

IN THE MATTER OF : BEFORE THE  
**Milestone Tower Limited** : HOWARD COUNTY  
**Partnership IV** : BOARD OF APPEALS  
Petitioner : HEARING EXAMINER  
: BA Case No. 23-003C

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**DECISION AND ORDER**

On May 17, 2023, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, held the evidentiary hearing for the Petition of Milestone Tower Limited Partnership IV (Petitioner) for a Communication Tower Conditional Use in a RR-DEO (Rural Residential)(Density Exchange Option) Zoning District, filed pursuant to Section 131.0.N.14 of the Howard County Zoning Regulations (HCZR).

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure. Sean Hughes, Esq. represented the Petitioner. Marc Marzullo, Andrew Petersohn,

Gaurau Behl and Matt Penning testified in support of the Petition. No one appeared in opposition.

Petitioner introduced into evidence the following Exhibits:

1. Statement of Justification
2. Radio Frequency Propagation Coverage Maps
3. Structures higher than 50 ft in vicinity
4. Photo Simulations and Maps
5. Letter of Authorization
6. Amended Conditional Use Plan
7. PlanHOWARD 2030- Designated Place Type Map
8. Aerial Photos
9. Site Photos
10. Pre-filing Community Meeting
11. SHPO email
12. May 8, 2023, Electro Magnetic Exposure Analysis

### **FINDINGS OF FACT**

Based upon the evidence of record, the Hearing Examiner finds the following facts:

1. Property Identification. The approximately 34-acre subject Property is irregularly shaped and consists of two (2) parcels. It is located west of Rt 29, south of Rt 216/Scaggsville Road, and on the south side of Old Columbia Pike. The proposed location of the Conditional Use is approximately 1,000 north of Melvin Court an approximately 1,600 feet from Murphy Road. The proposed Conditional Use is 9,701 sq ft in area. It is in Council District 4, the 4th Election District, identified as Tax Map 46, Grid 03, Parcel 387, and is also known as 8200 and 8210 Old Columbia Pike, Laurel, Maryland (the Property).

2. Property Description. The Property consists of a large religious facility (Grace Community Church) improved with multiple large buildings, a maintenance building near the proposed Communication Tower, large parking areas surrounding the building, and recreational areas in the south/southwest of the Property, and approximately 5.53 acres of Forest Conservation. The southwest section of the property is encumbered by a perennial stream and wetlands. The site descends from an elevation of 461 feet at the northeast corner of the property at the front lot line along Old Columbia Road to 347 feet at the southernmost property line.

3. Vicinal Properties.

Direction	Zoning	Land Use

North	R-SA-8/RR-DEO	Undeveloped/Park and Ride Facility
South	RR-DEO	Single-Family Residential
East	RR-DEO	Religious Facility
West	R-ED-MXT-3	Single-Family Residential

4. Roads. Old Columbia Road has four travel lanes within a variable right-of-way. The speed limit for Old Columbia Road is 25 miles per hour. Traffic count data is not available for this portion of Old Columbia Road.

5. Water and Sewer Service. The Property is within the Planned Service Area for Water and Sewer.

6. The General Plan. PlanHOWARD 2030 designates the Property as Growth and Revitalization on the Designated Place Types Map. The Plan's Functional Road Classification Map depicts Old Columbia Road as a Minor Collector.

7. Zoning History.

Case: BA-02-033C&V

Request: Conditional Use for a structure used primarily for religious activities and a variance to reduce parking setbacks

Action: Approved December 13, 2002

Case: BA 03-078C

Request: Modification of Conditional Use for a structure used for religious activities

Action: Approved April 12, 2003

8. Reported Agency Comments. There are no Agency or Department comments in objection to the Petition.

The Development Engineering Division takes no exception to the request for a communication tower subject to submitting a redline revision for SDP-04-079 for Grace Community Church showing the location and installation of the improvements.

RCD has the following clarifying comments:

- The adjacent parcel labeled on Plan Page 2 as "Existing Agricultural Preservation Easement" is labeled incorrect, it is not under an Agricultural Land Preservation Program (ALPP) easement. Rather, it is an Environmental Preservation Parcel recorded with F-18-047.
- A structure listed on the Howard County Historic Sites Inventory as HO-720, the Whetzel Farm, previously existed at this location. According to records and aerial imagery, all the structures associated with the historic farm property were demolished around 2004. Therefore, there are no historic structures on this property.

