



City of Harrisonburg, Virginia

Department of Planning & Community Development

409 South Main Street
Harrisonburg, Virginia 22801
(540) 432-7700 / FAX (540) 432-7777
www.harrisonburgva.gov/community-development

Building Inspections

Engineering

Planning & Zoning

April 30, 2018

TO THE MEMBERS OF CITY COUNCIL CITY OF HARRISONBURG, VIRGINIA

SUBJECT: Public hearing to consider multiple Zoning Ordinance amendments related to wireless telecommunications facilities as required by amendments to the Virginia Code from the 2017 General Assembly within Article 7.2, Zoning for Wireless Communications Infrastructure. Other minor amendments are also proposed to the regulations for clarity. The regulations of Article CC only address wireless communications on privately and publicly owned parcels and do not address wireless communication facilities within public street or alley right-of-way. The proposed amendments include: amending the existing definitions of “Industrial Microcell,” “Macrocell,” and “Wireless Telecommunications Facility;” adding definitions for “micro-wireless facilities” and “small cell facilities;” and adding small cell facilities as a use permitted by-right within the R-1, R-2, both R-3s, R-4, R-5, R-6, R-7, MX-U, B-1, B-2, and U-R zoning districts. Although no amendments are proposed for the M-1 district, this district already recognizes that any wireless telecommunications facility is permitted by right. Additional amendments include modifications to Article CC. Wireless Telecommunications Facilities and consist of: adding exemptions for micro-wireless facilities that are suspended on cables or lines in specific situations; adding collocation, height, camouflaging, and other regulations associated with “Small Cell Facilities” for residential districts and the MX-U; adding “Small Cell Facilities” to the list of regulated facilities for B-1 and B-2 zoned properties; amending costs associated with wireless telecommunications facilities applications and adding “Small Cell Facilities” to the list of facilities requiring application submittal fees; and adding a clarifying statement to Section 10-3-200 regarding the reporting of wireless telecommunications facilities that facilities deemed “eligible facilities” in existence prior to the original enactment of Article CC are not required to submit an annual report to the Zoning Administrator. The Zoning Ordinance Sections to be modified include: 10-3-24, 10-3-33, 10-3-39, 10-3-45, 10-3-48.3, 10-3-51, 10-3-55.3, 10-3-56.3, 10-3-57.3, 10-3-58.3, 10-3-84, 10-3-90, 10-3-179, 10-3-195, 10-3-196, 10-3-197, 10-3-199, and 10-3-200.

EXTRACT FROM MINUTES OF HARRISONBURG PLANNING COMMISSION MEETING HELD ON: April 11, 2018

Mrs. Banks said Article 7.2 of the Virginia Code, Zoning for Wireless Communications Infrastructure, was updated during the 2017 Session of the Virginia General Assembly with requirements regarding how small cell facilities are defined and considered within the wireless communications infrastructure. Changes include, but are not limited to, the following:

- Defining small cell facility and micro-wireless facility (which includes small cell facility).
- Identifying that a locality shall not require a special exception, special use permit, or variance be obtained for any small cell facility installed by a wireless services provider or wireless infrastructure provided on an existing structure, provided that the wireless services provider or wireless infrastructure provider (i) has permission from the owner of the structure to co-locate and (ii) notifies the locality in which the permitting process occurs.

- Allowing localities to require administrative review for the issuance of any required zoning permits for the installation of a small cell facility by a wireless services provider or wireless infrastructure provider on an existing structure.
- Requiring localities to allow applicants to submit up to 35 permit requests on a single application.
- Allowing localities to charge a reasonable fee for processing the application.
- Requiring that localities allow exemptions for micro-wireless facilities that are suspended on cables or lines in specific situations.
- Setting parameters for a locality to disapprove a proposed location or installation of a small cell facility.

City staff is proposing amendments to multiple sections of the Zoning Ordinance to incorporate recent changes to the Code of Virginia regarding wireless telecommunications facilities. These regulations only address wireless communications on privately and publicly owned parcels and do not address wireless communications within the public street and alley right-of-way.

Within Section 10-3-24, Definitions, staff is proposing to add the following two definitions:

- *Micro-wireless facility*: A small cell facility that is not larger in dimension than twenty-four (24) inches in length, fifteen (15) inches in width, and twelve (12) inches in height and that has an exterior antenna, if any, not longer than eleven (11) inches.
- *Small cell facility*: A wireless facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume, or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet and (ii) all other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet, or such higher limit as is established by the Federal Communications Commission. The following types of associated equipment are not included in the calculation of equipment volume: electric meter, concealment, telecommunications demarcation boxes, back-up power systems, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

As well, the existing definitions of “Industrial Microcell,” “Macrocell,” and “Wireless Telecommunications Facility” are proposed to be amended to include “small cell facilities.”

