



MEMORANDUM

To: Development Review and Regulations Committee

From: M. Tyler Klein, AICP, Senior Planner *MTK*

Subject: February 27, 2020 Meeting and Agenda

Date: February 21, 2020

The Frederick County Development Review and Regulations Committee (DRRC) will be meeting on Thursday February 27, 2020 at 7:00 p.m. in the **first-floor conference room (purple room)** of the County Administration Building, 107 North Kent Street, Winchester, Virginia. The DRRC will discuss the following agenda items:

AGENDA

- 1) **Election of DRRC Chairman and Vice-Chairman.** As stipulated in the DRRC Operating Procedures, a Chairman and Vice-Chairman will be elected during the first meeting of each year.
- 2) **Update on Previous Zoning Ordinance Text Amendments.**
- 3) **Development Review Fees for Conditional Use Permits.** Discussion of a request by the Board of Supervisors to amend the conditional use permit fees specifically for commercial telecommunication towers.
- 4) **Zoning Ordinance Violations and Penalty Review.** Discussion of Frederick County Zoning Ordinance §165-101.07 and §165-101.08, compliance required and violations and penalties.
- 5) **Other.**

Please contact this office if you will not be able to attend the meeting. Thank you.

Access to this building is limited during the evening hours. Therefore, it will be necessary to enter the building through the rear door of the four-story wing. I would encourage committee members and interested citizens to park in the County parking lot located behind the new addition or in the joint Judicial Center parking lot and follow the sidewalk to the back door of the four-story wing.

MTK/dw

Attachment

Item #2: Update on Previous Zoning Ordinance Text Amendments

Since the last regular meeting of the DRRC, the following items were moved forward for public hearing (and action) by the Board of Supervisors:

- Conditional uses in the RA Zoning District;
- Telecommunication facilities, commercial;
- Public Utilities, including utility-scale solar power generating facilities; and
- Amendments to landscaping, screening, buffers and requirements for certain uses.

Staff will provide a brief summary on each item and Board of Supervisors meeting discussion.

No action is requested by the DRRC.

Item #3: Development Review Fees for Conditional Use Permits

Discussion of a request by the Board of Supervisors to amend the Conditional Use Permit fees specifically for commercial telecommunication towers.

During consideration of the ordinance amendment to create a two-track process for review and approval of commercial telecommunication facilities (which was subsequently approved by the BOS in December 2019), the Board of Supervisors discussed the fee for a Conditional Use Permit application for these types of uses as a barrier to local service providers in applying for telecommunication structures.

The purpose of this reduction in fees is to encourage commercial telecommunication facilities to locate in *underserved* areas of the County, specifically those rural areas west of Interstate 81. The Board discussed this approach as a potential solution in lieu of any further changes to by-right tower height allowance at this time. This may be revisited in the future.

The current CUP application fee for telecommunication facilities is \$7,000 (adopted in 2011) which was intended to cover Staff review, potential third-party expert and legal review, legal advertisement and adjoining property notifications for CUPs. The Board of Supervisors directed Staff to re-evaluate the fees with the intention of reducing the fee. A proposal for a new fee of \$750, consistent with all “other” Conditional Use Permit applications (less “cottage occupations” which have a \$75 fee). This fee reduction would cover *only* those costs associated with legal advertisement and adjoining property notifications.

Staff is looking for direction from the DRRC on the appropriateness of this request to amend the Development Review Fees schedule. The approved ordinance for telecommunication facilities, commercial, includes the specific fee amount. Therefore, an ordinance amendment is necessary to reflect any changes in the fee amount. Depending on the outcome of this discussion, Staff may forward this item to the Planning Commission for further discussion.

