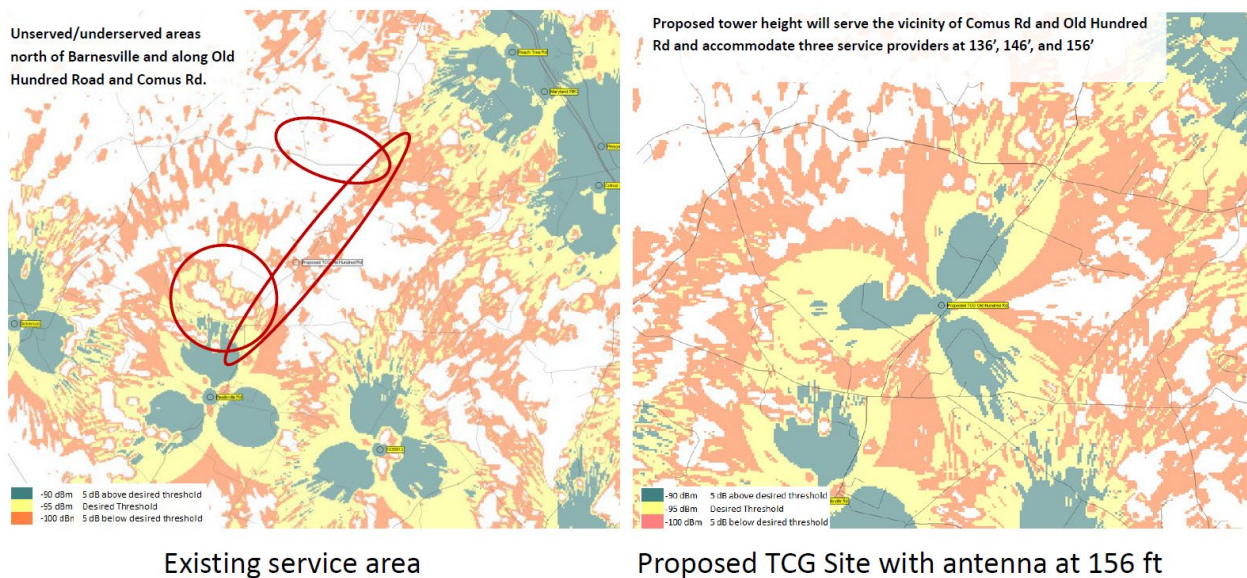
xi. Each owner of the Telecommunications Tower is responsible for maintaining the wireless communications tower in a safe condition.

Conclusion: Staff recommend the Applicant perform maintenance on a monthly basis, one to two times a month. *Id.* To ensure compliance with this provision, the Hearing Examiner has imposed a condition in Part IV of this Report requiring that the Applicants and any owners of the telecommunications facility are responsible for maintaining the facility in a safe condition.

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

Conclusion: Based on the record in this case, the Hearing Examiner finds that there is a need for a telecommunications facility of the proposed height, both for cell phone service needs and colocation requirements, at the location specified in the Applicants' plans. The Applicant's expert Mr. Mangra testified at length to need. He spent a significant amount of time reviewing

underserved existing service area and how the gaps in coverage would be cured once the 160-foot monopole is installed. See image below. T. 13-21. He further explained that as a consequence of the license there are certain requirements as far as covering a maximum percentage of the population within a certain time frame. T. 81. Staff and the Applicant’s experts both identified where the lapse in coverage exists in this occur. Staff point out the importance for citizens who may not have land lines to have proper cellular service to contact emergency services. Exhibit 21, pg. 20. The Hearing Examiner finds the Applicant’s expert’s testimony persuasive and finds there is sufficient need for the proposed facility.



Barnesville Existing and Proposed TCG Coverage Site : Exhibit 24, pg. 13

C. Conditional Use –Development Standards of the Zone (Article 59.4)

To approve a conditional use, the Hearing Examiner must find that the Application meets the development standards of the zone where the use will be located – in this case the AR (Agricultural Reserve) Zone. The Development Standards for the AR Zone are contained in

§59.4.2.1.F. Staff charted the specific development standards for this application against the minimum requirements. See below.

Table 1: Conditional Use Development and Parking Standards (Agricultural Reserve- AR Zone)

Development Standard Section 59.4.2.1.F	Permitted/ Required	Existing/Proposed
Minimum Lot Area	25 acres	40.98 acres
Minimum Lot Width at Front Building Line	125 ft.	672.86 ft.
Minimum Lot Width at Front Lot Line	25 ft.	1320 ft.
Maximum Density	1 unit/25 acres	1 unit/40.98 acres
Maximum Lot Coverage	10%	<1%
Minimum Front Setback	50 ft. (160 ft. for tower)	259 ft.
Minimum Side Setback	20 ft. (160 ft. for tower)	183 ft. & 202.4 ft.
Minimum Sum of Side Setbacks	n/a	n/a
Minimum Rear Setback	35 ft. (160 ft. for tower)	1186 ft.
Minimum Setback from Dwelling	300 ft.	406.7 ft.
Maximum Height	50 ft. (135 ft.-179 ft. for tower)	160 ft.
Vehicle Parking Requirement (Section 59.6.2.4.B)	2/dwelling unit= 2 space	2 spaces

*Section 50.3.3.A.10 exempts telecom towers from the subdivision and platting process, therefore this is not a requirement of this application.

