



Application for **Text Amendment**

TXT
2/09

City of Rockville
Department of Community Planning and Development Services

111 Maryland Avenue, Rockville, Maryland 20850
Phone: 240-314-8200 • Fax: 240-314-8210 • E-mail: Cpds@rockvillemd.gov • Web site: www.rockvillemd.gov

Application Information:

Is this an Amendment to Existing Text ? YES NO

Add New Zone Classes: YES NO Add New Uses: YES NO

Number of new uses: 1 Ordinance # 25.03.02 and 25.09.08 (see attached)

2016 FEB -3 AM 10:0
RECEIVED
CITY DEPARTMENT

Please Print Clearly or Type

Property Address information N/A

Project Description N/A

Applicant Information:

Please supply Name, Address, Phone Number and E-mail Address

Applicant Celco Partnership d/b/a Verizon Wireless, 7600 Montpelier Road, 2nd Floor - Network, Laurel, MD 20723, Attn: David Reinauer, Real Estate Specialist - Network, david.reinauer@verizonwireless.com

Property Owner N/A

Architect N/A

Engineer N/A

Attorney Cathy G. Borten, Law Offices of M. Gregg Diamond, P.C., 137 Kent Oaks Way, Gaithersburg, MD 20878
240-246-1624

STAFF USE ONLY

Application Acceptance:

Application # _____
Date Accepted _____
Staff Contact _____

Application Intake:

OR Date Received _____
Reviewed by _____
Date of Checklist Review _____
Deemed Complete: Yes No

Application is hereby made with the Rockville Mayor and Council for Approval of a change in the text of the Zoning and Planning Ordinance of Rockville, Maryland.

Page _____ Article 25.03.02 Section _____

FROM: Which reads as follows See attached

TO: Reads as follows See attached

By: _____
(Signature of Applicant)

Subscribed and sworn before this _____ day of _____, 20____

My Commission Expires _____
Notary Public

The following documents are furnished as part of the application:

- A Complete Application
- Filing Fee

Comments on Submittal: (For Staff Use Only)

LAW OFFICES OF M. GREGG DIAMOND, P.C.

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February 3, 2016

Mayor and City Council of Rockville
City of Rockville Planning Commission
111 Maryland Avenue
Rockville, MD 20850

By Hand Delivery

**Re: Zoning Text Amendment
Chapter 25, Article 3, Section 25.03.02, entitled "Definitions" and
Chapter 25, Article 9, Section 25.09.08, entitled "Wireless
Communication Facility"**

To the Mayor, City Council, and Planning Commission:

We represent Cellco Partnership, d/b/a Verizon Wireless, in connection with the proposed Zoning Text Amendment of Chapter 25, Articles 3 and 9, as the amendments relate to the installation of small cell wireless facilities. The City of Rockville Department of Community Planning and Development Services has proposed additional amendments to Chapter 25; the following will address only those proposed edits relating to small cell facilities. On behalf of Verizon Wireless, we respectfully request that the Mayor and Council and Planning Commission consider the following proposed amendments to existing language in the Zoning Ordinance in order to provide clarity, consistency and flexibility going forward. The suggested modifications are attached in a red line to the sponsored text included with this letter, and are explained below.

Section 25.03.02 – Definitions

The first proposed modification is to add a definition to the above referenced section to address "Antenna, small cell." The purpose of this definition is to distinguish small cell sites, which typically include one or two smaller-sized antennas, from other significantly larger antennas used in full (known as "macro") cell sites that normally include nine to fifteen taller-sized antennas. The proposed new definition addresses the smaller size of small cell antennas, while allowing for a waiver of the standard size by the Board of Appeals. The intent here is to

allow these smaller antennas to be installed with a minimum of administrative resources, including providing some flexibility in the size as the technology may go through various iterations going forward. The goal of a small cell installation is to be able to provide several smaller antennas, at lower heights, to target areas of high volumes in order to increase capacity and network reliability in those areas, and off load data capacity from nearby macro sites that are over capacity. As drafted, this new definition allows the small cell technology to be utilized to its maximum potential in the City, with the minimum amount of administrative resources.