To be in conformity with the requirements of the Code of Virginia, staff proposes that within the R-1, R-2, both R-3s, R-4, R-5, R-6, R-7, MX-U, B-1, B-2, and U-R zoning districts that small cell facilities be added as a use permitted by-right. No amendments are proposed for the M-1 district as this district already recognizes that any wireless telecommunications facility is permitted by right.

Within Article CC. Wireless Telecommunication Facilities, staff is adding the clarification that the City cannot impose permitting requirements and fees for the installation, placement, maintenance, or replacement of equipment meeting the specifications to be considered micro-wireless facilities that are suspended on cables or lines that are strung between existing utility poles in compliance with national safety codes, and so long as permission is granted by the owners of the cables or lines on which the facilities are located. This exemption is being added as it is required by the Code of Virginia.

Changes are also proposed within Section 10-3-196, Wireless telecommunications facilities within residential districts and the MX-U, Mixed Use Planned Community District, by removing the existing language that states “*there are no wireless telecommunications facilities allowed by right within any residential district or the MX-U district.*” That language will be replaced with collocation requirements, height restrictions, camouflaging requirements, screening requirements, and other regulations associated with the required by-right use for “Small Cell Facilities” in all residential districts and the MX-U district.

In Section 10-3-199, Submittal requirements and other application requirements, staff is suggesting amendments be made for the fees for applications for wireless telecommunications facilities, including

small cell facilities, be accompanied with one hundred dollars (\$100.00) for each facility up to the first five (5) facilities, and fifty dollars (\$50.00) for each additional facility on the same application. Applicants will be allowed to submit up to thirty-five (35) facilities on one application. This fee structure would replace the \$175.00 flat application fee.

Lastly, staff is proposing to add language to better clarify that within Section 10-3-200, reporting of wireless telecommunications facilities, that facilities deemed “eligible facilities” in existence prior to the original enactment of Article CC are not required to submit an annual report to the Zoning Administrator. Note that this amendment is not required by changes in the Code of Virginia.

Staff believes these amendments capture all the requirements of the updated State regulations. Staff recommends approval of the proposed wireless telecommunications facilities amendments.

Vice Chair Colman asked if anyone had questions for staff.

Mr. Fletcher said just a clarify what Mrs. Banks stated, all small cells must be co-located. If you recall last summer, 865 East was putting up a facility on the rooftop and, had this already been in effect, they would of just been able to do it by right; that just gives you an idea of what it looked like. I think we even talked about it at that time, that they had applied for their special use permit before the legislation went in effect and we went ahead and just followed through with it. Technically, they would have fallen under the small cell facility definition and all those things are required by the State, we had to do all of these things.

Vice Chair Colman said is there still an application for them to fill out.

Mr. Fletcher said yes.

Vice Chair Colman asked if anyone else had questions for staff. Hearing none, he opened the public hearing and asked if the applicant or anyone would like to speak in favor or against this request.

Panayotis “Poti” Giannakaouros, Harrisonburg, said I would like to ask a question to clarify what exactly it is that we are talking about here from the point of view of an ordinary person’s experience.

Mrs. Whitten said did you look at the picture from this slide?

Mr. Giannakaouros said I am not talking about how it looks, I am talking about what it is. From the perspective of what it is, I walk around as a wired person, there are two ways I experience wireless communication. One, is cell phone signal, how many bars do I have as I go around the City. The other is what I am using right now, wireless internet signal. Which of these are we talking about or are we talking about both?

Mr. Fletcher said cellular.

Mr. Giannakaouros said we are talking about cell phone signal.

Mr. Fletcher said a lot of these small cells now are about density of data because everybody is using so much data on their phone as a cellular signal, this is about the densification of that. They are trying to get closer to the user.

Mr. Giannakaouros said I would just suggest that, whenever you turn on your wireless signal you see your router, but if you are like me the first thing you see is Xfinity. How do they come into being everywhere in the City, was that something we intentionally thought about making those access points ubiquitous through the City. If that is something separate that is interesting, that is a question, if that is something that was done under the protection of this previous ordinance then would this be extending that? Even if it is only voice cellular or just cellular on your phone I would suggest, something that might be better if we can do it, if it is available, that is for people who want to have that in their residential neighborhood because they want their cell phone to work.

