COMMUNITY DEVELOPMENT DIVISION
FREDERICK COUNTY, MARYLAND

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TO: Frederick County Planning Commission

FROM: Eric Soter, Director; Shawna Lemonds, Project Manager

DATE: July 31, 2012

SUBJECT: Nongovernmental Utility Text Amendment (ZT-12-14)

ISSUE

The Board of County Commissioners (BOCC) has received requests for review of specific sections of the zoning ordinance for possible revision. Amendments to address the processing of a 'Nongovernmental utility' and 'Nongovernmental electric substation' have been drafted as part of this process. Staff is requesting a recommendation from the Frederick County Planning Commission (FCPC) regarding the Nongovernmental Utility Text Amendment (ZT-12-14).

BACKGROUND

Several initiatives have been identified over the last several months to provide an avenue for citizen input regarding development regulations and processes. As part of this effort, Staff began a phased update to the zoning ordinance. The amendments are compiled based on the Potential Text Amendment and the Business Friendly Improvement Areas (BFIA) lists. The lists were created through public input, as well as BOCC and Staff discussion over the last several months.

Based on review of community input and further research, amendments to the zoning ordinance have been drafted to address concerns regarding the processing of the 'Nongovernmental Utility' and 'Nongovernmental electric substation' land uses. The Nongovernmental Utility Draft Text Amendment was presented to the BOCC on June 28th. At that meeting the Board directed Staff to initiate a text amendment and to move forward through the public hearing process. The text amendment was presented to the Planning Commission on July 11, 2012 as an informational item.

RECOMMENDATION

Staff is requesting a recommendation from the Frederick County Planning Commission (FCPC) regarding the Nongovernmental Utility Text Amendment (ZT-12-14).

ATTACHMENTS

Exhibit 1 – Nongovernmental Utility Text Amendment (ZT-12-14)

OVERVIEW

During the Potomac/Appalachian Trail Highline project it was noted that the project would have a substantial impact to nearby residential uses, both during and subsequent to construction. A request has been made as noted in ZON-51 to *'amend the zoning ordinance and possibly the comprehensive plan to address the issue of placing PATH, other utilities, or a pumping station into the middle of a residential area'*.

The zoning ordinance includes specific provisions to address development of these types of facilities in the County through the nongovernmental utility land use term. The zoning ordinance currently requires all 'Nongovernmental utility' land uses to receive special exception approval in the Resource Conservation (RC), Agricultural (A), all residential districts, and the Village Center (VC) zoning district. Specific 'Nongovernmental utility' special exception criteria are located in existing section 1-19-8.339. 'Nongovernmental utilities' are also permitted with Site Development Plan approval in the General Commercial (GC), Limited Industrial (LI), and General Industrial (GI) districts.

It should be noted that an exemption of essential services from the zoning ordinance is provided in Section 1-19-4.110. Specifically, section 1-19-4.110(B) provides an exemption from the zoning ordinance for essential governmental utilities. However, the existing text does require that among other utilities, any overhead electric transmission line of 69 kilovolts or greater shall be submitted to the Planning Commission in adequate time for its review and recommendation.

Staff reviewed the existing definitions and regulations within the zoning ordinance and upon consideration it was determined that these regulations do not sufficiently address a 'Nongovernmental electric substation' including a transmission and distribution substation served by transmission lines of 500 kv or greater.

A nongovernmental utility is currently defined in section 1-19-11.100 of the zoning ordinance as "Any utility not owned by a governmental entity. Facilities include all buildings, structures, and land used to house the utility and equipment, including substations for transforming, boosting or switching purposes; regulators; stationary transformers and other such devices for supplying electric service; telephone offices; radio and television transmitter towers and stations; storage yards; and above ground pipelines."

In addition a definition for utility is also provided "Any facility erected, constructed, altered or maintained as part of an integrated system or program designed to furnish necessary services for the public health, safety or convenience, including water, electric, gas, communication (cable, wireless, satellite, telephone), steam or sewer."