Section 25.09.08 – Wireless Communication Facility

As proposed, existing language has been modified to exclude the small cell facility from certain inapplicable requirements. Specifically, the small cell facility has been excepted out from Section 25.09.08 b (regarding Wireless Communication Facilities Attached to Existing Structures), Section 25.09.08 c (regarding Wireless Communication Facilities Located on Ground-Mounted Antenna Support Structures), and, Section 25.09.08 d (regarding Equipment Enclosures Located at Ground Level Standards).

An entirely new Section 25.09.08 e is proposed to address the small cell antenna technology specifically. This language establishes that antennas meeting the definition of Antenna, small cell in Section 25.03.02 are permitted in all zones. Antennas, small cell may be installed on any new or existing building or structure that is at least 15 feet in height. This height minimum allows the small cell antennas to be installed in targeted areas in a manner that allows for greater capacity in those heavily congested areas where people are actively using the network.

As noted above, the ordinance would allow carriers to install a small cell facility meeting the height requirement on new or existing structures, such as structurally capable new or pre-existing light poles, or existing building facades, rooftops, etc. This new section also accounts for installing small cell facilities on structures that require replacement in order to handle the increased load from the antennas and equipment. This language recognizes that there may be a certain structure, such as a light pole, that can remain a light pole after the antennas are installed, but that needs to be structurally reinforced in order to accommodate both the light standard and the antennas.

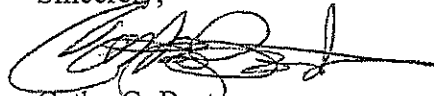
The new language addresses equipment dimensions, and includes a prohibition against small cell installations on single unit detached or semi-detached dwelling, or on any accessory building or structure associated with the dwelling. This prohibition provides the City a measure of protection by ensuring that the small cell installations remain in heavily trafficked multi-family or commercial areas rather than in single family areas.

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Finally, Section 25.09.08 f 3.a (f being a new subsection number/letter with the insertion of the new language in subsection e explained above) allows the Board of Appeals to grant minor size increases for small cell antennas upon showing that compliance with this Section would impose an undue hardship or prohibit or have the effect of prohibiting the provision of wireless communication services or would result in unreasonable discrimination among providers of functionally equivalent wireless communication services. As noted above, the waiver allows the City and its residents the benefit of the most current wireless technology, using the least amount of administrative resources possible.

In conclusion, this text amendment is a reasonable supplement to the City of Rockville Zoning Code. The text amendment provides, inter alia, a focus on small cell wireless development by defining these unique types of installations separate from “macro” sites and issues clear guidance on the City’s zoning requirements. This will result with the City of Rockville having a modern, progressive telecommunications zoning code that will allow it to encourage responsible wireless development of small cell technology.

Sincerely,



Cathy G. Borten
Counsel for Cellco Partnership d/b/a
Verizon Wireless

cc: David Reinauer, Verizon Wireless
Brian Stover, Verizon Wireless
Michael Weiland, Network Building + Consulting, LLC
Stephanie Petway, Network Building + Consulting, LLC

PROPOSED ZONING TEXT AMENDMENT

Chapter 25, Article 3, Section 25.03.02, entitled “Definitions” and Chapter 25, Article 9, Section 25.09.08, entitled “Wireless Communication Facility (proposed amendments shown in underline and ~~strike through~~)

Chapter 25, Article 3, Section 25.03.02 – Definitions

Antenna - Any structure or device used to collect, receive, transmit, or radiate electromagnetic waves, including both directional antennae (such as panels, microwave dishes, satellite earth station antennae over two (2) meters in diameter) and omni-directional antennae (such as whips). This term does not include antennae two (2) meters or less in diameter, and antennae regulated by 47 C.F.R. Section 1.4000, as amended.

Antenna, small cell – A wireless communication service antenna, whether omni-directional or panel antenna, with standard dimensions equal or less than four and a half (4 1/2) feet in height and two (2) feet in width, used to collect, receive, transmit, or radiate electromagnetic waves. The standard dimensions may be modified by the Board of Appeals consistent with Section 25.09.08.f.3. of this ordinance.

Antenna Support Structure - A structure designed for the primary purpose of supporting one (1) or more antennae (including telescoping mast, tower, monopole, tethered blimp, or other support structure). The term includes structures located on buildings or other structures, ground-mounted, or tethered.

