

**CITY OF FREDERICK
ZONING BOARD OF APPEALS
MEETING MINUTES
June 28, 2011**

MEMBERS PRESENT:	STAFF PRESENT:
Mr. Jim Racheff Ms. Gail Colby Mr. Ed Hazlett Mr. Marvin Kennedy Mr. Philip Dacey	Gabrielle Dunn, Division Manager of Current Planning Rachel Depo, Assistant City Attorney Brandon Mark, City Planner Jeff Love, City Planner Carreanne Eyler, Administrative Assistant

ANNOUNCEMENTS

For the benefit of the audience and especially the applicants, Mr. Racheff, Chairman, introduced everyone by name and department and explained the Zoning Board of Appeals process.

APPROVAL OF MINUTES:

Approval of March 22, 2011 ZBA Hearing Minutes:

MOTION: Mrs. Colby moved to approve the March 22, 2011 ZBA Hearing minutes as published.
SECONDED: Mr. Kennedy
VOTE: 5-0

ELECTION OF OFFICERS

MOTION: Mr. Hazlett moved to re-elect current officers. (Mr. Racheff for Chair, Mr. Hazlett, Vice-Chair and Ms. Colby, Secretary)
SECONDED: Mr. Dacey
VOTE: 5-0

GENERAL PUBLIC COMMENT

There was no general public comment.

CASES TO BE HEARD

CASE NO.: ZBA11-293CU
LOCATION: 300 East 4th Street
APPLICANT: Shawn Winpigler

DISCUSSION:

Mr. Jeff Holtzinger, representing the Applicant, requested a 30-day continuance

MOTION: Mrs. Colby moved to continue ZBA11-293CU for 30 days to the July 26 ZBA public hearing.

SECONDED: Mr. Hazlett

VOTE: 4-0

CASE NO.: ZBA11-299CU

LOCATION: 1510 Rosemont Avenue

APPLICANT: Andrew Namrow

DESCRIPTION:

The Applicant is requesting approval of a conditional use per Section 308 and 801 of the Land Management Code to allow for the continuation of an existing accessory apartment where the property has transferred ownership.

BACKGROUND INFORMATION:

This property was first documented in 1945, the year that tax assessment information indicates the structures on the property were built. The property first appears on the City Zoning Map in 1948 and prior to that, it is assumed that the property was outside the jurisdiction of the City. Therefore, any existing uses on the property that did not comply with the City zoning regulations at that time would have been considered nonconforming once annexed into the City. However, as there isn't any documentation of the uses on the property at that time, Staff has conducted additional research to determine the validity of the existing uses.

There is currently a 4 unit, multi-family apartment building located at the rear of the property and a commercial building with two (2) tenant spaces and a 2nd floor accessory apartment on the front portion of the property. The commercial space was previously used by a TV and radio repair business as evidenced by a sign on the building. The earliest documentation of the uses on this property on record in the City Planning Office is the *1983 Polk Directory*, which lists the TV and radio repair space and the second floor residential unit in the front building as well as the four apartments in the rear building. At that time, the property was zoned B-3 (General Commercial). Section 14 of the *1980 Frederick City Zoning Ordinance*, in effect at the time, permitted multifamily dwellings of 2 to 2 ½ stories and appliance stores in the B-3 district.

The property is currently zoned Neighborhood Commercial (NC). There are two principle uses on the property, a multi-family residential building and a commercial retail space with an accessory apartment. Per Table 404-1 of the LMC, the multi-family residential structure is not permitted within the NC zoning district and thus the use of the property for the multi-family dwellings is considered nonconforming and is permitted to continue in accordance with Section 905 of the LMC. Should the operation of the nonconforming uses cease for one year or more, the existing lot/structure shall not be returned to a nonconforming use.

The commercial structure is a permitted use in the NC district and can be continued so long as the other requirements of the LMC are met; however, the accessory apartment on the structure is considered a conditional use per Section 404, Table 404-1 of the LMC. Accessory apartments are permitted in the NC district with the approval of the Zoning Board of Appeals subject to compliance with the regulations established in Section 801 of the LMC. As conditional uses do not run with the property and are not

transferable per §308(a), the Applicant as the new owner is seeking approval of the conditional use in order to maintain the use of the lawful accessory apartment.

STAFF RECOMMENDATION
FINDINGS OF FACT

- The subject property is zoned NC.
- Per Section 404, Table 404-1, the *Use Matrix*, accessory apartments are a conditional use in the NC zoning district.
- An existing accessory apartment is located on the subject property.
- Conditional uses do not run with the property and are not transferable.
- The property was acquired by a new owner and in order to continue the accessory apartment use, the Applicant has requested approval of a conditional use.
- One accessory apartment is permitted 10,000 s.f. of property in the NC district.
- The Zoning Board of Appeals may grant approval of a conditional use for an accessory apartment provided that all criteria outlined in Section 308 and Section 801 of the LMC are met.

