

THE EFFECTIVE DATE OF THIS ORDINANCE IS _____

ORDINANCE NO. _____

RE: Zoning Text Amendment ZT-12-14 – Nongovernmental Utility

The Board of County Commissioners for Frederick County, Maryland (“Board”) has determined that it is in the best interests of the citizens of Frederick County (the “County”), and will benefit the health, safety and welfare of those citizens, to amend sections of the Frederick County Zoning Ordinance (“Zoning Ordinance”) relating to the location, development and design of certain electric substations in the County. The Board therefore hereby exercises its authority under Maryland Annotated Code, Article 66B, §4.05(a) to amend the provisions of the Zoning Ordinance relating to nongovernmental utilities, as more fully reflected in Exhibit 1 to this Ordinance.

The Frederick County Planning Commission held a duly advertised public hearing concerning this Ordinance on August 8, 2012. The Planning Commission recommended approval of the text amendment.

The Board of County Commissioners held a duly advertised public hearing concerning this Ordinance on _____, 2012. The public had an opportunity to comment on this ordinance at this public hearing.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that the Frederick County Code is hereby amended as shown on the attached Exhibit 1.

AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect on _____, 2012.

The undersigned hereby certifies that this Ordinance was approved and adopted on the ____ day of _____, 2012.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

David B. Dunn
County Manager

Blaine R. Young, President

DRAFT

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

Uses	Zoning Districts													
	RC	A	R1	R3	R5	R8	R12	R16	VC	MX	GC	ORI	LI	GI
<i>[Natural Resources Uses remain unchanged]</i>														
<i>[Residential Uses remain unchanged]</i>														
<i>[Temporary Housing remains unchanged]</i>														
<i>[Commercial Uses – Retail remains unchanged]</i>														
<i>[Commercial Business and Personal Services remain unchanged]</i>														
<i>[Wholesaling and Processing remains unchanged]</i>														
<i>[Automobile and Related Services remain unchanged]</i>														
<i>[Animal Care and Service remains unchanged]</i>														
<i>[Commercial Amusements remain unchanged]</i>														
<i>[Industrial Uses remain unchanged]</i>														
<i>[Open Space and Institutional remains unchanged]</i>														
<i>[Institutional remains unchanged]</i>														
<i>Governmental and Nongovernmental Utilities</i>														
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
<i>[Solid Waste Operations remain unchanged]</i>														

[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'
<i>Agricultural District A</i>							
[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 utilities 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 utilities 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 utilities 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 utilities 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 utilities ^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 utilities ^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.~~

(~~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 § ~~1-19-8.250, 1240(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.**