For example, I currently live in a cell phone dead spot and I love it I am glad I am in a cell phone dead spot. I would prefer that if all my neighbors wanted better cell phone signal they can persuade me to have cell phone signal then we could invite cell phone signal into where we live. We are talking about the integrity of your neighborhoods, there is an element of integrity of the neighborhood that I think would be the kind of thing that we should be regulating if we are talking about other things. I would speak against this if we can, if I am understanding it correctly.

Now if it is true that these wireless internet providers also fall under this I would suggest to those of you who like me can remember who Cindy Lauper was, who can also remember what it was like to get free floppy disks from AOL, and what a bummer it is when they started sending you free CD's and you realize that was spam. In the case that I just mentioned with Xfinity, consider somebody with limited cognitive capacity, somebody who is aging and they want to keep in touch with their children and every time they try to connect to the wireless router Xfinity grabs them. Eventually, you are going to have to go through a path of least resistance and yield and pay for something that maybe was not quite exactly fair. Just a couple of things to consider as you think about this ordinance.

Mr. Finnegan said a note about the Xfinity, they are essentially Comcast, if you are a Comcast customer your wireless router at your home is essentially being used to create that signal. That is why you find that signal everywhere. Xfinity is like a partition on each router and if you are a Comcast customer you signed a terms of use agreement and you said yes.

Mr. Giannakauros said it is in small print, okay that is good to know.

Vice Chair Colman said that is if you use their routers.

Mr. Finnegan said yes, I think it is only with their routers.

Mr. Finks said I think it is a combined thing most of them seem to have one box as a wireless router.

Vice Chair Colman said that is an interesting question and I do not know if we intended to carry it this way, but is that regulated, where does that fall under.

Mr. Fletcher said what the law is saying is that the City cannot require special use permits to have private property owners install small cell facilities. Verizon, AT&T, any company that you want to name, can come to your house and say, "we would love to put up a small cell facility on your roof."

Vice Chair Colman said as a loop hole.

Mr. Fletcher said it is not a loop hole, it is allowed, it is the law. As long as they meet our requirements, which is they have to be collocated, it has to be camouflaged, all those things.

Vice Chair Colman said I understand that, from that stand point it is fine. How about the routers?

Mr. Fletcher said I have no idea.

Vice Chair Colman said well they will give you a router for free, but everybody else can connect to it, your neighbor, anybody driving by, walking by, you have your private side, but you also have the one that is public, so where does that fall under.

Mr. Baugh said I think the answer to this is that it is done through a franchise agreement with the City that they are the only ones that have ever asked for one. Therefore, that is why they have it.

Mr. Fletcher said Comcast definitely has the franchise, we were just discussing whether you can have more than one.

Mr. Baugh said I have had questions asked about wi-fi and that has been my understanding. That on top of everything else, if you do not like it, it was so much better than these other places, but there is nobody else to deal with. Unless one of them wants to come into the market, which presumably we would be receptive to.

Vice Chair Colman asked if anyone else would like to speak on this request. Hearing none, he closed the public hearing and asked Planning Commission for a motion on the request for discussion.

Mrs. Fitzgerald moved to approve the Zoning Ordinance amendments for wireless telecommunications facilities (small cell facilities and other amendments) as presented by staff.

Mrs. Whitten seconded the motion.

Vice Chair Colman said we have a motion and a second for approval. Should we do a roll call vote?

Mr. Finks said I do not like it, but I am not going to vote against it.

Mr. Finnegan said I do not like it either. I do not like that it is taking more regulatory authority from the local governments.

Mr. Baugh said I know enough about this to be dangerous, but it was a fairly big item among other places. I think a fair, quick summary of the history is it was the industry folks who came forward and voluntarily scaled back a little bit from what they might have been allowed, which then created this frame where, maybe we ought to go along with this because the legislature was poised to do something worse than this. They were originally talking about broader rights to just put these things up anywhere and it is official, by State law, local governments have no say whatsoever.

Mr. Finnegan said I am surprised, I am looking at the voting history on this bill and there is almost no opposition to it on either side in the House.

Mr. Fletcher said we are working on the right-of-way side of it too, but there is other legislation that is in right now that is associated with giving the ability to allow new structures by right with small cell facilities to go up anywhere they want.

Vice Chair Colman called for a roll call vote on the motion.

Vice Chair Colman: Yes

Commissioner Whitten: Yes

Commissioner Fitzgerald: Yes

Commissioner Baugh: Yes

Commissioner Finks: Yes

Commissioner Finnegan: No

Vice Chair Colman said the final vote is five to one (5-1) to approve the Zoning Ordinance amendments for wireless telecommunications facilities (small cell facilities and other amendments) as presented by staff.

Vice Chair Colman said this will go forward to City Council on May 8, 2018

Respectfully Submitted,

Alison Banks

Alison Banks

Senior Planner