

Dickerson/Terra Energy questions and notes

Jan 22, 2024

Two sections follow—data communications system and public utility structure. See especially highlighted and bolded items.

Data center = Data Communications System C (conditional use) for AR and IH-2.5 zones

A few questions:

- How will the required findings (especially those highlighted in yellow) below be made?
- Is this location consistent with the cable communications plan approved by the District Council? Where is that plan?
- A franchise must be awarded by Montgomery County. Who will review this for that required award? What standards must be met in order for a franchise award to be made? (The Tower Committee is not reviewing this application.)
- How was the application accepted without several of the Application Requirements being submitted? Who has the authority to waive these submission requirements? Where is that documented?
- How will the required findings be made without the locations of buildings and structures, the gross square feet of development being proposed, etc?
- How will adequate public facilities findings be made without e.g., any information about electricity, well, septic, etc, usage and capacity being provided?
- Will a ZTA be necessary in order for this incomplete application to receive consideration by the Planning Board and the Hearing Examiner?
 - If not, who has the authority to waive these requirements, and where is that waiver in the file?
 - If so, who is sponsoring this ZTA? When will it be introduced?
- What process will be needed to address the impacts to the C&O Canal National Historic District (especially noise impacts)? Will this go to the HPC?

Section 3.5.2. Communication Facility

A. Cable Communications System

1. Defined

Cable Communications System means an arrangement of antennas, cables, amplifiers, towers, microwave links, lines, wires, waveguides, laser beams, satellites, or any other conductors, converters, equipment, or structures designed, constructed and operated with the purpose of producing, transmitting, receiving, amplifying, storing, processing, or distributing audio, video, digital or other forms of electronic or electrical signals, programs and services in which the signals are distributed by wire or cable to subscribing members of the public. Cable Communications System does not include

any similar system with cables that do not touch public rights-of-way and that serve only the occupants of a single property of land under common ownership or management.

2. Use Standards

Where a Cable Communications System is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section [7.3.1](#), Conditional Use, and the following standards:

- a. Any proposed tower must be set back one foot for every foot of height of a tower from all property lines, measured from the base of the support structure.
- b. The location of the proposed community access centers or studios are consistent with the cable communications plan approved by the District Council.
- c. Structures, buildings, and facilities in which or on which component elements of a Cable Communications System are located or which otherwise support the system, and which are operated by the entity operating the Cable Communications System under a franchise awarded by Montgomery County, may be allowed if approved by the Hearing Examiner.
- d. Offices are prohibited in Residential zones as part of the Cable Communications System.
- e. Screening under Division [6.5](#) is not required.
- f. The transmission and distribution lines, wires, and cables that are component elements of a cable communications system are permitted uses in all zones and are not required to obtain conditional use approval.

Section 7.3.1. Conditional Use

A. Applicability and Description

1. Use of any property for a conditional use under Article [59-3](#) requires approval of a conditional use application.
2. A conditional use application may include all or part of a property.
3. A conditional use application must satisfy the conditions and binding elements of, and be consistent with, any effective previous approvals on the subject property.
4. An area covered by a conditional use approval requires a site plan only if:
 - a. the area is included in a sketch plan; or
 - b. the use standards in Article [59-3](#) require it.

B. Application Requirements

1. Ownership:
 - a. An applicant must own the subject property or be authorized by the owner to file the application.
 - b. If any land or right-of-way is owned or controlled by the State, County, or any other entity or agency, written authorization from that entity or agency must be submitted with the application.

2. The applicant must submit the following for review:
 - a. application form and fees as approved by the District Council;
 - b. proof of ownership or authorization;
 - c. statement of how the proposed development satisfies the criteria to grant the application;
 - d. certified copy of official zoning vicinity map showing the area within at least 1,000 feet surrounding the subject property;
 - e. list of abutting and confronting property owners in the County tax records;
 - f. list of any civic, homeowners, and renters associations that are registered with the Planning Department and located within 1/2 mile of the site;
 - g. Traffic Statement or Study, accepted for review by the Planning Director;
 - h. map showing existing buildings, structures, circulation routes, significant natural features, historic resources, zoning, and legal descriptions on the proposed development site and within 500 feet of the perimeter boundary;
 - i. existing and proposed dry and wet utility plan if changes to these facilities are proposed;
 - j. written description of operational features of the proposed use;
 - k. if exterior changes are proposed, plans of the proposed development showing:
 - i. footprints, ground-floor layout, and heights of all buildings and structures;
 - ii. required open spaces and recreational amenities;
 - iii. layout of all sidewalks, trails, paths, roadways, parking, loading, and bicycle storage areas;
 - iv. rough grading;
 - v. landscaping and lighting;
 - vi. approved Natural Resources Inventory/Forest Stand Delineation, if required under Chapter 22A;
 - vii. Forest Conservation Plan application, if required under Chapter 22A, or an approved preliminary forest conservation plan; telecommunication tower applications must include an approved Forest Conservation Plan or a letter from the Planning Department confirming that a Forest Conservation Plan is not required under Chapter 22A;
 - viii. Stormwater Management Concept or Water Quality Plan application, if required under Chapter 19; and
 - ix. supplementary documentation showing or describing how the application satisfies previous approvals and applicable requirements.
 - l. development program and inspection schedule detailing any construction phasing for the project; and
 - m. for a telecommunication tower application, photographic simulations of the tower and site seen from areas with a direct view of the tower, including a minimum of at least 3 directions.