Attachments: Proposed Changes - Development Review Fee Schedule
Proposed Changes – Telecommunication facilities, commercial

**FREDERICK COUNTY
DEVELOPMENT REVIEW FEES**

Adopted April 23, 2008 – Effective May 1, 2008, Revised 2/24/2010, 4/28/2010, 5/2011, 1/25/2012,

2/18/2020

COMPREHENSIVE POLICY PLAN

\$ 3,000 non-refundable

REZONING

\$ 1,000 – Proffer amendments not requiring a public hearing
 \$ 5,000 base + \$100/acre – 2 acres or less
 \$ 10,000 base + \$100/acre more than 2, less than 150
 \$ 10,000 base + \$100/acre first 150 + \$50/acre over 150 acres

SUBDIVISION

Non-Residential \$1,000 base
 Design Plan \$ 200/lot
 Plat \$ 100/lot

Residential (RP, R4, R5)

Design Plan \$ 2,500/base \$100/lot
 Plat \$ 200/lot to 50 lots
 \$ 100/lot over 50 lots

Rural Areas (RA)

Sketch (Design) \$ 2,500 base \$200/acre
 Plat \$ 200/lot

Rural Areas (RA)

Minor – 3 lots or less \$ 200/lot
Lot Consolidation \$ 200/lot
Boundary Line Adj. \$ 200/lot

VARIANCE \$ 400

BZA APPEAL \$ 250

ZONING CERTIFICATION LETTER \$ 250

ZONING DETERMINATION LETTER \$ 100

SUBDIVISION ORDINANCE

EXCEPTION \$ 500

MASTER DEVELOPMENT PLAN

\$ 3,000 base + \$100/acre for first 150 +\$50/acre over 150 acres

CONDITIONAL USE PERMIT

Cottage Occupation \$ 75
 Telecommunication Tower **\$750 ~~\$ 7,000~~**
 Other \$ 750

SITE PLAN

Non-residential \$ 2,500 base
 \$ 200/acre to 5 acres
 \$ 100/acre over 5 acres

Residential \$ 3,500 base
 \$ 300/unit to 20 units
 \$ 100/unit over 20 units

Minor Site Plan \$ 500 for revision that increases existing structure area by 20% or less & does not exceed 5,000sf of disturbed area.

POSTPONEMENT of any Public Hearing or Public Meeting by Applicant after Advertisement, to include Applicant requests to **TABLE** an agenda item \$ 500/occurrence.

THIRD & SUBSEQUENT PLAN REVIEWS

(including County Attorney review) for a single development application \$ 500/review.

BOND MANAGEMENT

Establishment of bond \$ 500
 Reduction/Release \$ 300
 Replacement \$ 500

TDR PROGRAM

TDR Application Review \$300
 (*Review includes TDR Letter of Intent)
 TDR Certificate \$200
 Certificate Ownership Transfer \$50
 Receiving Property Approval \$200
 Review of Sending Property
 Deed Covenant \$100
 Review of Deed of Transfer (Extinguishment Document) \$100

CHAPTER 161 FEES

Installation License \$300

Septic Haulers Permit \$200
 Residential Pump and Haul \$50
 Commercial Pump and Haul \$500

ZONING VIOLATIONS

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.

A. 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 ~~\$750~~ **\$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 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.
 - 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)].
- B. 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)]
- C. 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)]

Item #4: Zoning Ordinance Violations and Penalty Review

Discussion of Frederick County Zoning Ordinance §165-101.07 and §165-101.08, compliance required and violations and penalties. In conjunction with input from the County Attorney, this is a discussion of a request from the Board of Supervisors to review the penalties for violations of the County Zoning Ordinance.

Staff is looking for input from the DRRC on this request to review the above sections. Depending on the outcome of this discussion, Staff may forward this item to the Planning Commission for further discussion.

Attachments: Frederick County Zoning Ordinance §165-101.07
Frederick County Zoning Ordinance §165-101.08

§ 165-101.07. Compliance required; required permits.