STAFF RECOMMENDATION

Based upon the finding of facts, Staff supports conditional approval of ZBA11-299CU, based on the following conclusions:

- 1) The proposed accessory apartment is supported by policies and implementation strategies in the 2010 Comprehensive Plan and permitted in the NC district as a conditional use per Table 404-1 of the LMC.
- 2) The proposed use will not generate more noise, traffic, pollution, smoke, dust or other adverse impact on adjacent properties greater than that of uses permitted in the NC district, not requiring conditional use approval.
- 3) The accessory apartment is accessible by a dedicated separate entrance on the building.
- 4) One (1) parking space has been provided for the accessory apartment above the required parking for the principal uses.
- 5) The subject property is 15,114 s.f., which allows for one accessory apartment.
- 6) The Applicant must comply with all LMC and building code requirements prior to the issuance of a building/zoning permit
- 7) The accessory apartment use does not transfer with ownership of the property.
- 8) The accessory apartment currently exists on this property and has not resulted in excessive concentrations of such units in the neighborhood, has been served by public water and sewer service, and does not detract from any residential character in the neighborhood.

Approval is conditioned upon:

- 1) In accordance with Section 312(g), the Applicant must apply for and receive a zoning certificate lawfully establishing the use within 2 years of the approval or the approval shall become void.
- 2) The Applicant must notify the Zoning Administrator in writing within fourteen (14) days of any change in the approved ownership, lease, sublease, or change in ownership/occupancy of the premise, which nullifies the conditional use. The failure to notify the Zoning Administrator is a violation of the LMC.

APPLICANT PRESENTATION:

Mr. Jonathan Warner, Warner Commercial, 102 W. Church Street, representing the Applicant, stated he did not feel this should be before the ZBA but due to the language of the Land Management Code and how it was written, it is required when property ownership is transferred.

DISCUSSION:

There was discussion regarding transferring of the property. It was noted that the accessory apartment use does not transfer with the ownership of the property.

PUBLIC COMMENTS:

Ms. Denise Thrash of 1510 Rosemont Avenue, agreed with Mr. Warner comments.

MOTION: Mrs. Colby moved to approve ZBA11-299CU property located at 1510 Rosemont Avenue to allow for accessory apartment per Sections 308 and 801 of the Land management Code finding that:

- The subject property is zoned NC.
- Per Section 404, Table 404-1, the *Use Matrix*, accessory apartments are a conditional use in the NC zoning district.
- An existing accessory apartment is located on the subject property.
- Conditional uses do not run with the property and are not transferable.
- The property was acquired by a new owner and in order to continue the accessory apartment use, the Applicant has requested approval of a conditional use.
- One accessory apartment is permitted 10,000 s.f. of property in the NC district.
- The Zoning Board of Appeals may grant approval of a conditional use for an accessory apartment provided that all criteria outlined in Section 308 and Section 801 of the LMC are met.

Based upon the finding of facts the following conclusions are to be met:

1. The proposed accessory apartment is supported by policies and implementation strategies in the 2010 Comprehensive Plan and permitted in the NC district as a conditional use per Table 404-1 of the LMC.
2. The proposed use will not generate more noise, traffic, pollution, smoke, dust or other adverse impact on adjacent properties greater than that of uses permitted in the NC district, not requiring conditional use approval.
3. The accessory apartment is accessible by a dedicated separate entrance on the building.
4. One (1) parking space has been provided for the accessory apartment above the required parking for the principal uses.
5. The subject property is 15,114 s.f., which allows for one accessory apartment.
6. The Applicant must comply with all LMC and building code requirements prior to the issuance of a building/zoning permit
7. The accessory apartment use does not transfer with ownership of the property.
8. The accessory apartment currently exists on this property and has not resulted in excessive concentrations of such units in the neighborhood, has been served by public water and sewer service, and does not detract from any residential character in the neighborhood.

Approval is conditioned upon:

1. In accordance with Section 312(g), the Applicant must apply for and receive a zoning certificate lawfully establishing the use within 2 years of the approval or the approval shall become void.
2. The Applicant must notify the Zoning Administrator in writing within fourteen (14) days of any change in the approved ownership, lease, sublease, or change in ownership/occupancy of the

premise, which nullifies the conditional use. The failure to notify the Zoning Administrator is a violation of the LMC.

SECONDED: Mr. Dacey

VOTE: 4-0

CASE NO.: ZBA11-277CU
LOCATION: 18 Market Space
APPLICANT: Jeffrey Taboada

DESCRIPTION:

The Applicant is requesting approval of a conditional use in accordance with Sections 308 and 856 of the Land Management Code (LMC) for a restaurant with entertainment.