3. The applicant must submit an initial application to the Planning Director for approval of completeness. The Planning Director must review the application for completeness within 10 days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale or lacks proper signatures. The assessment of completeness must not address the merits of the application.
4. The applicant must submit any required revisions to the Planning Director. The Planning Director must review the revised application for completeness within 10 days after receipt.
5. After the Planning Director verifies that the application is complete, the applicant must file the final application with the Hearing Examiner, who will accept the application and establish a hearing date under Section [7.3.1.C](#).
6. Public notice is required under Division [7.5](#).

C. Hearing Date

1. The Hearing Examiner must schedule a public hearing to begin within 120 days after the date an application was accepted.
2. The Hearing Examiner may postpone the public hearing and must send notice to all parties of record of the new hearing date.
3. The Hearing Examiner may issue a subpoena to compel the attendance of witnesses at a public hearing and production of documents and administer an oath to any witness.

D. Review and Recommendation

1. Planning Director Review

- a. The Planning Director may provide a report and recommendation for review by the Planning Board at a public meeting or issue a report and recommendation directly to the Hearing Examiner. The Planning Director must provide a report and recommendation on a telecommunication tower application directly to the Hearing Examiner.
- b. If the Planning Director provides a report and recommendation to the Planning Board, the Planning Director must publish the report and recommendation a minimum of 10 days before the Planning Board public meeting.
- c. If the Planning Director provides a report and recommendation to the Hearing Examiner, the Planning Director must publish the report and recommendation a minimum of 10 days before the Hearing Examiner's public hearing.

2. Planning Board Review

- a. The Planning Board may consider the Planning Director's report and recommendation as a consent item on its agenda or hold a public meeting to consider the recommendation.
- b. The Planning Board must provide a recommendation on the application to the Hearing Examiner a minimum of 7 days before the Hearing Examiner's public hearing.

3. Amendment of an Application

- a. An applicant may amend the application before the hearing if the Hearing Examiner approves a motion to amend after giving 10 days' notice to all parties entitled to original notice of filing. If an

amendment would materially alter an applicant's proposal or evidence, the Hearing Examiner may postpone the hearing to a date that permits all interested parties adequate time to review the amendment.

b. The applicant must forward a copy of any proposed amendment to the Planning Board. The Hearing Examiner must keep the record open for no more than 30 days to provide an opportunity for the Planning Board or its staff to comment. Within that time, the Planning Board or its staff must comment on the amendment or state that no additional review and comment are necessary.

4. Withdrawal of an Application

The Hearing Examiner or the Hearing Examiner's designee must send a notice to all parties entitled to notice of the hearing when an applicant withdraws an application for a conditional use.

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;

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;

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

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

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

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

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.

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.

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.

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.

5. The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:

a. Filling Station;

b. Light Vehicle Sales and Rental (Outdoor);

c. Swimming Pool (Community); and

d. the following Recreation and Entertainment Facility use: swimming pool, commercial.

6. The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:

a. Funeral Home; Undertaker;

b. Hotel, Motel;

c. Shooting Range (Outdoor);

d. Drive-Thru

e. Landfill, Incinerator, or Transfer Station; and

f. a Public Use Helipad, Heliport or a Public Use Helistop.

Batteries = Public Utility Structures
C in both zones

I think the questions above cover this. However, is there any safety issue (FRS???) that could be triggered by huge banks of batteries?

Section 3.6.7. Utilities

....

E. Public Utility Structure

1. Defined

Public Utility Structure means a utility structure other than transmission lines or pipelines. Public Utility Structure includes structures for the occupancy, use, support, or housing of switching equipment, regulators, stationary transformers, and other such devices for supplying electric service or other public utilities.

2. Use Standards

- a. Where a Public Utility Structure is allowed as a limited use, and the subject lot abuts or confronts a property zoned Agricultural, Rural Residential, or Residential Detached that is vacant or improved with an agricultural or residential use, site plan approval is required under Section [7.3.4](#).
- b. Where a Public Utility Structure is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section [7.3.1](#), Conditional Use, and the following standards:
 - i. The proposed structure at the location selected is necessary for public convenience and service.
 - ii. The proposed structure at the location selected will not endanger the health and safety of workers and residents in the community and **will not substantially impair or prove detrimental to neighboring properties.**
 - iii. A Public Utility Structure allowed in any Rural Residential or Residential zone, must, whenever practicable, have the exterior appearance of a residential building and must have suitable landscaping, screen planting and fencing, wherever deemed necessary by the Hearing Examiner.
 - iv. The Hearing Examiner may waive the height limits of the applicable zone where, in the opinion of the Hearing Examiner, adjacent residential uses will not be adversely affected by the increased height.
 - v. An applicant for a Public Utility Structure may file a conditional use application if the applicant states in writing under oath that a bona fide effort has been made to obtain a contractual interest in the subject property for a valid consideration without success, and that there is an intent to continue negotiations to obtain the required interest or in the alternative to file condemnation proceedings should the conditional use be approved.

All of 7.3.1, copied previously, also applies to the proposed batteries.