These definitions do not provide for the type of facility that would include a transmission and distribution substation served by transmission lines of 500 kv or greater, made evident through recent applications for projects of this type to be developed in Frederick County. The assemblage of equipment required to accommodate this type of nongovernmental electric substation was not contemplated at the time of creation of the existing regulations and definitions. Therefore the existing regulations do not adequately address this type of development and the potential impact on neighboring properties.

A 'Nongovernmental electric substation' served by transmission lines of 500 kv or greater, should be located in a zoning district where industrial impacts are expected, existing, or are a contemplated land use. In this manner the use would be more compatible and similar to surrounding land uses and the district would minimize impact through appropriate design and siting.

Therefore, the proposed amendments (summarized below) include creation of a new land use term, specific development provisions in a more appropriate location, and a definition to address a 'Nongovernmental electric substation' of this type.

ANALYSIS

The overview section below provides an issue summary of the specific amendments to the zoning ordinance as provided in Exhibit 1 – Nongovernmental Utility Draft Text Amendment.

ARTICLE V: ZONING MAP AND DISTRICTS
DIVISION 3. USE TABLE
§ 1-19-5.310. USE TABLE.

Amendments are proposed to this existing section of the zoning ordinance to create 'Nongovernmental electric substation'. The proposed land use term would represent those projects above and beyond the existing 'Nongovernmental utility' provisions, including a new definition provided in section 1-19-11.100 (detailed below).

The newly created 'Nongovernmental electric substation' land use is proposed as a principal permitted use as a special exception with site development plan approval (E) in the Limited Industrial (LI) and General Industrial (GI) zoning districts.

ARTICLE VI: DISTRICT REGULATIONS
DIVISION 1. DESIGN REQUIREMENTS AND MODIFICAITONS
§ 1-19-6.100. DESIGN REQUIREMENTS FOR SPECIFIC DISTRICTS.

Edits to this section include updates to terminology to reflect changes made to the Use Table in section 1-19-5.310 above, and to standardize land use terminology between the Use Table and Design Requirements Table. Provisions for nongovernmental utilities have been added to the design requirements table and mirror the existing provisions for 'Governmental and public utilities' or the established setbacks in existing special exception criteria in section 1-19-8.339.

ARTICLE VIII: SPECIFIC USE REGULATIONS
DIVISION 3. SPECIAL EXCEPTION USES
§ 1-19-8.337. NONGOVERNMENTAL ELECTRIC SUBSTATION IN THE LI AND GI DISTRICTS.

This newly created section of the zoning ordinance provides for the processing of 'Nongovernmental electric substation' by special exception in the LI and GI zoning districts. The proposed special exception criteria would apply to all 'Nongovernmental electric substation' applications meeting the new definition proposed in section 1-19-11.100.

In creating the proposed regulations, Staff reviewed and where appropriate duplicated existing special exception criteria, relied on Staff experience with deficiencies in current regulations (identified during processing of past applications for 'Nongovernmental utility' projects within Frederick County), reviewed existing regulations in other jurisdictions, and identified public health/safety/welfare issues that have become apparent during processing of past applications.

Based on this review and input, several criteria are proposed. Subsection (A) includes information required as part of the special exception application for a 'Nongovernmental electric substation'. These application materials will be required in addition to those outlined in Division 2. Special Exceptions, Variances, Approvals, and Appeals; section 1-19-3.200.1 Application.

The specific requirements proposed in this section (1-19-8.337) are intended to provide additional information related to 'Nongovernmental electric substation' applications and better inform the Board of Appeals in regards to the proposed project. Subsection (A)(1) is a new criterion which is intended to provide information to the Board of Appeals regarding the use of the proposed development and its necessity in regards to a long-range plan for service.

This information provides a more complete set of facts for the Board of Appeals to render a decision regarding the application, and formulate potential conditions related to approval criteria found in this section as well as section 1-19-3.210 (B), the existing general special exception approval criteria.

Proposed Subsection (A)(2) is a new criterion intended to provide information to complement the information to be submitted in proposed subsection (A)(3), and existing special exception application requirements found in section 1-19-3.210. The information required to be submitted in these sections will provide a more complete picture of how the proposed development will impact surrounding properties. Although proposed subsection (A)(2) would be a new criterion, subsection (A)(3) mirrors an existing criterion found in section 1-19-8.339(E).