BACKGROUND INFORMATION:

The subject property, 18 Market Space, is zoned Downtown Commercial/Residential (DB) and is also located in the Historic Preservation Overlay District (HPO). The building is currently vacant; however the Applicant is in the process of establishing the use as a restaurant, and is requesting approval of a conditional use in accordance with Section 856 of the LMC to establish a restaurant with entertainment. The Applicant has indicated the entertainment as being music, but has not specified day or time in which the entertainment will be conducted.

STAFF RECOMMENDATION

Based upon the finding of facts, Staff supports conditional approval of ZBA11-277CU finding that:

- 1) The policies and regulations found in both the 2004 Comprehensive Plan and the Land Management Code (LMC) support the downtown as a center for arts and entertainment and that the proposed inclusion of entertainment at the existing restaurant is in harmony with these goals.
- 2) That the DB zoning district permits a variety of uses including many that generate a high volume of pedestrian and vehicular traffic and if conducted in accordance with the testimony provided and all applicable regulations, the characteristics of the use and its operation on the property in question and in relation to adjacent properties will not create any greater adverse impact than the operation of any permitted use not requiring conditional use approval.
- 3) The proposed use of the restaurant to include entertainment complies with the provisions of Article 8, Section 856 entitled *Restaurant with Entertainment* based on the following:
 1. That the Mistero Bar and Italian Grille will serve unpackaged food where customers consume foods while seated at tables located within the building.
 2. That the Mistero Bar and Italian Grille will provide regular seating capacity at tables for at least eighty (80) percent of patrons.
 3. That the sale of alcoholic beverages and entertainment will not constitute greater than forty (40) percent of the total quarterly revenues.
 4. That the Applicant has testified that the entertainment will not that include sexual conduct, nudity, or obscenity.
 5. That the sound levels shall conform to §15-21 of the City Code.
 6. That the Applicant has provided guarantees that the use of the property for a restaurant with entertainment will not constitute a nuisance because of noise or other activities associated with the use and that the failure of the owner/managers to consistently abide by all conditions, limitations, and restrictions which may be specified by the Board in granting the conditional use will result in the certificate of occupancy for entertainment being revoked.

Approval is conditioned upon:

1. In accordance with Section 312(g), the Applicant must apply for and receive a zoning certificate lawfully establishing the use of a Restaurant with Entertainment within 2 years of the approval or

the approval shall become void. The zoning permit application must describe the times of entertainment as being 9:00pm – 1:30am on Wednesdays, Thursdays, Fridays and Saturdays.

1. The Applicant must submit their quarterly revenues to the Planning Department for the next one year to verify compliance with the criteria established under Section 856(c).
2. A 6-month review of the calls for service to the Police Department will be conducted and provided to the Board for review in order to identify any violations of this approval.
4. That the approval of this Restaurant with Entertainment is automatically revocable if violations of any of the applicable regulations occur.

APPLICANT PRESENTATION:

Mr. Jeffrey Taboada resides at 25 Vista Avenue Thurmont, MD, is requesting approval of a conditional use for a restaurant with entertainment. This establishment would be an upscale dining restaurant serving Italian food. He encouraged neighbors notify him of their concerns.

DISCUSSION:

Mr. Racheff wanted the Applicant to know that they need to provide 80% seating capacity and about the revenue of alcohol sales to food sales.

Mr. Hazlett asked when the Applicant would like the entertainment for this establishment. The Applicant indicated they would like to have the entertainment on the weekend which would include a DJ. They want to provide a different type entertainment for Frederick.

Mr. Kennedy asked what the Applicant what hours they would hold the entertainment. The Applicant indicated said they would like the operations from 10:00 p.m. until 2:00 a.m.

The Board had some concerns about noise in the late hours. The Applicant indicated that they would take all of the concerns into consideration.

There was discussion about the second floor being a dance floor with a DJ. The Applicant reiterated that this is primarily a restaurant.

PUBLIC COMMENTS:

Ms. Leslie Homm, 35 East Church Street, speaking as the President of the Congregation of the Evangelical Lutheran Church who is concerned about the negative impact it would have on their church. She mentioned there are residential apartments close to this facility. She said their concerns are also per Section 308 of the Land Management Code in that after hours, it could present a nuisance from the late night disturbance.

Saundra Sos, 8019 Field Stone Drive, supported the establishment at this location. She felt Frederick would benefit from this use.

Laura McGilvray, 20A Market Space, is concerned about the noise this establishment may present. Since her apartment is so close to the balcony she is afraid of people vandalizing, throwing glass, throwing up, or possibly urinating on the premise.

Mr. Thomas Davey, 3 West 13th Street, commented that in the staff report it does not address hours of operation, seating capacity and the quarterly financial statement be provided to the public. He felt the condition regarding nuisance maybe hard to enforce.