- A. No building or structure shall be used, occupied, developed, located, relocated, constructed, reconstructed, enlarged or structurally altered except in compliance with the terms and provisions of this chapter and any other applicable ordinances and regulations. Compliance shall require the issuance of a permit by the Director of Code Administration.
- B. No land shall be used, occupied or developed or lots created or altered except in compliance with the terms and provisions of this chapter and any other applicable ordinances and regulations.
- C. Any person who proposes to construct or alter any building or use or alter the use of any building, structure or land shall apply for a permit from the Director of Code Administration. Such application shall include all information necessary to determine if the requirements of this chapter have been met. The Director of Code Administration shall submit this application to the Zoning Administrator, who shall certify whether the proposed use is in compliance with this chapter. If such proposed use is not in compliance with this chapter, the Director of Code Administration shall refuse to issue a permit for the use.
- D. No use or structure shall be occupied until a certificate of occupancy has been issued by the Director of Code Administration. No certificate of occupancy shall be issued unless all requirements of this chapter have been met.

§ 165-101.08. Violations and penalties; enforcement.

It shall be a violation of this chapter to make any use of land in a fashion not expressly permitted by this chapter.

- A. Misdemeanor. Any person(s), firm or corporation, whether owner, lessee, principal, agent, employee or otherwise, who violates any provision of this chapter or who uses land or constructs or alters structures in a fashion that is not in conformance with the requirements and procedures in this chapter shall be guilty of a misdemeanor. Upon conviction of such misdemeanor, such person(s), firm or corporation shall be subject to punishment by a fine of not less than \$10 nor more than \$1,000. If this violation is uncorrected at the time of conviction, the court shall order the violator to abate or remedy such violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within a specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than \$10 nor more than \$1,000, and any such failure during any succeeding thirty-day period shall constitute a separate misdemeanor offense for each thirty-day period, punishable by a fine of not less than \$10 nor more than \$1,000. **[Amended 12-9-1992; 10-10-2001]**
- B. Complaints. Whenever a violation of this chapter occurs or is alleged to have occurred, any person may file a complaint to the Zoning Administrator, stating fully the case and basis of the complaint. The Zoning Administrator shall record such complaint immediately and investigate and take action as provided by this chapter.
- C. Notification. When the Zoning Administrator determines that a violation has occurred, a notice of the violation shall be served to the person committing or permitting the violation. The notice of the violation shall specify the nature of the violation and shall order that the violation cease within a reasonable time specified by the Zoning Administrator.
- D. Appeal. The interpretation of the Zoning Administrator that a violation has occurred may be appealed to the Board of Zoning Appeals following procedures set forth in this chapter. The order to cease the violation may be stayed until the appeal is heard, provided that the appeal is filed on a timely basis.
- E. Enforcement. If the violation continues after the time period specified in the notice of violation expires, the Zoning Administrator may initiate injunction, mandamus or any other

appropriate action to ensure compliance with this chapter. In addition, the Frederick County Attorney or other prosecuting attorney appointed by the Board of Supervisors shall proceed to prosecute the violation. **[Amended 6-11-2008]**

- F. Civil penalties. The Board of Supervisors may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specific provisions of this chapter according to the provisions of the Code of Virginia, as amended. Such schedule of offenses shall not include any zoning violation resulting in injury to any person or persons. In such cases, the civil penalty shall be a fine established by the schedule. The fine shall be in lieu of criminal sanctions, and except for any violation resulting in injury to any person or persons, such designation shall preclude the prosecution of a violation as a criminal misdemeanor.
- G. Any person summoned for a scheduled violation may provide a waiver of trial and admission of liability and pay the civil penalty to the County Treasurer. Such persons shall be informed of their right to stand trial and that an admission of liability will have the same effect as a judgment of the court. If a person charged with a scheduled violation does not elect to enter a waiver of trial and admission of liability, the violation shall be tried in the General District Court as provided for by law. An admission of liability or finding of liability shall not be a criminal conviction.
- H. The remedies provided for in this section are cumulative, not exclusive, and shall be in addition to any other remedies provided by law.