Proposed subsections (A)(4) through (7) are new criterion intended to provide additional details for the Board of Appeals regarding the proposed development and better inform the Board in formulation of potential conditions of approval related to the criteria proposed in subsections (B-E).

Proposed subsection (A)(8) mirrors the existing special exception criterion found in section 1-19-8.339(J).

Proposed subsection (A)(9) is intended to provide further details, and build upon, the information submitted as required in existing section 1-19-3.210(B)(3) within the general special exception criteria.

Proposed subsections (A)(10) through (12) mirror existing special exception criteria in section 1-19-8.339(H)(3), (K), and (L).

Proposed subsections (B)(1) through (3) are site design standards and mirror existing special exception criteria in section 1-19-8.339(A) and (B). Proposed subsection (B)(4) specifically requires that the Board of Appeals approve any increased height associated with the proposed development. Existing section 1-19-6.160 Height Modification permits several instances where a height modification may be approved administratively. However, the proposed text will include any height modification for a 'Nongovernmental electric substation' as part of the application to the Board of Appeals.

Proposed subsection (C) is a new criterion developed in response to concerns raised with past applications and the impact of the proposed development of a 'Nongovernmental electric substation' adjacent to residential uses. The increased setback, as determined by the Board of Appeals, will provide an increased buffer from noise, fumes, odor, dust or other potential negative impacts that may be associated with proposed development.

Remaining proposed subsections mirror existing special exception criteria in section 1-19-8.339.

§ 1-19-8.339 NONGOVERNMENTAL UTILITY IN RC, A, R-1, R-3, R-5, R-8, R-12, R-16 AND VC DISTRICTS.

These existing special exception provisions would, for the most part, remain unchanged and continue to apply to existing and new 'Nongovernmental utility' land uses. As part of this text amendment existing subsection (I) is proposed for deletion. This existing criteria is difficult to meet and may create a situation where a proposed nongovernmental utility is required to duplicate or have an appearance consistent with existing neighborhood characteristics that are less than desirable.

ARTICLE XI: DEFINITIONS
DIVISION 1. DEFINITIONS
§ 1-19-11.100. DEFINITIONS

This existing section has been amended to correct an existing cross reference, to update the existing 'Nongovernmental utility' definition, to create a definition for 'Nongovernmental electric substation', and to amend the existing definition for utility.

Within the existing definition of accessory use or structure the cross reference to section 1-19-8.240(B) should reference section 1-19-8.250.1(F) which provides an exemption for guardhouses from the requirement that the use or structure be located on the same lot as the principal use or building. This amendment is proposed by Staff as a cleanup item to provide clarity in implementation of this definition and regulation.

Updates are also proposed for the 'Nongovernmental utility' definition. Language has been added to distinguish a 'Nongovernmental utility' as a land use determined to be a utility not owned by a governmental entity which may include a transmission and distribution substation served by transmission lines of less than 500 kv. In tandem with efforts to differentiate between a 'Nongovernmental utility' and a 'Nongovernmental electric substation', references to specific utility types, devices, and equipment have been removed from the 'Nongovernmental utility' definition. These references have been added to the definition of utility to provide a clearer explanation of the types of utilities that may be included in the land use term.

The proposed definition of 'Nongovernmental electric substation' is intended to differentiate between those existing 'Nongovernmental utility' land uses served by electric transmission lines of less than 500 kv and facilities that may be proposed in the future that would be served by transmission lines of 500 kv or greater.

STAFF RECOMMENDATION

Staff is requesting a recommendation from the FCPC regarding the Nongovernmental Utility Text Amendment (ZT-12-14).

ARTICLE V: ZONING MAP AND DISTRICTS
DIVISION 3. USE TABLE
§ 1-19-5.310. USE TABLE.