Ms. Paula Boorse, 23 E. Church Street, had a question on how the City measures the noise decibels. She felt that a certified, independent party, that is not a City employee should take the decibel readings in her back yard and around the premise during the day and night hours.[\[GMD1\]](#)

Ms. Mary Rokos resides at 225 East Church, opposes this application.

Mr. Bob Cassidy resides at 228 E. Church Street, opposes this application.

Ms. Julia Ferguson resides at 20 East 2nd Street, opposes this application.

Ms. Denise and Tom Lopper on 3rd Street opposes this application.

Mr. Jeremy Polling opposes this application.

Ms. Kathryn Sellers opposes this application.

DISCUSSION:

Mr. Racheff brought up the uncertainties presented by the Applicant not being open to date including not having established a seating plan for the Board to review or a record of revenue and alcohol sales. Mrs. Dunn explained that Staff drafted language in the conditions of approval that the Applicant would need to apply for zoning permit that would depict the seating lay out to establish 80% of the patrons to be seated at tables. Staff also noted that there was a condition that the revenues would be required as with other cases in the past.

In regards to an issue raised in the public comment period regarding the zoning of the properties in the vicinity, Mrs. Dunn noted that the properties listed in the staff report are the immediate adjacent zoning categories.. The DB zone does provide for both residential and commercial and staff wanted to specify where the uses were.

In regards to a question raised regarding public access to any documentation provided in the future on the revenue generation of the business, Staff noted that all of that information is for public and anyone can see the documentation..

Mrs. Dunn also stated, in regards to the time and hours of music, if the Board members felt it would be appropriate to give the hours of operation they can do so. She recommended against specifying the types of music that would be appropriate.

In regards to asking the Applicant to comply with the noise ordinance for residential uses versus commercial uses, Mrs. Dunn felt that the section in Code could not be superseded the City Code Standard and it cannot hold this Applicant subject to something that is not spelled out in the Code.

There was discussion regarding the gate that the public had questioned if it would be opened or locked. Mrs. Dunn noted that before they would advise the Board to make any conditions associated with the gate, additional information would be needed as to if it is on the subject property, under whose ownership it is, and if it introduces fire and/or emergency access issues, those would be some considerations in the decision process.

Ms. Colby asked the Applicant if they had a plan in process for hours to play music. The Applicant said originally they wanted Wednesday, Thursday, Friday and Saturday, but there seems to be a lot of concerns he would go back to his partner and neighbors to get feedback from them. He also recommended having Friday and Saturday for entertainment.

MOTION: Mr. Dacey moved to continue for 30 days to the July 26, 2011 ZBA hearing in which seating capacity information, designated smoking areas, and gates being locked, time of operations and security information be provided.

SECONDED: Mr. Hazlett

VOTE: 4-0

CASE NO.: ZBA11-295CU
LOCATION: 704 Vernon Avenue
APPLICANT: Kevin Glardon

DESCRIPTION:

The Applicant is requesting approval of a conditional use per Section 308 and 866 of the Land Management Code for the installation of new emergency communications antennas on the City-owned water tower.

BACKGROUND INFORMATION:

Frederick County, in coordination with the City of Frederick, is in the process of upgrading the County's emergency communication facilities in order to enhance radio communication for County as well as City Police Department users. The Vernon Avenue water tower location was identified as one of the areas that will assist in closing coverage gaps to the system and is necessary to the overall success of the system.

The Applicant will removing obsolete antennas from the tower and will be attaching three (3) new antennas to the top of the tank and two (2) dishes to the western side of the tank along the catwalk.

STAFF RECOMMENDATION

Based upon the finding of facts, Staff supports a modification to Section 866(a)(3) for the Level III screening requirement surrounding fences and parking areas accessory to telecommunications facilities based on the fact that the compound is an existing structure and that no further exterior alterations are being made that change the existing visual conditions.

Staff recommends conditional approval of **ZBA11-295CU** finding that:

1. The proposed facility will not generate more noise, traffic, pollution, smoke, dust or other adverse impact on adjacent properties greater than that of uses permitted in the IST district, not requiring conditional use approval.
2. Based on the documentation supplied by the Applicant, the proposed antennas and microwave dishes will not be a hazard to adjacent properties or constitute a nuisance because of radio interference or other potentially disruptive activity associated with the operation of the tower or antenna.
3. That a modification to the Level III screening requirement for fencing and parking areas accessory to in areas surrounding telecommunications facilities when adjacent to residential properties is appropriate with regard to the existing ground equipment compound based on fact that no exterior alterations are proposed as part of this application.
4. The proposed equipment is attached to an existing communications tower.
5. Based on the information provided, the Applicant has demonstrated that the proposed communications tower and antennas will contribute any additional adverse impacts on the historic vistas, City gateways or other significant City landmarks.
6. That, per the statement from the engineer, the antennas proposed meets the radio frequency safety standards as established by the regulating agency for such antenna(s).
7. That the Applicant has provided a draft lease agreement in which the initial lease term is identified as 20 years and the Applicant has agreed to the removal of the facility per the provisions of paragraph (13)(D) of Section 866(a).

