

FREDERICK COUNTY BOARD OF APPEALS
STAFF REPORT for September 24, 2020 @ 7pm

Case Number: B-20-12, B260014

Applicant: Josh Schakola, Verizon Wireless

Appeal: Request a Special Exception in accordance with the Frederick County Zoning Ordinance, Section, 1-19-3.210, to erect a Telecommunications Monopole tower up to 150-feet and a 60- foot-by-60-foot fenced compound at the base, to house mechanical equipment for the monopole tenants in accordance with Section 1-19-8.332. and Sec. 1-19-8.420 Communication Towers Communication Towers in RC and A Districts.

Location: The property is described as 6249 and 6269 Ed Crone Lane, Frederick, MD 21703. Parcel 0038, Tax Map 76, Zoning Agricultural (A), Size 101.119 Acres

Planning Region: Frederick

Zoning District: Agricultural (A)

Comp. Plan Designation: Agricultural / Rural

Applicable Ordinances: Sec. 1-19-3.210 Special Exceptions
Sec. 1-19-8.332 Communication Towers in RC and A Districts
Sec. 1-19-8.420 Communication Towers

Background:

The subject Property is zoned Agricultural (A) and contains approximately 101.119 acres. The Property is currently improved with 1 single family dwelling and several agricultural buildings that support the active agricultural farming activities on the Property.

Proposal:

Request a Special Exception in accordance with the Frederick County Zoning Ordinance, Section, 1-19-3.210, to erect a Telecommunications Monopole tower up to 150-feet and a 60-foot-by-60-foot fenced compound at the base, to house mechanical equipment for the monopole tenants in accordance with Section 1-19-8.332. Communication Towers in RC and A Districts.

General Criteria – Special Exception:

All Special Exceptions are subject to the General Criteria found in Section 1-19-3.210 of the County Zoning Ordinance:

- A. An application for a special exception may be made only by persons with a financial, contractual or proprietary interest in the property for which a special exception is requested.
- B. A grant of a special exception is basically a matter of development policy, rather than an appeal based on administrative error or on hardship in a particular case. The Board of Appeals should consider the relation of the proposed use to the existing and future development patterns. A special exception shall be granted when the Board finds that:

- (1) The proposed use is consistent with the purpose and intent of the Comprehensive Development Plan and of this chapter; and

The applicant states that as noted in Mr. Sloan's report: The Fredrick County Comprehensive Development Plan (Amended Resolution #12-19, Effective September 13, 2012) indicates a proposed collector level street to run parallel to I-70 connecting Ed Crone Lane to Jefferson Pike. The Fredrick County Comprehensive Plan identifies the adjacent properties for agricultural/rural use with no proposed changes in land use. The proposed communication compound will be consistent with the intent of The Fredrick County Comprehensive Plan and not change or adversely impact the character of the surrounding properties or the existing onsite structures and vegetation

- (2) The nature and intensity of the operations involved in or conducted in connection with it and the size of the site in relation to it are such that the proposed use will be in harmony with the appropriate and orderly development of the neighborhood in which it is located; and

The applicant states that the evidence presented will show that, of the property's 100.67 +/- acres, the Communication Tower compound and 20' wide ingress/egress and utility easement (including the 12' wide access road) takes up less than 0.4% of the site. The site will be strategically placed to the south of an existing hedgerow that will buffer views from surrounding neighborhoods and minimize impacts. Additional hedgerows and tree cover existing around the property and within adjacent fields minimizes the need for additional screening. The leased area for the compound is a 60' x 60' area which is a small fraction of the total site. The communication equipment will be unmanned, and therefore will not generate minimal traffic to the site. Maintenance personnel will have infrequent visits (4 or fewer per year) and the site will have access for no more than one vehicle. The proposed facility is not for human habitation. Its purpose is to house the communication equipment. The remainder of the compound is surrounded by expansive farm fields. The proposed use will not alter the use of the surrounding properties in any way. The location and the general operations of the communication compound will not change the rural character of the community.

The applicant further states that the level of disturbance is just over 7,500 square feet. Stormwater Management ("SWM") requirements will be addressed per the

2000 Maryland SWM Design Manual and Maryland SWM Act of 2007 during the site plan approval process. No de-forestation is required to establish the site. There is no impact on water or sewer facilities. There is no impact on fire and rescue services. The proposed special exception does not create odors, dust, gas, smoke, fumes, vibration, glare or noise.