(A) *Permitted uses and required development review.*

P Principal permitted use subject to design regulations
PS Principal permitted use subject to site development plan approval. See §§ 1-19-2.160, and 1-19-3.300 through 1-19-3.300.4
E Principal permitted use as a special exception with site development plan approval. See §§ 1-19-8.320 and following
T Permitted as temporary use as a special exception. See § 1-19-8.300
X Permitted as temporary use only. See § 1-19-8.700
SW Solid Waste Floating Zone
A blank indicates that the use is not permitted under any situation

	Zoning Districts													
Uses	RC	A	R1	R3	R5	R8	R12	R16	VC	MX	GC	ORI	LI	GI
[Natural Resources Uses remain unchanged]														
[Residential Uses remain unchanged]														
[Temporary Housing remains unchanged]														
[Commercial Uses – Retail remains unchanged]l														
[Commercial Business and Personal Services remain unchanged]														
[Wholesaling and Processing remains unchanged]														
[Automobile and Related Services remain unchanged]														
[Animal Care and Service remains unchanged]														
[Commercial Amusements remain unchanged]														
[Industrial Uses remain unchanged]														
[Open Space and Institutional remains unchanged]														
[Institutional remains unchanged]														
Governmental and Nongovernmental Utilities														
Arena or stadium											PS		PS	PS
College or university			PS	PS	PS	PS	PS	PS	PS	PS	PS			
Public school			PS	PS	PS	PS	PS	PS	PS	PS	T	T	T	
Nongovernmental utility	E	E	E	E	E	E	E	E	E		PS		PS	PS
NONGOVERNMENTAL ELECTRIC SUBSTATION													**E**	**E**
[Solid Waste Operations remain unchanged]														

[Footnotes remain unchanged]

ARTICLE VI: DISTRICT REGULATIONS
DIVISION 1. DESIGN REQUIREMENTS AND MODIFICATIONS
§ 1-19-6.100. DESIGN REQUIREMENTS FOR SPECIFIC DISTRICTS.

Note 1. Minimum lot areas measured in acres and square feet; minimum lot width, yard areas and height measured in feet.
Note 2. The minimum lot area and yard requirements do not apply to agricultural activity involving no structures.
Note 3. Design requirements for uses permitted by special exception are established in §§ 1-19-8.320 *et seq.*
Note 4. Lot area, width and yard measurements may be modified in accordance with § 1-19-8.620 through § 1-19-8.620.6 (to residential zones - R3, R5, R8, R12, R16, VC).

Use Classification	Minimum Lot Area	Minimum Lot Area per Unit	Lot Width	Front Yard	Side Yard	Rear Yard	Height
Resource Conservation District RC							
[Natural Resources through Institutional Remain Unchanged]							
NONGOVERNMENTAL UTILITY	**10 ACRES**	**-**	**300**	**50**	**50**	**50**	**30'**
Agricultural District A							
[Natural Resources through Institutional Remain Unchanged]							
NONGOVERNMENTAL UTILITY	**40,000**	**-**	**200**	**50**	**50**	**50**	**30'**
Residential One District R1							
[Natural Resources through Institutional Remain Unchanged]							
NONGOVERNMENTAL UTILITY	**40,000**	**-**	**200**	**50**	**50**	**50**	**30'**
Residential Three District R3							
[[Natural Resources through Institutional Remain Unchanged]							
NONGOVERNMENTAL UTILITY	**12,000**	**-**	**200**	**50**	**50**	**50**	**30'**
Residential Five District R5							
[[Natural Resources through Institutional Remain Unchanged]							
NONGOVERNMENTAL UTILITY	**8,000**	**-**	**200**	**50**	**50**	**50**	**30'**
Residential Eight District R8							
[Natural Resources through Institutional Remain Unchanged]							
NONGOVERNMENTAL UTILITY	**6,000**	**-**	**200**	**50**	**50**	**50**	**30'**

