

IN THE MATTER OF	:	BEFORE THE
Jennifer Jack	:	HOWARD COUNTY
t/a	:	BOARD OF APPEALS
TowerCo	:	HEARING EXAMINER
PETITIONER	:	BA Case No. 25-010C

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DECISION AND ORDER

On August 13, 2025, 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 Jennifer Jack t/a TowerCo (Petitioner) for a Communication Tower Conditional Use in a PGCC-2 (Planned Golf Course Community) 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 Patrick Hughes, Esq. represented the Petitioner. Camille Shabshab (engineer) and Joshua Schakola (Project Manager Verizon) testified in support of the Petition. Marilyn Weeks, Don Pressler, Sari McLeod,

Louis Grimm and Nichole Mozsay testified in support of the Petition. Albert DiGerolamo appeared in opposition.

Petitioner introduced into evidence the following Exhibits:

1. Conditional Use Petition
2. Statement of Justification
3. Radio Frequency Propagation Coverage Maps
4. Radio Frequency Engineer's Health Compliance Report
5. Structures higher than 50 ft within 1 mile
6. Photo Simulations and Maps
 - A. Monopole
 - B. Treepole
7. Property Owner Letter of Authorization
8. Amended Conditional Use Plan
 - A. Treepole
 - B. Monopole
9. Aerial Photos
10. Site Photo
11. Pre-Submission Community Meeting Package
 - A. Meeting minutes

- B. Affidavit of Posting
 - C. Sign-in list
 - D. Certification
 - E. Health Document
 - F. Zoning Map
- 12. SDAT Page for subject Parcel
 - 13. County Zoning Map
 - 14. Turf Valley Sketch Plan
 - 15. CV's
 - A. Camille Shabshab
 - B. Paul Dugan
 - C. Carrie Fazzolari
 - 16. Highlighted Aerials of Property and Tower Parcel

PRELIMINARY MOTION

At the beginning of the evidentiary hearing Petitioner orally moved to amend its Petition to substitute a treepole design in lieu of the proposed monopole design. Other than this aesthetic design change no other changes are proposed for the Communication Tower. During the evidentiary hearing there was no objection raised to this design substitution. Based on the evidence adduced during the evidentiary hearing this Motion will be granted.

FINDINGS OF FACT

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

1. Property Identification. The approximately 97.48-acre subject Property is irregularly shaped. It is located on the south side of Turf Valley Golf Road, south of I-70, north of Rt 40, and west of Turf Valley Road. The proposed Conditional Use is 7,400 sq ft in area. It is in Council District 5, identified as Tax Map 16, Grid 17, Parcel 8, and is also known as 2700 Turf Valley Golf Road, Ellicott City, Maryland (the Property).

2. Property Description. The Property consists of a large mixed-use resort and golf course facility, religious facility 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 to 347 feet at the southernmost property line.

3. Vicinal Properties.

Direction	Zoning	Land Use
North	PGCC-2	Golf Course
South	PGCC-2	Golf Course
East	PGCC-2	Golf Course
West	PGCC-2	Golf Course

4. Roads. Turf Valley Golf Road (Private Road) has two travel lanes within a variable right-of-way. The speed limit for Turf Valley Golf Road is 35 miles per hour. Traffic

count data is not available for this portion of Turf Valley Golf 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 Mixed-Use Neighborhood on the Future Land Use Map. Turf Valley Golf Road is a Private Road.

7. Zoning History. The Department of Planning and Zoning does not have a record of any prior zoning petitions for the Property. However, in accordance with the 1977 zoning map the Parcel was zoned R (Rural – 3 acres) prior to being zoned PGCC-2 as shown on the 1985 zoning map.

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 to install a monopole structure along with antenna and support structure, a fenced secured ground equipment compound, and supporting ancillary equipment This decision is subject to redlining the appropriate SDP or F-plan for the improvements. If the cumulative LOO exceeds 5.000 sft then an Environmental Concept Plan shall be approved prior to submission of the redline revision.”

The Division of Land Development commented:

CRITERIA: Potential to comply with all technical requirements in subsequent Subdivision and Site Development Plan stages of Review:

- A site development plan (SDP) for office use and related site improvements will be required should this conditional use be granted. Proposed site

improvement and features such as, proposed monopole, support structures, access drive, and security fencing, stormwater management and landscaping shall be evaluated by DPZ staff and county agencies as part of the SDP submission requirements.

- Subsequent to site development plan review, this project will need approval from the Howard County Planning Board per the Multi-Use Subdistrict Final Development Plan prior to the submission of the SDP originals.
- Access to the proposed site will be provided from Turf Valley Golf Rd via an extension of the access path to the existing driving range tees.

CRITERIA: 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:

- The Landscape and screening requirements will be reviewed and evaluated at the SDP stage.
- Landscaping screening required for the proposed development of the support buildings and compound should be a Type D buffer. Ground level equipment and buildings and the tower base shall be screened from public streets and residentially-zoned properties. Preservation of existing vegetation can support or be used as credit in accordance with the Howard County Landscape Manual.
- If slats are to be used with the perimeter security fencing for the compound it is recommended that a natural color be selected to work with the required landscape screening.