8. That the Applicant has provided guarantees that the telecommunications facilities will comply with the applicable local, state, and federal rules and regulations.
9. The Applicant has filed an agent authorization letter signed by the Mayor of the City of Frederick identifying its interest in the property and granting the applicant permission to seek the conditional use.
10. Although the proposed telecommunications facility will exceed the maximum height permitted in residential zoning districts, the proposed structure will not exceed 199' and that the proposed structure will make no substantial change in the character of the area.
11. That the Applicant has fulfilled all of the public notice requirements mandated under Section 866(a)(13)(A-B).
12. That the Applicant has indicated that they will maintain the facility in good condition.
13. That should the use of the facility for telecommunication purposes cease for a period of one (1) year the approval will terminate and the Applicant is responsible for the removal within 90 days of the termination of use.
14. That the Applicant has provided documentation and testimony indicating that co-location is not possible and justifying the proposed site.
15. The Applicant has filed an FAA Form 7460-1.

Approval is conditioned upon:

1. The Applicant must provide documentation of FAA approval.
2. Prior to building permit issuance, the Applicant must receive approval of the final site plan for the development in accordance with Section 309 of the LMC.

APPLICANT PRESENTATION:

Mr. Jack Markey, Director of Frederick County Emergency Management, and Mr. Steve Haller, Frederick County Police Department Technical Service, provided some history that they had some communication equipment at this site since 1981. In 1991 the City allowed some cellular providers to add some additional antennas to the site. When the provider went to the site they added a building and some additional amenities of generators and so forth. So with this particular change it would allow them vacate their system and go into the County system to increase their operations since 911. The Applicant indicated that they are the only public safety provider in the County that is not part of that system. The Police Department is using portable radios and to have the kind of embedded coverage that they would need they would have to have sites in downtown Frederick.

DISCUSSION:

Ms. Colby asked the Applicant how they would be bolted to the top. The Applicant indicated that it would be welded to the steel structure. Ms. Colby asked if there was lead paint abatement done at the Vernon address and when was it done. The Applicant indicated that they could not give a specific date, but they were provided information from the Water Department.

PUBLIC COMMENTS:

Mr. Chris Mattia, 25 South Pendleton Court, stated that the Applicant indicated that there were antennas there previously and that there had been no requirement necessary prior to and that this is one of the reasons that it is coming before the Board now. He pointed out that the issue should not be rubber stamped.

APPLICANT'S REBUTTAL:

The Applicant wanted the Commission to know that this would be an excellent opportunity to consolidate services which would benefit the taxpayers, not only financially, but in the effectiveness of the public safety services that are provided. This would bring all of the City and County radio users along with State Police and other supporting agencies to one system rather than funding multiple independent systems.

MOTION: Mr. Dacey moved to approve the Applicants request per Section 308 and 866 of the Land Management Code for the installation of new emergency communications antennas on the City-owned water tower finding that:

- 1) The subject property, 704 Vernon Avenue, is zoned IST.
- 2) Per Section 404, Table 404-1, the *Use Matrix*, telecommunications facilities are permitted as a conditional use in the IST zoning district.
- 3) The subject site is a City owned water tower which is currently being used as a telecommunications facility for both public safety purposes as well as a cell carrier.
- 4) The Applicant proposes to remove abandoned antennas and to install three new antennas and two new microwave dishes on the water tower.
- 5) The Applicant proposes to use the existing ground compound and existing shelter which will be updated on the interior to meet all current standards.
- 6) All fencing and parking areas accessory to a telecommunications facility must be screened with Level III screening when adjacent to residentially zoned property unless modified by the Zoning Board of Appeals upon determining that fencing and screening will adequately buffer the facility from adjoining properties and that there will not be a negative impact to an adjoining property.
- 7) The Zoning Board of Appeals may grant approval of a conditional use for a telecommunications facility provided that all criteria outlined in Section 308 and Section 866 of the LMC are met.
- 8) The proposed facility will not generate more noise, traffic, pollution, smoke, dust or other adverse impact on adjacent properties greater than that of uses permitted in the IST district, not requiring conditional use approval.
- 9) Based on the documentation supplied by the Applicant, the proposed antennas and microwave dishes will not be a hazard to adjacent properties or constitute a nuisance because of radio interference or other potentially disruptive activity associated with the operation of the tower or antenna.
- 10) That a modification to the Level III screening requirement for fencing and parking areas accessory to in areas surrounding telecommunications facilities when adjacent to residential properties is appropriate with regard to the existing ground equipment compound based on fact that no exterior alterations are proposed as part of this application.
- 11) The proposed equipment is attached to an existing communications tower.
- 12) Based on the information provided, the Applicant has demonstrated that the proposed communications tower and antennas will not contribute any additional adverse impacts on the historic vistas, City gateways or other significant City landmarks.

