

ORDINANCE



Action:

PLANNING COMMISSION: February 21, 2024 Recommended Approval
BOARD OF SUPERVISORS: March 13, 2024 Adopted

TO AMEND CHAPTER 165 – ZONING

ARTICLE II SUPPLEMENTARY USE REGULATIONS, PARKING, BUFFERS, AND REGULATIONS FOR SPECIFIC USES

Part – 204 Additional Regulations for Specific Uses §165-204.19 Telecommunication Facilities, Commercial

WHEREAS, the Frederick County Board of Supervisors has considered an ordinance to amend Chapter 165 – Zoning to modify the supplementary use regulations for commercial telecommunications facilities, specifically regarding setback waivers granted by the Board of Supervisors; and


WHEREAS, the Planning Commission held a public hearing on the ordinance amendment on February 21, 2024, and recommended approval of the ordinance amendment;

NOW, THEREFORE, BE IT ORDAINED by the Frederick County Board of Supervisors, in the interest of public health, safety, general welfare, and in good zoning practice, that Chapter 165 – Zoning is amended to modify the supplementary use regulations for commercial telecommunications facilities, specifically regarding setback waivers granted by the Board of Supervisors, as shown in the attached.

Passed this 13th day of March 2024 by the following recorded vote:

Josh E. Ludwig, Chairman	Aye	John F. Jewell	Aye
Heather H. Lockridge	Aye	Robert W. Wells	Aye
Blaine P. Dunn	Aye	Judith McCann-Slaughter	Aye
Robert T. Liero	Aye		

A COPY ATTEST


Michael L. Bollhoefer
Frederick County Administrator

Chapter 165 – Zoning Ordinance

ARTICLE II

Supplementary Use Regulations; Parking; Buffers; and Regulations for Specific Uses

Part – 204

Additional Regulations for Specific Uses

§165-204.19 Telecommunication facilities, commercial.

C. Standard process projects.

1. Except as provided in subsection B, no wireless facility or wireless support structure shall be sited, constructed, or operated except pursuant to a conditional use permit issued through the process defined in Part 103 of Article I of this Chapter. The issuance of a conditional use permit for the siting, construction, and operation of a wireless facility is permitted within the zoning districts specified in this Chapter, provided that, pursuant to Virginia Code § 15.2-2232(A), the general location or approximate location, character, and extent of such facilities are substantially in accord with the adopted Comprehensive Plan or part thereof and that adjoining properties, surrounding residential properties, land use patterns, scenic areas, and properties of significant historic value are not negatively impacted. [based on current intro to County Code § 165-204.19]
2. Any person seeking to install a facility or structure pursuant to this subsection shall make application to the Zoning Administrator, accompanied by payment of a fee of \$7,000. [Va. Code § 15.2-2316.4:1(B)(2) (“the fee shall not exceed the actual direct costs to process the application, including permits and inspection”)] The application shall be subject to consideration as follows and include the indicated information:
 - a. The Board of Supervisors shall approve or disapprove the application within 150 days of receipt of the complete application by the Zoning Administrator or such shorter period as required by federal law, unless the applicant and the Board agree to a longer period for approval or disapproval of the application. Within 10 days after receipt of an application and a valid electronic mail address for the applicant, the Zoning Administrator shall notify the applicant by electronic mail whether the application is incomplete and specify any missing information; otherwise, the application shall be deemed complete. [Va. Code § 15.2-2316.4:1(C)]
 - b. Information to be included with application:
 - i. A map depicting the search area used in siting the proposed facility or structure [Va. Code § 15.2-2316.4:2(D); based on current 165-204.19(A)(2)];
 - ii. Identification of all service providers and commercial telecommunications facility infrastructure within the search area [Va. Code § 15.2-2316.4:2(D); based on current 165-204.19(A)(3)];

- iii. Confirmation that attempts to co-locate on existing structures have been made and, if such attempts were unsuccessful, the reasons so [Va. Code § 15.2-2316.4:2(D); based on current 165-204.19(A)(3)];
 - iv. Documentation issued by the Federal Communications Commission indicating that the proposed facility is in compliance with the Federal Communications Commission’s established ANSI/IEEE standards for electromagnetic field levels and radio frequency radiation [based on current 165-204.19(A)(4)];
 - v. An affidavit signed by the landowner and by the owner of the facility or structure stating that they are aware that either or both of them may be held responsible for the removal of the facility or structure as stated in subsection E [based on current 165-204.19(A)(5)]; and
 - vi. The applicant may voluntarily submit, and the Board may accept, conditions that address potential visual or aesthetic effects resulting from the placement of the facility or structure. [Va. Code § 15.2-2316.4:2(C)]
3. If the Board of Supervisors grants a conditional use permit under this subsection, the following standards shall then apply to any property on which a wireless facility or wireless support structure is sited, in order to promote orderly development and mitigate the negative impacts to adjoining properties, residential properties, land use patterns, scenic areas, and properties of significant historic value:

a. The Board may reduce the required setback distance for the wireless facility or wireless support structure as required by § 165-201.03(B)(8) of this Code if the applicant submits sufficient documentation, certified by a registered Virginia professional engineer, that, in the event of a collapse of the wireless facility or wireless support structure, the collapsed wireless facility or wireless support structure will be contained in a fall zone that does not extend into the area of the proposed reduced setback, measured from the center line of the base of the wireless facility or wireless support structure. -The setback distance shall not be reduced to less than half the distance of the height of the wireless facility or wireless support structure if the adjoining property is zoned for residential use or if the principal use of the adjoining property is a residence.