Use Classification	Minimum Lot Area	Minimum Lot Area per Unit	Lot Width	Front Yard	Side Yard	Rear Yard	Height
Residential Twelve District R12							
[Natural Resources through Institutional Remain Unchanged]							
Governmental and public utilit~~ies~~**Y**	6,000	-	200	40	50	50	30'
NONGOVERNMENTAL UTILITY	**6,000**	**-**	**200**	**50**	**50**	**50**	**30'**
Residential Sixteen District R16							
[Natural Resources through Institutional Remain Unchanged]							
Governmental and public utilit~~ies~~**Y**	6,000	-	200	40	50	50	30'
NONGOVERNMENTAL UTILITY	**6,000**	**-**	**200**	**50**	**50**	**50**	**30'**
Village Center District VC							
[Natural Resources through Institutional Remain Unchanged]							
Governmental and public utilit~~ies~~**Y**	None	-	200	40	50	50	30'
NONGOVERNMENTAL UTILITY	**NONE**	**-**	**200**	**50**	**50**	**50**	**30'**
General Commercial District GC							
[Natural Resources through Institutional Remain Unchanged]							
Governmental and public utilit~~ies~~**Y**	12,000	-	200	40	40	40	30'
NONGOVERNMENTAL UTILITY	**12,000**	**-**	**200**	**40**	**40**	**40**	**30'**
Office/Research Industrial District ORI							
Governmental and public ~~uses~~**UTILITY**	40,000	-	200	50[2]	25[2]	40[2]	60'
Open space uses	None	-	-	-	-	-	-

Use Classification	Minimum Lot Area	Minimum Lot Area per Unit	Lot Width	Front Yard	Side Yard	Rear Yard	Height
Limited Industrial District LI							
[Natural Resources through Open space uses Remain Unchanged]							
Governmental and public utilit~~ies~~**Y**	20,000	-	200	40	40	40	30'
NONGOVERNMENTAL UTILITY, NONGOVERNMENTAL ELECTRIC SUBSTATION	**20,000**	**-**	**200**	**50**	**50**	**50**	**30'**
General Industrial District GI							
[All Permitted Uses and Open space uses Remain Unchanged]							
Governmental and public utilit~~ies~~**Y**	1 acre	-	200	40	40	40	30'
NONGOVERNMENTAL UTILITY, NONGOVERNMENTAL ELECTRIC SUBSTATION	**1 ACRE**	**-**	**200**	**50**	**50**	**50**	**30'**

* Equal to the height of structure.
** Minimum 10' green area no parking within area
*** For development within the Village Center Zoning District see also §§ 1-19-7.500(B)(2) and (3)
**** Or as determined under §§ 1-19-7.500(B)(3), whichever is greater
***** Except as provided in § 1-19-8.450(B)(2) and § 1-19-8.450(D)(1).
1 Any proposed addition would have to meet setbacks required for new structures. Parking requirements of §§ 1-19-6.200 through 1-19-6.240.
2 As shown or equal to height of structure, whichever is greater.
3 Development within the VC zoning district may not exceed the density as specified within §§ 1-19-7.500(B)(1).

ARTICLE VIII: SPECIFIC USE REGULATIONS
DIVISION 3. SPECIAL EXCEPTION USES

§ 1-19-8.337. NONGOVERNMENTAL ELECTRIC SUBSTATION IN THE LI OR GI DISTRICTS.

THE FOLLOWING PROVISIONS SHALL APPLY TO A NONGOVERNMENTAL ELECTRIC SUBSTATION IN THE LI OR GI DISTRICT.

(A) AN APPLICATION FOR A NONGOVERNMENTAL ELECTRIC SUBSTATION IN THE LI OR GI DISTRICT SHALL INCLUDE THE FOLLOWING:

(1) A STATEMENT AND FULL EXPLANATION OF WHY THE PROPOSED NONGOVERNMENTAL ELECTRIC SUBSTATION IS NECESSARY AND HOW THE FACILITY CONFORMS TO A LONG-RANGE PLAN FOR EXPANSION OF SERVICE TO FREDERICK COUNTY, IF A LONG-RANGE PLAN EXISTS, AND HOW IT WILL SERVE THE PUBLIC NEED FOR ADEQUATE, RELIABLE, AND ECONOMIC SERVICE.

(2) A VICINITY MAP OF APPROPRIATE SCALE DEPICTING THE TRACT OF LAND PROPOSED FOR NONGOVERNMENTAL ELECTRIC SUBSTATION DEVELOPMENT INCLUDING SURROUNDING PROPERTIES AND STREETS.