- 13) That, per the statement from the engineer, the antennas proposed meets the radio frequency safety standards as established by the regulating agency for such antenna(s).
- 14) That the Applicant has provided a draft lease agreement in which the initial lease term is identified as 20 years and the Applicant has agreed to the removal of the facility per the provisions of paragraph (13)(D) of Section 866(a).
- 15) That the Applicant has provided guarantees that the telecommunications facilities will comply with the applicable local, state, and federal rules and regulations.
- 16) The Applicant has filed an agent authorization letter signed by the Mayor of the City of Frederick identifying its interest in the property and granting the applicant permission to seek the conditional use.
- 17) Although the proposed telecommunications facility will exceed the maximum height permitted in residential zoning districts, the proposed structure will not exceed 199' and that the proposed structure will make no substantial change in the character of the area.
- 18) That the Applicant has fulfilled all of the public notice requirements mandated under Section 866(a)(13)(A-B).
- 19) That the Applicant has indicated that they will maintain the facility in good condition.
- 20) That should the use of the facility for telecommunication purposes cease for a period of one (1) year the approval will terminate and the Applicant is responsible for the removal within 90 days of the termination of use.
- 21) The Applicant has provided documentation of FAA approval.

SECONDED: Ms. Colby.

VOTE: 4-0

CASE NO.: ZBA11-296CU

LOCATION: 100 Hill Street

APPLICANT: Kevin Glardon

DESCRIPTION:

The Applicant is requesting approval of a conditional use per Section 308 and 866 of the Land Management Code for the construction of a 190-foot tall monopole telecommunications facility. The project is located at 100 Hill Street more commonly known as Hill Street Park.

BACKGROUND INFORMATION:

Frederick County, in coordination with the City of Frederick, is in the process of upgrading the County's emergency communication facilities in order to enhance radio communication for County as well as City Police Department users. The High Street Park location was identified as one of the areas that will assist in closing coverage gaps to the system and is necessary to the overall success of the system.

The Applicant has proposed to construct a 190' monopole with a 5' lightning rod attached to the top at the southwest corner of Hill Street park. The site will also accommodate a small compound consisting of a 1'x' x 26' equipment and generator buildings as well as a buried propane tank to serve as an energy supply to the backup generator. The entire 20' x 75' lease area will be enclosed with an 8' fence for security.

STAFF RECOMMENDATION

Based upon the finding of facts, staff supports a modification to Section 866(a)(3) for the Level III screening requirement surrounding fences and parking areas accessory to telecommunications facilities and conditional approval of **ZBA11-296CU** finding that:

1. The proposed facility will not generate more noise, traffic, pollution, smoke, dust or other adverse impact on adjacent properties greater than that of uses permitted in the IST district, not requiring conditional use approval.
2. Based on the documentation supplied by the Applicant, the proposed structure will not be a hazard to adjacent properties or constitute a nuisance because of radio interference or other potentially disruptive activity associated with the operation of the tower or antenna.
3. The proposed telecommunications facility is to be constructed as part of an athletic light structure and as such, the requirement that telecommunication facilities be setback from all property lines a distance equal to the height of the tower is not applicable to this application.
4. That a modification to the Level III screening requirement for fenced in areas surrounding telecommunications facilities when adjacent to residential properties is appropriate based on a distance of 500' to the nearest residential property line.
5. The documentation supplied by the Applicant demonstrates that there are no technically suitable spaces available on an existing communications towers within the geographic area that the new site is intended to serve.
6. Based on the photographs provided, the Applicant has demonstrated that the proposed communications tower and antennas will not have an adverse impact on the historic vistas, City gateways or other significant City landmarks.
7. That, per the statement from the engineer the antennas proposed meet the radio frequency safety standards as established by the regulating agency for such antenna(s).
8. That the Applicant has provided a draft lease agreement in which the initial lease term is identified as 5 years and the applicant has agreed to the removal of the facility per the provisions of paragraph (13)(D) of Section 866(a).
9. That the Applicant has provided guarantees that the telecommunications facilities will comply with the applicable local, state, and federal rules and regulations.
10. The Applicant has filed an agent authorization letter signed by the Frederick County Board of Education identifying its interest in the property and granting the applicant permission to seek the conditional use.
11. Although the proposed telecommunications facility will exceed the maximum height permitted in residential zoning districts, the proposed structure will not exceed 199' and that the adverse impacts of the proposed structure will be marginal based on the presence of surrounding structures that currently exceed that height and the distance from adjoining properties.
12. That the Applicant has fulfilled all of the public notice requirements mandated under Section 866(a)(13)(A-B).
13. That the Applicant has indicated that they will maintain the facility in good condition.
14. That should the use of the facility for telecommunication purposes cease for a period of one (1) year the approval will terminate and the Applicant is responsible for the removal within 90 days of the termination of the approval.
15. That the proposed telecommunications facility is designed for co-location of four antennas in addition to those proposed at this time.
16. That the Applicant has provided documentation indicating that co-location is not possible and justifying the proposed site.
17. The Applicant has filed an FAA Form 7460-1.

