



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 11, 2012

SUBJECT: Nongovernmental Utility Draft Text Amendment

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 providing an opportunity for Planning Commission review and comment prior to initiating the public hearing process.

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 to the public hearing process.

RECOMMENDATION

Staff is providing an opportunity for Planning Commission review and comment on the proposed amendments prior to initiating the public hearing process.

ATTACHMENTS

Exhibit 1 – Nongovernmental Utility Draft Text Amendment as presented to the BOCC on 6/28

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 MODIFICATIONS § 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 (l) 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 providing an opportunity for review and comment on the draft text amendment prior to initiating the public hearing process.