The Division of Land Development has reviewed the conditional use petition for a communication tower and has no objection to the request to

construct a communication tower. The Division's recommendation is based on the following analysis:

1. A site development plan (SOP) is required for the construction of the tower and associated compound after the approval of this conditional use. Proposed site improvements and features shall be evaluated by DPZ staff and county agencies/offices as part of the SOP submission requirements.
2. The area of the tower does not adversely impact any on site environmental features, such as stream, wetland, their buffers, 100-year floodplain, steep slopes and forest conservation easements.
3. Landscaping will be required for this development with the SDP, in accordance with the Landscape Manual.
  - a. The compound must be screened from the adjacent property boundaries by providing a Type C landscaped buffer, which requires the equivalent of 1 shade per 40' and 1 evergreen per 20'.
  - b. The conditional use plan provides a 10-foot landscape buffer surrounding the compound

and within the existing parking lot. It is unclear from the conditional use plan how the proposed landscaping will be installed on the impervious area.

- c. Two internal parking lot landscape trees are impacted by the compound facility. The replacement of the two internal landscape trees may be required elsewhere onsite.
4. The tower and associated compound will remove thirteen existing parking spaces. The current SOP requires 600 parking spaces and provides 727 parking spaces; therefore, there is sufficient parking for the site.
5. The forest conservation obligation for the parcel has been satisfied under SDP-04-079.
6. The parcel is not located within DAP's reviewing area.

MOOT SHA has no comment nor objection to approval. As far as access, Old Columbia Road is a County roadway therefore MOOT SHA defers all access review to Howard County.

9. Proposed Use. Petitioner proposes to construct a 125-foot-tall communications monopole tower and associated equipment on the Property. The tower is sited at a minimum of 125 feet from the nearest residentially zoned lot. The structure and equipment will be located in a 2,357 sq ft fenced

enclosure. The fence will be 8 feet in height, surrounded by a 10-foot landscape buffer. The site will be accessed by an existing church driveway. Employees from each wireless provider and the Petitioner will visit the Property every several months for general maintenance and for any emergency outages.

### **BURDEN OF PROOF**

The Court of Appeals of Maryland has frequently expressed the applicable standards for judicial review of the grant or denial of a Conditional Use. The Conditional Use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The Conditional Use is a valid zoning mechanism that delegates to an administrative body a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating this presumption. The legislative body has statutorily determined that a Conditional Use is compatible in a particular zoning district absent specific facts adduced to the contrary at a particular location. The duties given the hearing body are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the Zoning Plan.

The Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden



of establishing affirmatively that his proposed use would be a benefit to the community.

These prescribed standards and requirements are conditions precedent to the approval of a conditional use. If he shows to the satisfaction of the zoning body that the conditions precedent have been met and that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest to a greater extent than if the proposed use were located elsewhere, he has met his burden.

The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the zoning body to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a Conditional Use is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974).

These standards dictate that if a requested Conditional Use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

The appropriate standard to be used in determining whether a requested Conditional Use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed and the particular location proposed would have any adverse effects above and beyond those inherently associated with such a Conditional Use irrespective of its location within the zone. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Deen v. Baltimore Gas & Electric Co., 240 Md. 317, 330-31; 214 A.2d 146, 153 (1965); Anderson v. Sawyer, 23 Md. App. 612, 617-18, 329 A.2d 716, 720, 724 (1974). Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

### **CONCLUSIONS OF LAW**

#### **1. General Criteria for Conditional Uses (Section 131.0.B)**

HCZR Sections 131.0.B.1-3 require the Hearing Authority to evaluate whether the proposed Conditional Use will be in harmony with the landscape uses and policies indicated in the Howard County General Plan for district in which it is

located through the application of three standards: harmony with the General Plan, overall intensity and scale of use, and atypical adverse impacts.

**A. Harmony and Intensity of Use**

**Section 131.0.B.1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.**

While Howard County General Plan policies are not directly related to Conditional Use requests for Communication Towers, properly sited communication towers are legislatively determined to be in harmony with land uses and policies in Howard County General Plan.

**Section 131.0.B.2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.**

The proposed Conditional Use area is 9,701 square feet, which is approximately 0.006% of the 34.14-acre Property and complies with all required setbacks. Approximately three (3) employees may visit the site monthly for general maintenance and emergency outages. Old Columbia Road is a Minor Collector and appropriate for the type and number of vehicles associated with the proposed use.

The nature and intensity of the use, the size of the Property in relation to the

use, and the location of the site, with respect to streets that provide access, are such that the overall intensity and scale of the use are not appropriate.