* * *

Wireless Communication Facility - A remotely operated facility for the transmission and/or reception of wireless communication services, consisting of one (1) or more antennas, but excluding satellite earth station antennae two (2) meters or less in diameter. Such a facility also may include transmission cables, related equipment enclosures, and, in some cases, a freestanding ground-mounted antenna support structure to achieve the necessary elevation.

Wireless Communication Service - Those services defined in the same manner as in Title 47, U.S. Code, Section 332(c)(7)(c), as they may be amended from time to time, and such other services that consist of the transmission and/or reception of information by electromagnetic wave, digital signals, broadcast television signals, analog signals, radio frequencies, or other communication signals.

* * *

Chapter 25, Article 9, Section 25.09.08 – Wireless Communication Facility

- a. *Purpose* – The purpose of this Section is to provide a uniform and comprehensive set of standards for the development and installation of wireless communication facilities, related structures, and equipment.
 1. The regulations and requirements contained herein are intended to:
 - (a) Regulate the placement, construction, and modification of wireless communication facilities in order to protect the health, safety, and welfare of the public and the aesthetic quality of the City; and
 - (b) Encourage managed development of wireless communication infrastructure, while at the same time not unreasonably interfering with the development of the competitive wireless communication marketplace in the City.
 2. This section is intended to promote the following objectives:
 - (a) To minimize the total number of wireless communication facilities and antenna support structures throughout the community through siting standards;
 - (b) To provide for the appropriate location and development of wireless communication facilities and related structures and equipment within the City, and, to the extent possible, minimize potential adverse impacts on the community;
 - (c) To minimize adverse visual impacts of wireless communication facilities and related structures and equipment through careful design, siting, landscape screening, and innovative camouflaging techniques, such as stealth technology, and utilizing current and future technologies;
 - (d) To promote and encourage shared use/collocation of antenna support structures;
 - (e) To maintain and preserve the existing residential character of the City and its neighborhoods and promote the creation of a convenient, attractive, and harmonious community;
 - (f) To promote the safety of citizens and avoid the risk of damage to adjacent properties by ensuring that wireless communication facilities and related structures and equipment are properly designed, constructed, located, modified, maintained, and removed;
 - (g) To ensure that wireless communication facilities and related structures and equipment are compatible with surrounding land uses;

- (h) To encourage: the location of antennas on existing buildings or other structures; collocation of new antennas on existing antenna support structures; camouflaged antenna support structures; and construction of antenna support structures with the ability to locate three (3) or more providers or users; and
 - (i) To maintain and ensure that a non-discriminatory, competitive, and broad range of high quality wireless communication services and high quality wireless communication infrastructure consistent with laws are available to the community.
- b. *Wireless Communication Facilities Attached to Existing Structures – Except for a facility utilizing a small cell antenna.* ~~W~~wireless communication facilities attached to the roof or side of a building, or attached to an existing structure must comply with the following:
1. The building or other structure on which a wireless communication facility to be installed must be at least 35 feet in height if used for nonresidential purposes and 50 feet in height if used for multiple unit dwelling purposes. In a mixed-use development, the multiple unit dwelling standard applies. Except as provided in Section 25.09.08.e, wireless communication facilities are not permitted on any single unit detached dwelling or appurtenant accessory building or structure.
 2. The antennas and antenna support structures must be located and designed to minimize visual impacts through various methods, including, but not limited to, the use of stealth technology. Antennas and antenna support structures must be installed according to the order of preference in Sections 25.09.08b.2.(a) through (d) below, with (a) being the preferred option. Use of a lower preference location is permitted only if an applicant provides detailed justification as to why higher preference locations are not suitable.
 - (a) Antennas must be flush mounted on existing structures, or on either rooftop enclosures or the side of a building, and closely match the color and architectural treatment of the structure, enclosure, or building.
 - (b) Antennas must be flush-mounted on expanded rooftop mechanical equipment enclosures, with the enclosures and antennas designed to be consistent with the architectural treatment and color of the building.
 - (c) Antennas must be enclosed with screening that is consistent with the architectural treatment and color of the building or structure.
 - (d) Antennas and support structures must be painted or otherwise treated to minimize their visibility.
 3. Antennas and supporting structures are permitted to exceed the height of the building or structure to which they are attached by a maximum of 19 feet. The height above a

building must be measured from the finished roof elevation, and not from the roof of any equipment enclosure.