Staff Report, Exhibit 21, pg. 21, Table 1 – CU Development & Parking

The Applicant’s expert Mr. Mazullo also testified at to how the proposed development satisfied the development standards. T. 43-49.

Conclusion: The Hearing Examiner agrees with Staff and Mr. Mazullo and finds the proposed Facility satisfies the development standards in the AR Zone and is appropriate

D. Conditional Use - Applicable General Development Standards (Article 59.6)

Conclusion: Article 59.6 sets the general requirements for site access, parking, screening, landscaping, lighting, and signs. Section 59.3.5.2.C.2.c.iv. exempts telecommunications towers

from the screening requirements of Article 59-6 and states: “The support structure must be located to minimize its visual impact. Screening under Division 6.5 is not required, however, the Hearing Examiner may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and nearby residential properties.” Other provisions of Article 59-6 of the Zoning Ordinance, such as parking, site access, and open space do not apply to this facility.

Staff note that “the proposed tower and compound are located 259 feet from the public right of way and will be located within a forested area and therefore additional screening is not recommended **so long as the forest is maintained.**” Exhibit 21, pg. 22 (**emphasis added**). The topic of additional screening was discussed earlier in this report and the follow-up email and attachments as requested by the Hearing Examiner identified planting additional trees within the identified limits of disturbance. The Hearing Examiner finds that with the additional trees as proposed by the Applicant per Exhibit 27 and discussed above along with the existing conditions, the compound sufficiently screened. Given the fact that no lighting is proposed and discussion above regarding §59.4, there is no need to further address the general development standards in this case. The Hearing Examiner finds that the subject proposal satisfies the applicable general development standards “to the extent ... necessary to ensure compatibility,” as required by *Zoning Ordinance*, §59.7.3.1.E.1.b.

IV. CONCLUSION AND DECISION

As set forth above, the application meets all the standards for approval in Articles 59-3, 59-4, 59-6 and 59-7 of the Zoning Ordinance.

Based on the foregoing findings and conclusions and a thorough review of the entire record, the application of Telecom Capital Group for a 100-foot monopole and 3,600 square feet equipment compound at its base regarding the property at 22900 Old Hundred Road, Barnesville, Maryland 20838 is hereby **GRANTED**, subject to the following conditions:

1. The use is limited to a Telecommunications Tower per section 59.3.5.2.C.
2. The Telecommunications Tower on the site must conform to submitted Conditional Use Site Plan (Exhibit 8(a)-8(i)).
3. The support structure must provide space for the antennas of minimum of five (5) wireless communication carriers.
4. In accordance with *Zoning Ordinance* §59.3.5.2.C.2.c.iii, at the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection required by the building permit, the Applicant must certify to DPS that the height and location of the support structure conforms with the height and location of the support structure on the building permit.
5. In accordance with *Zoning Ordinance* §59.3.5.2.C.2.c.ix., the Telecommunications Tower support structure and equipment must be removed at the cost of the owner of the Telecommunications Tower when the Telecommunications Tower is no longer in use by any wireless communication carrier for more than 12 months.
6. In accordance with *Zoning Ordinance* §59.3.5.2.C.2.c.x., the Telecommunications Tower must display a contact information sign, two square feet or smaller, affixed to the outside of the support structure or equipment building. This sign must identify the owner and the maintenance service provider of the support structure and any attached antenna, and it must provide the telephone number of a person to contact regarding the structure. The sign must be updated, and the Hearing Examiner notified within 10 days of any change in ownership.
7. In accordance with *Zoning Ordinance* §59.3.5.2.C.2.c.xi., the Applicants and all owners of the Telecommunications Tower are responsible for maintaining the facility in a safe condition.
8. Applicants must comply with Forest Conservation Plan No. F20240500.

Issued this 9th day of September 2024.



Kathleen Byrne
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

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

The Board of Appeals will consider your request for oral argument at a Worksession. Agendas for the Board's Worksessions can be found on the Board's website and in the Board's office. You can also call or email 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 Worksession.

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, emailing BOA@montgomerycountymd.gov, or visiting the Board's website: <http://www.montgomerycountymd.gov/boa/>.

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

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

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

NOTIFICATION OF DECISION SENT TO:

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Mark Beall, Planning Department
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