**B. Adverse Impacts (Section 131.0.B.3)**

Unlike HCZR Section 131.0.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, or Section 131.0.B.2, which concerns the on-site effects of the proposed use, compatibility of the proposed use with the neighborhood is measured under Section 131.0.B.3's six off-site, "adverse effect" criteria: (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading; (d) access; (e) environmentally sensitive areas; and (f) impact on the character and significant historic sites.

Inherent in the assessment of a proposed Conditional Use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in a RR-DEO Zoning District. The proper question is whether there are facts and circumstances showing the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception [conditional] use irrespective of its location within the zones. *People's Counsel for Baltimore County*

*v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery*, 107 Md. App. 1, 666 A.2d 1253 (1995).

**Section 131.0.B.3.a. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.**

The proposed use is a passive, unmanned, rarely visited, low intensity utility use accessed from existing driveways. The use will generate a limited number of vehicles. The proposed Conditional Use site will be a very small portion of the 34-acre Property. The proposed use will not generate fumes or odors, nor will it cause glare (it will not be lit), vibrations, or hazards. The use of the access driveway may generate some noise but will not be significant due to infrequent use. The proposed use is unlikely to result in adverse effects at the Property greater than it would generally be elsewhere in the RR-DEO zoning district.

**Section 131.0.B.3.b. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.**

Pursuant to HCZR § 128.0.A.3.d, Communication Towers are exempt from height requirements and the ground equipment is 9.5 feet tall, which does not exceed the 25-foot height limit for accessory structures in the RR-DEO zoning district. The proposed fencing is 8 feet in height. The proposed 125-foot-tall tower and equipment are 125 feet and 156.6, respectively, from the closest property line. The Petitioner is proposing a landscape buffer planting of 22 White Pines immediately adjacent to the fenced enclosure.

Therefore, the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the RR-DEO zoning district.

**Section 131.0.B.3.c. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be approximately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.**

HCZR §133.0 does not specify a parking requirement for the Communication Tower use. The approved Site Development Plan requires 600 parking spaces for the religious facility and 727 are provided. The proposed Communication Tower and associated compound are located within the existing parking lot and will result in the elimination of 13 parking spaces. The proposed use will utilize existing driveways for ingress and egress. Therefore,

sufficient parking will be available for the infrequent employee visits. The location is currently screened by mature trees to the east and south, effectively screening it from adjacent properties. Refuse areas are not proposed.

**Section 131.0.B.3.d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.**

The existing ingress/egress drives approved through SDP-04-079 will not be impacted by the proposed use. The driveways are not shared with other residential any emergency outages or a similar situation. The existing church ingress and egress drives will continue to provide safe access with adequate sight distance to and from the Grace Community Church property, including the proposed conditional use, based on actual conditions, and with adequate acceleration and deceleration lanes.

**Section 131.0.B.3.e. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.**

The closest environmentally sensitive area is a pond located approximately 700 feet west of the proposed equipment enclosure, which exceeds all environmental setback and buffer requirements. There are no scenic roads (or trails)

within 100 feet. There are no off-site environmental features within 100 feet. There are no existing historic sites within 100 feet. There are no cemeteries within 100 feet. An Agricultural Preservation Easement is shown on the Plan. However, the use will not impact said easement and is an unmanned, passive use with very rare site visits for maintenance and emergency service. Thus, there is no evidence of the proposed use having a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere. Additionally, the State of MD (State Historic and Preservation Office-SHPO) has confirmed that no historical impact would occur from the proposed use as the site area has no historic properties in the area of direct or visual effect.

Therefore, the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere in the RR-DEO zoning district.

**Section 131.0.B.3.f. The proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.**

A structure listed on the Howard County Historic Sites Inventory as HO-720, the Whetzel Farm, previously existed adjacent to the Property. According to records and aerial imagery, all the structures associated with the historic farm property were demolished around 2004. Therefore, there are no extant historic structures on or in the vicinity of the Property and the proposed use will not have a greater potential for



diminishing the character and significance of historic sites in the vicinity than elsewhere in the RR-DEO zoning district.

## **2. Specific Criteria for Communication Towers (Section 131.0.N.14)**

- a. A Conditional Use may be granted for commercial communication towers in the following districts (provisions for permitted commercial communication antennas are in Section 128.0.E):
1. In the RC, RR, R-20, R-12, R-SC, R-SA-8, R-H-ED, R-A-15, R-APT, R-MH or PGCC Districts, except that antennas meeting the requirement of Section 128.0.E.4., and commercial communication towers located on government property, excluding School Board property, and with a height of less than 200 feet measured from ground level, are permitted as a matter of right.
  2. In the POR, PEC, B-1, B-2, SC, BR and CE Districts for towers with a height of 200 feet or greater (including antennas) measured from ground level.