(3) INFORMATION INDICATING THE GENERAL CONDITIONS OF USE AND EXISTING IMPROVEMENTS ON ADJOINING PROPERTIES WITHIN A 1,000-FOOT RADIUS SURROUNDING THE SUBJECT PROPERTY.

(4) A DESCRIPTION OF THE POTENTIAL ENVIRONMENTAL AND ECOLOGICAL (INCLUDING WATER, AIR, WILDLIFE, AND VEGETATION) EFFECT OF THE PROPOSED NONGOVERNMENTAL ELECTRIC SUBSTATION ON PROPERTIES IN THE VICINITY OF THE PROPOSED DEVELOPMENT.

(5) A DESCRIPTION OF THE POTENTIAL EFFECT OF THE PROPOSED NONGOVERNMENTAL ELECTRIC SUBSTATION ON THE SCENIC, HISTORIC AND RECREATIONAL VALUES AND RESIDENTIAL PROPERTY VALUES, OF PROPERTIES IN THE VICINITY OF THE PROPOSED DEVELOPMENT.

(6) AN ASSESSMENT OF THE IMPACT FROM ANY ELECTROMAGNETIC FIELDS TO BE PRODUCED BY THE PROPOSED DEVELOPMENT.

(7) AN ASSESSMENT OF SAFETY AND RELIABILITY INFORMATION INCLUDING PLANNED PROVISIONS FOR EMERGENCY OPERATIONS AND SHUTDOWNS.

(8) INFORMATION AS TO HOW THE APPLICANT PROPOSES TO ADDRESS THE VISUAL IMPACT OF THE NONGOVERNMENTAL ELECTRIC SUBSTATION ON NEIGHBORING COUNTY DESIGNATED PRESERVATION AREAS, SUCH AS RURAL LEGACY AREAS, AGRICULTURAL PRESERVATION AREAS, CRITICAL FARMS, MONOCACY SCENIC RIVER, APPALACHIAN TRAIL, DESIGNATED HERITAGE AREAS, HISTORIC SITES AND SITES ELIGIBLE FOR DESIGNATION.

(9) A DESCRIPTION OF METHODS TO BE UTILIZED TO MITIGATE ANY NEGATIVE WASTE DISPOSAL, AIR QUALITY, VISUAL OR NOISE IMPACTS ASSOCIATED WITH THE DEVELOPMENT OR OPERATION OF THE NONGOVERNMENTAL ELECTRIC SUBSTATION.

(10) PHOTOGRAPHS OF THE EXISTING CONDITIONS OF THE SITE AND AREA.

(11) PHOTO-DOCUMENTATION THAT A BALLOON TEST HAS TAKEN PLACE AT THE PROPOSED SITE LOCATION.

(12) ALL APPLICATIONS FOR A NONGOVERNMENTAL ELECTRIC SUBSTATION BEFORE THE BOARD OF APPEALS SHALL BE FORWARDED TO THE HISTORIC PRESERVATION COMMISSION FOR REVIEW AND COMMENT REGARDING THE PROJECT'S IMPACTS ON ANY HISTORIC DISTRICT, REGISTERED HISTORIC PROPERTY, PARKS, DESIGNATED HERITAGE AREA, AND OTHER HISTORIC OR CULTURAL RESOURCE.

(B) THE FOLLOWING PROVISIONS SHALL APPLY TO DEVELOPMENT OF A NONGOVERNMENTAL ELECTRIC SUBSTATION IN THE LI AND GI DISTRICTS:

(1) THE MINIMUM SETBACK FROM ALL PROPERTY LINES IS 50 FEET, EXCEPT AS PROVIDED IN (C) BELOW.

(2) STRUCTURES AND PARKING ARE NOT PERMITTED WITHIN THE SETBACK AREA.

(3) SCREENING, LANDSCAPING, AND FENCING OF THE NONGOVERNMENTAL ELECTRIC SUBSTATION SHALL BE PROVIDED AS REQUIRED BY THE BOARD OF APPEALS.

(4) THE BOARD OF APPEALS MAY APPROVE AN INCREASE IN THE MAXIMUM HEIGHT ESTABLISHED IN § 1-19-6.100, WHERE THE INCREASED HEIGHT DOES NOT HAVE AN ADVERSE IMPACT ON PROPERTIES IN THE VICINITY OF THE PROPOSED NONGOVERNMENTAL ELECTRIC SUBSTATION.