4. Antennas must comply with the following size standards:
 - (a) Whip antennas must be no more than seven inches (7") in diameter; and
 - (b) Panel antennas must be no more than two feet (2') wide and ~~six~~ eight feet (6 8') long.
5. An equipment building or cabinet may be located on the roof of a building provided it and all other roof structures do not occupy, in the aggregate, more than 25 percent of the roof area.
6. When an antenna is located on a stadium light or utility pole, the total height of the antenna plus the pole or light must not exceed 125% of the average height of the lighting system at the stadium or run of poles within 500 feet of the pole on which the antenna is located.

c. *Wireless Communication Facilities Located on Ground-Mounted Antenna Support Structures*

1. *Scope* – This subsection applies to wireless communication facilities mounted on free-standing antenna structures except for a facility utilizing a small cell antenna.
 - (a) *Special Exception* – Wireless communication facilities covered by this Section require the approval of a special exception in accordance with the applicable provisions of Article 15 of this Chapter.
 - (b) *Additional Findings Required* – The following additional findings must be made for the granting of a special exception:
 - i. The location selected is necessary for the public convenience and service and cannot be supplied with equivalent public convenience on a building or structure or collocated on an existing antenna support structure; and
 - ii. For new antenna support structures to be located in a residential zone or within 500 feet of a residential zone, it must be demonstrated that a good faith effort has been made to locate the proposed antenna support structure in a nonresidential zone more than 500 feet from the residential zone, with adequate coverage and on an isolated site with minimal visual impact.
 - (c) *Independent Consultant* - The City may hire an independent consultant to review evidence submitted by the applicant, and the applicant must reimburse the City for the reasonable cost of hiring and utilizing such a consultant.

2. *Development Standards*

- (a) The maximum height of the facility, including antenna and other attachments, is 50 feet in a residential zone, or within 500 feet of a residential zone, and 199 feet in all other locations. Height must be measured vertically from the pre-disturbance ground level at the center of the support structure.
- (b) Monopoles are the preferred type of freestanding antenna support structure.
- (c) No commercial or promotional signs, banners, or similar devices or materials are permitted on antenna support structures.
- (d) The ground-mounted antenna support structure must be located and designed in a manner that is harmonious with surrounding properties, to the extent practicable. Antenna support structures must be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment. When practicable, available stealth structure design techniques must be used.
- (e) Wireless communication facilities must be located on City-owned property, if feasible.
- (f) Antenna support structures must be set back one foot (1') for every foot of height of the structure, measured from the base of the structure to each adjoining property line or right of way.
- (g) Lights are not permitted on antenna support structures unless they are required for aircraft warnings or other safety reasons, or to comply with applicable laws and regulations. If required, minimum lighting requirements must be applied, and strobe lights must be avoided unless specified by the Federal Aviation Administration or the Federal Communications Commission.
- (h) Outdoor storage of equipment or items related to the wireless communication facility is prohibited on sites with antenna support structures.
- (i) All antenna support structures erected as part of a wireless communication facility must be designed to accommodate collocation of additional wireless communication carriers. New antenna support structures of a height of 150 feet or more must be designed to accommodate collocation of a minimum of four (4) additional providers either upon initial construction or through future modification to the antenna support structure. Antenna support structures of less than 150 feet must be designed to accommodate collocation of a minimum of two (2) additional providers.