~~a. In cases where a reduction in the setback distance is requested and immediate adjoining property across the common property line is not zoned for residential uses and/or the present use of the property is not a residence, the Board may reduce the required setback distance for the wireless facility or wireless support structure as required by 165-201.03B(8) of this Code if the applicant submits sufficient documentation, certified by a registered Virginia professional engineer, that, in the event of a collapse of the wireless facility or wireless support structure, the collapsed wireless facility or wireless support structure will be contained in a fall zone that does not extend into the area of the proposed reduced setback, measured from the center line of the base of the wireless facility or wireless support structure. The reduced required setback distance under this provision shall not be any less than that required to accommodate the indicated fall zone.~~

- b. Monopole-type construction shall be required for any new wireless facility or wireless support structure. The Board may allow lattice-type construction when existing or planned residential areas will not be impacted and when the site is not adjacent to identified historic resources.
- c. No more than two signs shall be permitted on any wireless facility or wireless support structure. Such signs shall be limited to 1.5 square feet in area and shall be posted no higher than 10 feet above grade.
- d. When lighting is required for a wireless facility or wireless support structure, dual lighting shall be utilized which provides daytime white strobe lighting and nighttime red pulsating lighting unless otherwise mandated by the Federal Aviation Administration or the Federal Communications Commission. Strobe lighting shall be shielded from ground view to mitigate illumination to neighboring properties. Equipment buildings and other accessory structures operated in conjunction with the wireless facility or wireless support structure shall utilize infrared lighting and motion-detector lighting to prevent continuous illumination.
- e. Every wireless facility and wireless support structure shall be constructed with materials of a galvanized finish or be of a non-contrasting blue or gray unless otherwise mandated by the Federal Aviation Administration or the Federal Communications Commission.
- f. Every wireless facility and wireless support structure shall be adequately enclosed to prevent access by persons other than employees of the service provider. Appropriate landscaping and opaque screening shall be provided to ensure that equipment buildings and other accessory structures are not visible from adjoining properties, roads, or other rights-of-way.

[the entirety of the above subsection C(3) is based on current 165-204.19(B)]

- 4. If the Board of Supervisors denies a conditional use permit under this subsection, the Board shall:
 - a. Provide applicant with a written statement of the reasons for the denial [Va. Code § 15.2-2316.4:1(E)(1)];
 - b. Identify any modifications of which the County is aware that would permit it to approve the conditional use permit [Va. Code § 15.2-2316.4:1(E)(2)]; and
 - c. Have supporting substantial record evidence in a written record publicly released within 30 days of denial [Va. Code § 15.2-2316.4:1(F)(2)].
- D. Maintenance of existing facilities and/or structures and replacement of existing facilities and/or structures within a 6-foot perimeter with substantially similar or same size or smaller facilities and/or structures is exempt from fees and permitting requirements under this section. [Va. Code § 15.2-2316.4:3(A)]
- E. Any facility or structure permitted by this section that is not operated or used for a continuous period of 12 months shall be considered abandoned, and the owner of such facility or structure shall remove

same within 90 days of receipt of notice from the Frederick County Department of Planning and Development. If the facility or structure is not removed within the ninety-day period, the County may remove the facility and a lien may be placed to recover expenses. [Va. Code § 15.2-2316.4(B)(6); based on current County Code § 165-204.19(B)(7)]



MEMORANDUM

TO: Frederick County Board of Supervisors
FROM: Department of Planning & Development Staff
SUBJECT: Ordinance Amendment – Telecommunications Facilities, Commercial
DATE: February 22, 2024

Proposal:

This is a proposal to amend the supplementary use regulations for commercial telecommunication facilities to modify the criteria for a setback waiver by the Board of Supervisors (§165-204.19(C)(3)(a)).

This ordinance amendment was initiated by a telecommunications provider.

Current Zoning Ordinance Standard:

The Zoning Ordinance §165-204.19(C)(3)(a) specifies: “The Board may reduce the required setback distance for the wireless facility or wireless support structure as required by § 165-201.03B(8) of this Code if it can be demonstrated that the location is of equal or lesser impact. When a reduced setback is requested for a distance less than the height of the tower, a certified Virginia engineer shall provide verification to the Board that the wireless facility or wireless support structure is designed, and will be constructed, in a manner that if the wireless facility or wireless support structure collapsed the wireless facility or wireless support structure will be contained in an area around the wireless facility or wireless support structure with a radius equal to or lesser than the setback, measured from the center line of the base of the wireless facility or wireless support structure. In no case, shall the setback distance be reduced to less than 1/2 the distance of the height of the wireless facility or wireless support structure.”

The current commercial telecommunication facilities ordinance was comprehensively updated in 2019.

Meeting Summary & Requested Action:

The Planning Commission held a public hearing on February 21, 2024. Two (2) persons spoke in support of the proposed amendment, noting that telecommunication facilities were critically important to the community and setback waivers should be allowed on a case-by-case basis. The Planning Commission expressed some concerns with how fall zones are engineered, and requested more information regarding what standards engineers follow to ensure a telecommunication monopole collapse within a fall zone during high wind events. The Planning Commission unanimously recommended approval of the proposed ordinance amendment (10-0).

This item is presented for a public hearing. Following a public hearing, staff is seeking a decision by the Board of Supervisors on this proposed ordinance amendment.

MTK/pd

Attachment: **1. Proposed Changes – Redline**
 2. Resolution