(C) THE BOARD OF APPEALS MAY, IN ADDITION TO OTHER REQUIREMENTS IMPOSED UNDER THIS CHAPTER AND IS HEREBY AUTHORIZED TO ADD TO THE SPECIFIC REQUIREMENTS ANY ADDITIONAL CONDITIONS THAT IT MAY DEEM NECESSARY TO PROTECT ADJACENT PROPERTIES, THE GENERAL NEIGHBORHOOD, AND ITS RESIDENTS OR WORKERS. IN ACCORDANCE WITH THIS AUTHORITY: WHERE PROPERTIES WITHIN THE 1,000-FOOT RADIUS ARE RESIDENTIALLY ZONED OR CONTAIN RESIDENTIAL LAND USES THE BOARD OF APPEALS MAY INCREASE THE MINIMUM REQUIRED SETBACK TO MINIMIZE ADVERSE EFFECTS OF THE PROJECT ON THE SURROUNDING RESIDENTIAL PROPERTIES.

(D) WHEN APPROVING A NONGOVERNMENTAL ELECTRIC SUBSTATION, THE BOARD OF APPEALS MAY AUTHORIZE FUTURE CHANGES NOT REQUIRING FURTHER BOARD OF APPEALS APPROVAL WITHIN A 10 YEAR PERIOD OF THE INITIAL SPECIAL EXCEPTION APPROVAL. SUCH CHANGES SHALL BE LIMITED TO THE ADDITION, RELOCATION, OR MODIFICATION OF FOUNDATIONS OR EQUIPMENT, OR ADDITIONS TO EXISTING BUILDINGS, WITHIN A FENCE LINE APPROVED BY THE BOARD OF APPEALS. THE SITE PLAN MUST SHOW INITIALLY PROPOSED AND FUTURE BUILDINGS AND STRUCTURES AS REASONABLY EXPECTED WITHIN 20 YEARS OR THE FORESEEABLE FUTURE.

(E) A REASONABLE EFFORT SHALL BE MADE BY THE APPLICANT TO CONTACT AND INFORM AREA HOMEOWNER ASSOCIATIONS AND COMMUNITY ASSOCIATIONS OF THE PROPOSED USE TOGETHER WITH AN INFORMATIONAL MEETING.

§ 1-19-8.339. NONGOVERNMENTAL UTILITY IN RC, A, R-1, R-3, R-5, R-8, R-12, R-16 AND VC DISTRICTS.

The following provisions shall apply to a nongovernmental utility in RC, A, R-1, R-3, R-5, R-8, R-12, R-16 and VC Districts.

(A) Minimum setback from all property lines is 50 feet. Structures, fencing or parking are not permitted within the setback area.

(B) Screening and landscaping is required as approved by the Board of Appeals.

(C) Within the RC District, the requirements of § 1-19-7.200 of this Code will be met.

(D) When permitted in any residential district, a nongovernmental utility shall have the exterior appearance of residential buildings and shall have suitable landscaping, screen planting and fencing, deemed necessary by the Board of Appeals.

(E) Provide information to indicate the general conditions of use and existing improvements on adjoining properties within a 1,000-foot radius surrounding the subject property.

(F) When approving a nongovernmental utility use, the Board of Appeals may authorize future changes not requiring further Board of Appeals approval within a 10 year period of the initial special exception approval. Such changes shall be limited to the addition, relocation, or modification of foundations or equipment, or additions to existing buildings, within a fence line approved by the Board of Appeals. The site plan must show initially proposed and future buildings and structures as reasonably expected within 20 years or the foreseeable future.

(G) A reasonable effort shall be made by the applicant to contact and inform area homeowner associations and community associations of the proposed use together with an informational meeting.

(H) Tests to determine mitigation requirements. In the event the Board determines to grant the special exception, the Board shall consider the following areas to determine the extent that impact mitigation measures will be required.

(1) The Board shall make findings that the proposed building or 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.