CRITERIA: The number of parking spaces will be appropriate to serve the particular use. Parking areas loading areas, driveway and refuse areas will be appropriately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties:

- Parking requirements and areas for service to the communication tower and equipment shelters will be reviewed at the SDP Stage. The existing access road for the driving range tee will be extended to the communication tower site.

- The adjacent use is the driving range for the Turf Valley Golf Course. Neighboring residential buildings that are part of the newly constructed Villa Apartments development are in close proximity to the proposed site. The monopole base, compound, and service areas shall be mitigated with adequate landscaping and screening to the best extent possible per the landscaping comments above.

CRITERIA: The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere:

- There do not appear to be environmental impacts within the Limit of Disturbance as shown on the conditional use exhibit. An environmental concept plan for the site must be approved prior to the site development plan to identify any impacts to nearby streams, wetlands, and their buffers, floodplain, steep slopes and specimen trees on site which are protected from disturbance, per the Subdivision and Land Development Regulations. The existing natural environmental conditions of the subject site must be thoroughly assessed by an environmental professional and findings must be provided with the forthcoming SDP. Any proposed disturbances to protected environmental site elements may require approval of an alternative compliance request to the applicable Land Development Regulation.

CRITERIA: Design Advisory Panel Review:

- The proposed development is not subject to Design Advisory Panel (DAP) review as it does not fall within the boundaries of a DAP review area and does not meet the additional criteria that would require DAP review.

9. Proposed Use. Petitioner proposes to construct a 160-foot-tall treepole communication tower that will include antennas and support structures, a 2,500 square foot equipment compound enclosed by an 8-foot-tall security fence and will utilize existing forest areas as landscaping buffers. The tower is designed to accommodate antennas and ancillary equipment of at least four (4) communications providers/platforms. Approximately two (2) employees may visit the site monthly for

general maintenance and emergency outages.

10. Citizen Testimony. The citizens collectively testified as to the need to extend network coverage, the existing poor cell and internet service resulting in many dropped calls and outages, the security and safety issues in being unable to connect to 911, and the regional nature of this connectivity issue. In opposition, Mr. DiGerolamo testified that since the property owner would be receiving money for the lease of its property for the Communication Tower to TowerCo, property owners should also receive payment as the Communication Tower would devalue their property values. No evidence was presented regarding devaluation of property values.

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 7,400 square feet, which is approximately 0.17% of the 97.48-acre Property and complies with all required setbacks. Approximately two (2) employees may visit the site monthly for general maintenance and emergency outages. Turf Valley Golf Road is a Private Road and appropriate for the type and number of vehicles associated with the proposed use.

The nature and intensity of the proposed use, the size of the Property in relation to the use, and the location of the site with respect to the streets that provide access, are such that the overall intensity and scale of the use are 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 PGCC-2 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 97.48-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 PGCC-2 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 7.5- foot tall, which does not exceed the 15-foot height limit for accessory structures in the PGCC-2 zoning district. The proposed 160-foot-tall tower and equipment are 126 feet from the closest property line. The Petitioner is proposing an 8-foot-tall security fence along the perimeter of the compound and is utilizing existing vegetation as a landscape buffer 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 PGCC-2 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 proposed Communication Tower and associated compound are located within the existing golf course. The Petitioner is proposing a 10-foot-wide gravel access road leading to the equipment compound with a turn-around area. Therefore, sufficient parking will be available for the infrequent employee visits. The location is currently screened by mature trees to the north and east, 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 areas to the Property were approved during the construction of the existing golf course and no changes are being proposed to this area.

The Property does not share a driveway with other residential uses.

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 floodplain located approximately 450 feet north of the proposed equipment enclosure, which exceeds all environmental setbacks and buffer requirements. Therefore, the proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere in the PGCC-2 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.

The closest historic site in the vicinity (HO-021) the Waverly Mansion, is located 0.80-mile to the northwest of the Property and is screened by existing structures, distance/topography, and vegetation. Therefore, there are no extant historic structures on or in the vicinity of this 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 PGCC-2 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 PGCC-2 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.

- (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, 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.**

Petitioner proposes a dark brown pole with dark green foliage designed to mimic a deciduous tree. This coloring and design has previously been approved in Howard County and will minimize visibility and blend into the existing landscape.

- (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 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/property owner agrees to comply with this
criterion.

- (7) The communication tower shall comply with the setbacks for such structures as specified in Section 128.O.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 160-tall tower is set back 780 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 14th day of August, 2025, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**,

That the amended Petition of Jennifer Jack t/a TowerCo for a Communication Tower Conditional Use, in a PGCC-2 (Planned Golf Course Community) Zoning District, Tax Map 16, Grid 17, Parcel 8, Council District 5, identified as 2700 Turf Valley Golf Road, Ellicott City, Maryland, be and is hereby **APPROVED, and it is further ORDERED**,

That this APPROVAL is contingent on the following Condition:

1. Petitioner/property owner 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.