Approval is conditioned upon:

1. The Applicant must provide an updated lease that outlines the specific use of this particular property.
2. The Applicant must provide approval of FAA Form 7460-1.
3. Prior to building permit issuance, the Applicant must receive approval of the final site plan for the development in accordance with Section 309 of the LMC.
4. A Level I landscaping buffer will be required on all sides of the proposed facility in lieu of the required Level III buffer due to the distance of the facility relative to the adjacent residential uses.

APPLICANT PRESENTATION:

Mr. Jack Markey, Director of Frederick County Emergency Management - 340 Montevue Lane, and Steve Haller, Frederick Police Department of Technical Services Bureau stated they have addressed the screening issue.[\[GMD2\]](#) Mr. Nick Stanzoila, Engineer for Motorola explained the coverage areas.

DISCUSSION:

Mr. Racheff asked the Applicant to comment per Section 866 on the location of other existing structures and what makes the Butterfly Lane water tower infeasible. The Applicant explained they had sought the location of the Butterfly Lane water tank as part of their original work with the City. Upon identifying that it had not undergone lead paint abatement nor were there plans or funding to do that, they were barred from being able to locate on the top of the tank. He explained that the Water Department had concerns about them breaching the water tank down to metal because there is a significant risk of disturbance of lead paint leading to other complications. They felt this would not be a great option to use the tank and they also looked at the compound area.

The Applicant noted that the County-wide radio system is not a cellular network, they are independent connections, with a microwave network which is critical to operate on that type of system. He mentioned they originally looked at other athletic lighting structures at Hill Street Park as a potential area to put the system there and in discussions with staff and others it would preclude potential future alterations to parkland that could be used for other purposes. The shelter that they would need to locate would be located more centrally, more visually intrusive the broader open space uses of the park. With working with City Staff and others they said where could they locate this consistent with the principals that have been identified with McCurdy Field and others.

Mr. Hazlett asked if the Applicant could make a higher tower at the Hargett Farm. Mrs. Dunn briefed the Commissioners that the Hargett Farm is zoned R4 and would need to rezone that property for a tower. Mr. Markey brought up the issue that there are two National Registry properties, one being Prospect Hall and the other, the farm adjacent to the Hargett Farm. He mentioned that putting the tower on the Hargett Farm would put them close to the National Registry properties. Mr. Nick Stanziola, Engineer for Motorola, went over the attachment provided to the Board which depicted coverage areas and explained that the green painted areas represented reliable coverage to a portable radio using the Hill Street Park site and the blue painted areas represented reliable cover to a portable radio using the Hill Street Alternate 2 site on Hargett Farm along with describing the green painted areas that represented coverage lost due to using the Hill Street Alternate 2 site instead of the Hill Street Park site.

There was discussion if the Applicant could put the tower somewhere else. Mr. Hazlett asked if the Applicant if they could build a small tower perhaps on the Golden Mile. The Applicant indicated they could build more towers given funding and locations for additional towers. The driver there becomes funds. He mentioned the Hill Street location is a beneficial location for this type of system to the City.

Mr. Dacey wanted to know how high the athletic lighting poles in the park are. Mr. Markey estimated 75 feet.

Mr. Dacey asked if micro-transmitters would be coming soon or could be used in this application. The Applicant explained that micro-transmitters are more for data networks as opposed to voice radio networks.

Ms. Colby asked if all properties were notified of this system. The Applicant said they notified all property owners, operators in the required zones.

Mr. Hazlett asked the Applicant to brief the Board on the propane tank. Mr. Randy Rienth, project Manager for Motorola, [\[GMD3\]](#) explained that they put the tank underground to protect against accidental discharge. The tank is a 500 gallon tank dug five feet underground.

There was discussion regarding the maximum height in a residential area. Mrs. Dunn pointed out that the maximum height in a residential area is 65 feet.

If a tower would be at the Hargett site, the Applicant explained that funding for power, roads, and parking would have to be provided, which would be extremely costly, and this site already has all the amenities.