(2) The Board shall make findings regarding adverse effects of the project on the character of the surrounding area including impacts from sound, light, visual appearance, impervious surfaces, traffic impacts, and on forest and wildlife impacts.

(3) All applications for nongovernmental utilities before the Board shall be forwarded to the Historic Preservation Commission for review and comment. The Board shall consider comments from the Historic Preservation Commission and shall make findings regarding the project's impacts on any historic district, registered historic property, parks, designated heritage area, and other historic or cultural resource. When there is a finding of negative impact based upon evaluation of the above, the Board shall to the maximum extent practicable require mitigation. Required mitigation may include the construction of fences, barriers, mandatory setbacks, the surfacing of access drives, shielding of lighting, or the establishment of buffers, vegetative screening, or landscaping.

~~(I) When permitted in nonresidential zones, a nongovernmental utility shall have an appearance consistent with the surrounding neighborhood.~~

(~~J~~**I**) All applications shall include information as to how the applicant has addressed the visual impact of the nongovernmental utility on neighboring county designated preservation areas, such as rural legacy areas, agricultural preservation areas, critical farms, Monocacy scenic river, Appalachian Trail, designated heritage areas, historic sites and sites eligible for designation.

(~~K~~**J**) Provide photographs of the existing conditions of the site and area.

(~~L~~**K**) Provide photo-documentation that a balloon test has taken place at the proposed site location (for substations only).

ARTICLE XI: DEFINITIONS
DIVISION 1. DEFINITIONS
§ 1-19-11.100. DEFINITIONS**.**

*ACCESSORY USE OR STRUCTURE***.** A subordinate use or structure, which is located on the same lot as the principal use or building except as outlined in § 1-19-8**.25 0.1**~~240(B)~~ **(F)** and serves a purpose customarily incidental to the principal use or building. No accessory structures shall be permitted in designated floodplain areas.

*NONGOVERNMENTAL UTILITY***.** Any utility not owned by a governmental entity. **INCLUDING A TRANSMISSION AND DISTRIBUTION SUBSTATION FOR SUPPLYING ELECTRIC SERVICE SERVED BY TRANSMISSION LINES OF LESS THAN 500 KV**. ~~Facilities include all buildings, structures, and land used to house the utility and equipment, including substations for transforming, boosting or switching purposes; regulators; stationary transformers and other such devices for supplying electric service; telephone offices; radio and television transmitter towers and stations; storage yards; and above ground pipelines.~~

***NONGOVERNMENTAL ELECTRIC SUBSTATION*. A HIGH-VOLTAGE ELECTRIC SYSTEM FACILITY USED TO SWITCH GENERATORS, EQUIPMENT AND CIRCUITS OR LINES IN AND OUT OF A SYSTEM. IT ALSO IS USED TO CHANGE AC VOLTAGES FROM ONE LEVEL TO ANOTHER, AND/OR CHANGE ALTERNATING CURRENT TO DIRECT CURRENT OR DIRECT CURRENT TO ALTERNATING CURRENT. INCLUDING WITHOUT LIMITATION A TRANSMISSION AND DISTRIBUTION SUBSTATION SERVED BY TRANSMISSION LINES OF 500 KV OR GREATER.**

*UTILITY***.** Any facility erected, constructed, altered or maintained as part of an integrated system or program designed to furnish necessary services for the public health, safety or convenience, including water, electric, gas, communication (cable, wireless, satellite, telephone), steam or sewer. **FACILITIES INCLUDE ALL BUILDINGS, STRUCTURES, AND LAND USED TO HOUSE THE UTILITY AND EQUIPMENT, INCLUDING FACILITIES FOR THE PRODUCTION OF ELECTRICITY THROUGH SOLAR COLLECTION OR WIND GENERATION, SUBSTATIONS FOR TRANSFORMING, BOOSTING OR SWITCHING PURPOSES; REGULATORS; STATIONARY TRANSFORMERS AND OTHER SUCH DEVICES FOR SUPPLYING ELECTRIC SERVICE AT VOLTAGES LESS THAN 500 KV; STORAGE YARDS; AND ABOVE GROUND PIPELINES.**