The Property is within the RR-DEO zoning district.

b. Conditional Use Criteria:

- (1) An applicant for a new communication tower shall demonstrate that a diligent effort has been made to locate the proposed communication facilities on a government structure or, on an existing structure or within a non-residential zoning district, and that due to valid considerations, including physical constraints, and economic or technological feasibility, no appropriate location is available. The information submitted by the applicant shall include a map of the area to be served by the tower, its

**relationship to other antenna site in the area and, an evaluation of all existing structures taller than 50 feet, within one mile of the proposed tower.**

The Petitioner provided a map and analysis of structures in Howard County that are within one mile of the Property and taller than 50 feet.

None of these structures could provide the capacity and coverage required in the area of the proposed facility. Additionally, the Petitioner asserts that there are no government or non-residentially zoned structures that are economically or technologically feasible to accommodate an antenna within the required search area. This is supported by communication from Howard County Government to the Petitioner stating that installing antennas on the water tank and on the public-school campus is not allowed.

- (2) New communication towers shall be designed to accommodate antennas for more than one user, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons. Unless collocation has been demonstrated to be infeasible, the Conditional Use plan shall delineate an area near the base of the tower to be used for the placement of**

**additional equipment buildings and cabinets for other users.**

The tower is designed to accommodate four (4) antennas and four (4) equipment areas are shown within the fenced enclosure on the Conditional Use Plan.

**(3) Ground level equipment and buildings and the tower base shall be screened from public streets and residentially-zoned properties.**

The compound will be screened from public streets and adjoining residentially zoned properties by an 8-foot-tall fence, a ten-foot-wide landscape buffer and existing dense vegetation on the Property.

**(4) Communication towers shall be grey or a similar color that minimizes visibility, unless a different color is required by the Federal Communications Commission or the Federal Aviation Administration.**

The photo simulations depict a grey/similar color tower.

**(5) No signals or lights shall be permitted on a tower unless required by the Federal Communications Commission or the Federal Aviation Administration.**

The Petitioner does not propose to install any

lights on the tower, unless required to by the  
FCC or FAA.

- (6) A communication tower that is no longer used shall be removed from the site within one year of the date that the use ceases.**

The Petitioner agrees to comply with this criterion.

- (7) The communication tower shall comply with the setbacks for such structures as specified in Section 128.0.E.**

Section 128.0.E.2 requires a minimum setback from residentially zoned properties and public street rights-of-way that is equal to the height of the tower. The proposed 125-tall tower is setback 125 feet or more from all residential properties and public street rights-of-way.

- (8) On an ALPP purchased easement property, the use is not permitted except as a release of one acre for a public interest use per Section 15.516 of the Howard County Code.**

The Property is not an ALPP purchased

easement property; therefore, this criterion does

not apply.

- (9) On an ALPP dedicated easement property, the use is permitted, provided that the use shall not interfere with farming operations or limit future farming production, shall operate within a specified area, which shall be no larger than necessary for the tower and the ground mounted**

equipment structures, and the parking shall be within this same area. The tower, the ground mounted equipment and parking shall count towards the cumulative use cap of 2% of the easement.

The Property is not an ALPP dedicated easement property; therefore, this criterion does not apply.

### **CONCLUSION**

A Conditional Use is determined to be legislatively compatible within a specific Zoning District provided all of the conditions precedent to the approval of a particular Conditional Use are met. In the instant Petition, Petitioner has meet or exceeded all of the conditions precedent to the Communications Tower Conditional Use.

**ORDER**

Based upon the foregoing, it is this 18th day of May, 2023, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**,

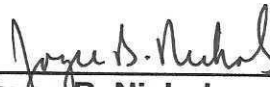
That the Petition of Milestone Tower Limited Partnership IV for a Communication Tower Conditional Use, in a RR-DEO (Rural Residential) (Density Exchange Option) Zoning District, Tax Map 46, Grid 03 Parcel 382, Council District 4, Election District 4, identified as 8200 and 8210 Old Columbia Road, Laurel, Maryland, be and is hereby **APPROVED, and it is further ORDERED**,

**That this APPROVAL is contingent on the following Condition:**

1. Petitioner shall remove the Communication Tower and related equipment within one year of the date that the Communication Tower use ceases.

**HOWARD COUNTY BOARD OF APPEALS**

**HEARING EXAMINER**

  
\_\_\_\_\_  
**Joyce B. Nichols**

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be

submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.