- (j) Prior to construction, each applicant must provide certification from a registered structural engineer that the structure will meet pertinent design, construction, installation, and operation standards, including but not limited to the applicable standards of the Electronics Industries Association (EIA), the Telecommunications Industry Association (TIA), ANSI, and the BOCA Code in effect at the time of the building permit application.
 - (k) Upon completion of any sale or sublease of an antenna support structure, the owner of an antenna support structure must provide written notice to the City's Inspection Services Division.
 - (l) The owner of a ground-mounted antenna support structure, at the owner's expense, must remove antenna support structures when a wireless communication facility is not used for wireless purposes for a period 180 days in a 12-month period. The owner of a ground-mounted antenna support structure must immediately notify the City, in writing, of nonuse or abandonment of the structure upon its cessation as a wireless communication facility. Failure to remove an abandoned or unused ground-mounted antenna support structure will result in removal of the structure by the City at the expense of the owner.
 - (m) When a ground-mounted antenna support structure is removed by an owner, said owner must apply for a demolition permit to remove the tower. A condition of the demolition permit is to restore the site to the standards required by the building code in effect at the time, at no expense to the City.
- d. Equipment Enclosures Located at Ground Level Standards – Except for a facility utilizing a small cell antenna. Equipment enclosures located at ground level must comply with the following standards:
1. Each enclosure that contains the equipment of a single provider must not exceed 560 square feet of gross floor area and 12 feet in height; if more than one (1) provider is to be accommodated in an enclosure, a single enclosure must be constructed to accommodate the maximum number of providers that are required to collocate on the antenna support structure, up to a maximum of 1,500 square feet in area and 12 feet in height.
 2. The enclosure must conform to the applicable setback standards for main structures in the zone in which the property is located; setback standards for accessory buildings and structures in Section 25.09.03 are not applicable to equipment enclosures.
 3. The enclosure must be screened to provide year-round screening. This standard may be met by one (1) or a combination of the following: fencing, walls, landscaping, structures or topography which will block the view of the equipment shelter as much

as practicable from any street and/or adjacent properties. In areas of high visibility, fencing may be wrought iron, masonry, or other decorative fencing material.

4. Lighting associated with equipment structures must be directed so as to minimize any negative impact of such lighting on adjacent properties.
5. When constructed as a freestanding building, the design of the enclosure must be coordinated with the design of the existing main building on the same lot or, if there is no building on the lot, with the buildings on an adjoining lot, to the extent practicable. In addition, the enclosure must be constructed of non-reflective materials.
6. When attached to an existing building, the enclosure must be designed in a manner that is harmonious with the existing building and surrounding properties.
7. The equipment enclosure must be removed at the cost of the owner when the wireless communication facility is no longer being used by a wireless communication provider. Failure to remove abandoned equipment will result in removal by the City at the expense of the owner.

e. A wireless communications facility utilizing a small cell antenna is subject to the following provisions:

1. Antennas meeting the definition of Antenna, small cell in section 29.03.02 are permitted in all zones;

2. Location:

(a) A small cell antenna may be located on any new or existing building or structure at least 15 feet in height, measured from the existing grade;

(b) If a replacement structure is needed to support the proposed antenna, the height of the replacement structure cannot exceed the greater of 20 percent or ten (10) feet of the height of the existing structure it is intended to replace. The replacement structure must maintain the same primary function as the existing structure;

(c) The equipment to support the small cell antenna, whether located on the support structure, roof, or on the ground, cannot exceed 36 square feet of area and a maximum of five (5) feet in height;

(d) Small cell antennas and support equipment are not permitted to be attached to any single unit detached or semi-detached dwelling or any accessory building or structure associated with the dwelling.

f. *Waivers Permitted*

1. *Regulated Satellite Earth Station Antennas*

- (a) Any person or entity seeking to install or erect a satellite earth station antenna subject to this Section, other than an antenna specified in subsection 25.09.08.e.1.(a)ii below, may apply for a waiver from one (1) or more of the provisions of this Section 25.09.08., and the Board of Appeals may grant such a waiver pursuant to applicable procedures and standards if it is shown that:
 - i. The provision(s) of Section 25.09.08 at issue materially limit or inhibit the transmission or reception of satellite signals at the waiver applicant's property or the provision(s) at issue impose more than a minimal cost on the waiver applicant; and
 - ii. The waiver, if granted, would not result in any noncompliance with applicable laws, regulations, and codes (including, but not limited to, safety and building codes); and
 - iii. The waiver sought is the minimum waiver necessary to permit the reception or transmission of satellite signals at the waiver applicant's property.