PUBLIC COMMENTS:

Mr. Scott Darby, 14 South Pendleton Court, opposes the location of this tower. He showed a picture of the tower at Frederick Community College which is 125 feet tall and noted that this Applicant is proposing a tower that is 190 feet. He mentioned the notice letter lacked information such as the height and purpose of the tower. He was disturbed by the fact that historic gateways are protected by the regulations but that neighborhoods are not. He wondered why the water tower has not been renovated and if the lighting on this project would have any impact on the park. He suggested if this is going to be allowed it should be like the one at T.J. High School. He also asked where parking for maintenance and the propane tank area would occur. He noted that he does not see any access for the enclosure. He also asked if security cameras are going to be provided. He noted that plantings should be considered to hide the area if approved. He suggested having a condition that no other antenna be allowed to be placed on this tower other than 911 Emergency signals.

Mr. Gary Brooks, 600 Monarch Ridge Road, felt the Board has the authority if they find this application is not conforming they could deny the application. Mr. Brooks provided a demonstration using a scaled model of the tower relative to Hillcrest Elementary School. He recommended having the pole on the water tower. He felt a different location would be more appropriate for this pole.

Mr. Steve Stoyke, 1338 David Lane, opposes this application. It would not look good or be good for the neighborhood.

Mr. Chris Mattia, 25 South Pendleton Court, stated at the last meeting with the applicant, barbed wire fencing, propane tanks, or generators were never mentioned and he felt the Applicant is only giving them little information. He is concerned about the fall zone of the tower. He is concerned about safety of children and people in that area.

Mr. Lance English, 1406 Kit Court, felt the public safety for communication is important. He recalled that 911 emergency fire fighters could not speak in buildings during 9/11 due to inadequate communications equipment. He stated his support for this application.

Mr. Justin Palk, 94 Blueridge Court, opposes this location for the tower. Barbed wire fencing is a concern to him. He felt putting the tower on the water tank would make more sense.

Mr. Tom Davey, 3 West 13th Street, stated his opposition to the application.

APPLICANT REBUTTAL:

Mr. Jack Markey commented that the slides they presented to the public did include references to the generator and propane tank. He said they worked closely with the Parks and Recreation Department about the impact on their future ability to use the park and how they plan to develop other sections of the park. He mentioned the shelter could stand 100 mph winds.

There was much discussion as to whether this tower could be located somewhere else as it would be a visual impact on the neighborhood. The Applicant reiterated that due to funds being the issue if they have to relocate to another location. He also mentioned that they have met the requirements in the Land Management Code.

Mr. Kennedy asked if the pole could be lowered and possibly be put on the water tank. Mr. Markey said they need this height for the communication and putting it on the water tank would be the same height.

Ms. Depo, City Assistant Attorney, briefed the Board that in Section 866 (a) (5) the criteria explains that the applicant shall demonstrate that a diligent effort has been made to co-locate the proposed telecommunications antennas in mentioned districts, and that due to valid considerations, including physical constraints and technical feasibility, no appropriate location is available in those districts.

There was much discussion regarding using the Hargett Farm. Ms. Colby asked the Applicant if the City precluded them from using the Hargett Farm. Mr. Markey said no the City did not preclude them from going to the Hargett Farm, it was not in the Applicant's best interest.

It was mentioned by the Applicant that they took this to the Mayor and Board of Aldermen and they approved it unanimously and took it to the County Commissioners. A lease has been in effect since June 16, 2011. [\[GMD4\]](#)

Mr. Stanziola went over the cons of using the other broadcast towers in the area and why they were not considered. He said with that with high powered broadcast towers, coordination with the station managers would be required to turn off their signal and they feel it would not be desirable

for a commercial entity. He noted that when you get close to a high powered broadcast tower there is a high probability, no matter what type of shielding you have, you would get some of interference between the signals.

MOTION: Mr. Dacey moved to deny the application of a conditional use per Section 308 and 866 of the Land management Code for the construction of a 190-foot tall monopole telecommunications facility finding that:

- 1) That the visual profile and appearance of the tower would cause a substantial change in the character of the area and that the location of the proposed monopole is a park area, and the construction of a tower in a children's park would cause a substantial change in character of the park.
- 2) That because of its visual profile and appearance, the monopole would cause a substantial change in the character of the residential area and that it would have an impact on the home values based on the visual profile and appearance.
- 3) That the intent of §866(a)(12) of the LMC is that the visual profile and appearance of a telecommunications facility should not cause a substantial change in the character of any residential district, including residential districts abutting the proposed facility.

SECONDED: Mr. Hazlett

VOTE: 4-0

The meeting adjourned at 11:33 p.m.

Respectfully submitted,

Carreanne Eyler