- (3) Operations in connection with the special exception at the proposed location shall not have an adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district; and

The applicant states that the agricultural operations on the site will continue in conjunction with the compound operations. Typical agricultural operations prevalent within the area and on lands located within this zoning classification include the frequent use of large farm equipment which creates noise. For these reasons the proposed use will not have an adverse impact on neighboring properties above and beyond those inherently associated with the special exception at any other location within the zoning district.

- (4) Parking areas will comply with the off street parking regulations of this chapter and will be screened from adjoining residential uses, and the entrance and exit drives shall be laid out so as to achieve maximum safety.

The applicant states that off of the Ed Crone Road, a private 12' wide gravel access road placed within a 20' wide ingress/egress and utility easement is proposed to provide direct access to the compound. The proposed access road will be flanked by existing and new tree lines that provide adequate screening from adjoining properties. The compound will be situated near the east of the compound. Its location will preserve the existing rural character. No off-street parking is necessary as the equipment is unmanned and service is only anticipated to occur four or fewer times per year.

- (5) The road system providing access to the proposed use is adequate to serve the site for the intended use.

The applicant states that the current access drive is located off of Ed Crone Road. The unmanned equipment will have infrequent visits (4 or fewer per year) by maintenance personnel and this will be for no more than one vehicle. The current road system is adequate to serve the site for its intended use of agricultural operations and the minimum maintenance visits proposed for the communication compound.

B. The Application Meets the Required Criteria for Communications Towers in the A District Under Sections 1-19-8-8.332 and 1-19-8.420.2. 1.

As set forth below, the proposed application meets the requirements of a Communications Tower in the A District.

- A. The applicant and the property owner shall be responsible for maintaining the tower in a safe condition.

The applicant states that the applicant and owners have entered an Option and Land Lease Agreement.

- B. The tower shall be utilized continuously for wireless communications. In the event the tower ceases to be used for wireless communications for a period of 6 months, the approval will terminate. The property owner shall remove the tower within 90 days after termination. The property owner shall insure the tower removal by posting an acceptable monetary guarantee with the county on forms provided by the office of the Zoning Administrator. The guarantee shall be for an amount equal to a cost estimate approved by the Zoning Administrator for the removal of the tower, plus a 15% contingency.

The applicant states that the tower shall be utilized continuously for wireless communications. In the event the tower ceases to be used for wireless communications for a period of 6 months, the approval will terminate. The property owner shall remove the tower within 90 days after termination. The property owner shall insure the tower removal by posting an acceptable monetary guarantee with the county on forms provided by the office of the Zoning Administrator. The guarantee shall be for an amount equal to a cost estimate approved by the Zoning Administrator for the removal of the tower, plus a 15% contingency. The tower shall be utilized continuously for wireless communications, and the tower will be removed within ninety (90) days after termination of the Agreement. Under the terms of the Agreement, Applicant (Lessee) is required to remove the equipment cabinet, antenna structure (except footings), equipment, conduits, fixtures and all personal property and restore the Premises (as defined therein) to its original condition, reasonable wear and tear and casualty excepted.

- C. All towers shall be designed for co-location, which shall mean the ability of the structure to allow for the placement of antennae for 2 or more carriers. This provision may be waived by the approving body if it is determined that co-location will have an adverse impact on the surrounding area.

The applicant states that as shown on the zoning drawings, the Communications Tower has been designed to accommodate antennas of four (4) additional carriers.

- D. The tower height may exceed the maximum height permitted within the GC, ORI, LI and GI Districts, and provided the required setbacks are met after a determination by the approving body that its visual profile and appearance would make no substantial change in the character of the area.

The applicant states that the height maximum in the A District is 30' (§1-19-6.100). The zoning ordinance allows that "the tower height may exceed the maximum height permitted within the RC and A Districts after a determination by the approving body that its visual profile and appearance would make no substantial change in the character of the area, provided, however, that in no event shall the maximum allowed tower height exceed 199 feet" (§1-19-8.332(A)).

The applicant further states that the proposed Communications Tower is proposed to be up to 150' tall, exceeding the 30' District maximum but well below the allowable overall maximum of 199'. The proposed Tower has been sited among farm and agricultural uses and structures. As noted, the size of the use comprises less than 0.4% of the overall site acreage, including access, placed among barns and other existing structures, and screen by existing woods. The agricultural uses at the property will not be affected by the Tower and/or equipment. Thus, the presence of the proposed Tower would make no substantial change in the character of the area, and the height of up to 150' remains consistent with the intent of the zoning ordinance.