- (b) The Board of Appeals is authorized to grant a complete or partial waiver to any provision of Section 25.09.08. In addition, the Board of Appeals may impose a lesser requirement instead of granting a complete waiver of any provision in this Section if a complete waiver is not necessary to permit reception or transmission of amateur service communications at the waiver applicant's property, and the lesser requirement will allow the reception or transmission of satellite signals. The Board of Approval shall not condition a waiver upon an applicant's expenditure of a sum of money, including costs required to screen, pole-mount, or otherwise specially install a satellite earth station antenna, over and above the aggregate purchase or total lease cost of the equipment as normally installed, if such sum would be greater than the aggregate purchase or total lease cost of the equipment as normally installed.

2. *Wireless Communication Facilities for Amateur Service Communications*

- (a) Any person or entity seeking to install or erect a wireless communication facility in the City for the purpose of engaging in amateur radio communications may apply for a waiver from one (1) or more of the provisions of this Section 25.09.08. and the Board of Appeals may grant such a waiver pursuant to applicable procedures and standards if it is shown that:

- i. The provision(s) of Section 25.09.08 at issue preclude amateur service communications, do not reasonably accommodate amateur service communications at the waiver applicant's property or do not constitute the minimum practicable regulation to accomplish the City's health, safety, and welfare objectives; and
 - ii. The waiver, if granted, would not result in any noncompliance with applicable laws, regulations and codes (including, but not limited to, ~~FCC~~ Federal Communications Commission regulations concerning amateur radio transmission and reception); and
 - iii. The waiver sought is the minimum waiver necessary to reasonably accommodate amateur service communications at the waiver applicant's property.
- (b) The Board of Appeals is authorized to grant a complete or partial waiver to any provision of Section 25.09.08. In addition, the Board of Appeals may impose a lesser requirement instead of granting a complete waiver of any provision in this Section if a complete waiver is not necessary to permit reception or transmission of amateur service communications at the waiver applicant's property, and the lesser requirement:
- i. Will not preclude amateur service communications; and
 - ii. Is the minimum practicable regulation to accomplish the City's health, safety, and aesthetic objectives.
- (c) In determining whether to grant a complete or partial waiver of any provision in Section 25.09.08 or to impose a lesser requirement, the Board must reasonably accommodate amateur radio communications.

3. *All Other Wireless Communication Facilities*

- (a) The Board of Appeals is authorized to grant a waiver from any and all of the standards of this Section 25.09.08, but except for the height restrictions for a freestanding antenna support structure in subsection c. of this Section, upon showing that compliance with this Section would impose an undue hardship or prohibit or have the effect of prohibiting the provision of wireless communication services or would result in unreasonable discrimination among providers of functionally equivalent wireless communication services.
- (b) Waiver requests from the height restrictions (Section 25.09.08.c.2) for a freestanding antenna support structure may be granted by the Mayor and Council upon showing that compliance with this Section would impose an undue hardship or prohibit or have the effect of prohibiting the provision of wireless

communication services or would result in unreasonable discrimination among providers of functionally equivalent wireless communication services. When requesting a height waiver under this provision, the applicant must submit evidence to the Mayor and Council that the height requested for the freestanding antenna support structure is the minimum height necessary to provide adequate coverage for the area that is being served by the structure. The Mayor and Council, in reviewing any waiver request from this Section, must also consider the impact that the increased height of the antenna support structure would have on properties in the area surrounding the proposed structure, including, but not limited to, the visibility of the structure from residences and proposed methods of mitigating the visibility of the structure.

(c) The Board of Appeals is authorized, upon a request of the applicant, to grant a waiver from dimensional restrictions of this Section 25.09.08 with regard to allowing minor size increases for antennas permitted under Section 25.09.08e.1., which will continue to be considered Antenna, small cell as defined in Section 25.03.02, provided the Board makes the additional finding that the increased size is integrated into the structure and limits the visual impact to the maximum extent possible.

(ed) This Section 25.09.08.e.3 does not apply to antennas and wireless communication facilities specified in Sections 25.09.08.e.1 and 2.

4. *Procedures for All Waivers*

- (a) Unless the Mayor and Council adopt by resolution different procedures for processing waivers from the height restrictions contained in Section 25.09.08.e.3, all waivers of this Section must be processed in accordance with the procedures applicable to variances contained in Section 25.06.03 of this Chapter.
- (b) A waiver applicant must provide supporting evidence and all information requested by the City. The City may hire an independent consultant to review such evidence, and the applicant must reimburse the City for the reasonable cost of hiring and utilizing such a consultant.