E. All applications for approval of communications towers shall include:

As part of this application, Applicant is providing:

1. This Justification Statement
2. Propagation studies showing service area and system coverage in the County (maps)
3. Photo simulations of the tower and site from at least directions of a distance no more than 1 mile.

F. As part of the site plan review, screening and fencing may be required around the base of the tower structure and any equipment buildings.

The applicant states that the proposed Facility and access road are proposed to the south of an existing hedgerow that will buffer views from surrounding neighborhoods. Additional hedgerows and tree cover existing around the property and within adjacent fields minimizing the need for additional screening. Visual impacts are generally mitigated by these hedgerows and intervening farm land.

G. The appearance of the tower structure shall be minimized by the reasonable use of commercially available technology to reduce visual impact, with specific reference to size, color and silhouette properties. The decision of the approving authority shall be final.

The applicant states that the proposed tower will be constructed of galvanized steel. It will not be painted unless requested.

H. No lighting is to be placed on the tower unless specifically required by the Federal Aviation Administration.

The applicant states that there will be no lighting placed on the Tower unless specifically required by the Federal Aviation Administration.

I. Monopoles shall be the preferred tower structure type within the county.

The applicant states that as a monopole, the proposed Communications Tower is consistent with the preferred tower structure type in the County.

J. All tower sites shall be identified by means of a sign no larger than 6 square feet affixed to the equipment building or fence enclosure. Said sign shall identify the tower owner and each locating provider and shall provide the telephone number for a person to contact in the event of an emergency.

The applicant states that the proposed Communications Tower will comply with all signage requirements.

K. Site plan approval for the tower, access, equipment, and structures shall be by the Planning Commission in accordance with the site plan regulations specified within the zoning ordinance.

The applicant states that the site plan approval for the tower, access, equipment, and structures shall be by the Planning Commission in accordance with the site plan regulations specified within the zoning ordinance.

- L. No towers are permitted within land designated or eligible for designation for National Register or Frederick County Historic Districts or Sites.

The applicant states that the proposed Tower is not within land designated or eligible for designation for National Register or Frederick County Historic Districts or Sites.

- M. A copy of all reports including the environmental assessment, NEPA review, and SHPO review, as required by or provided to the Federal Communications Commission, shall be included as part of the application.

The applicant states that copies of all necessary reports, including the environmental assessment, NEPA review, and SHPO review, are included as part of the application.

- N. Towers should be sited within or adjacent to areas of mature vegetation and should be located down slope from ridge lines and towards the interior of a parcel whenever possible and only should be considered elsewhere on the property when technical data or aesthetic reasons indicate there is no other preferable location.

The applicant states that the Zoning Drawings and Mr. Sloan's report set out the siting of the proposed Tower. The siting is consistent with the requirements that the tower should be sited within or adjacent to areas of mature vegetation and towards the interior of a parcel whenever possible. As noted in the report, the Facility takes advantage of the Property's proximity to I-70 and is situated toward the center of the Property to decrease visual impacts to the residential properties to the west and south. This location is also along a hedgerow maximizing the mitigation provided by this vegetation. Other areas on the subject site were analyzed for their suitability for the proposed compound and monopole. It was determined that no other areas were as suitable as the selected site. No other area on the site would provide the natural buffers or visual screening, adequate room for construction, compact limit of disturbance, or ease of access for long term maintenance and emergency responders.

- O. All applications shall include information as to how the applicant has addressed the visual impact of the tower on all county designated preservation areas, such as: rural legacy areas, agricultural preservation areas, critical farms, Monocacy Scenic River, Appalachian Trail, historic sites and sites eligible for designation.

The applicant states that the proposed Communications Tower has no impact on rural legacy areas, agricultural preservation areas, critical farms, Monocacy scenic river, or the Appalachian Trail, and therefore the application is not required to include information as to how the applicant has addressed the visual impact of the tower on all such county designated preservation areas. With regard to historic sites and sites eligible for designation, there are no structures or properties listed on the National Register of Historic Places within 1 mile of the monopole: Highland Lodge, located at 5519 Old National Pike is approximately 1.08 miles away and a National Road Milestone on Old National Pike is approximately 1.12 miles away. The Property is not within an Agricultural Preservation or Rural Legacy Area, and is at least 4 miles from the Monocacy River and National Battlefield. The Appalachian Trail is approximately 8.5 miles to the west, and will not be impacted by the proposed Facility. There are no mapped historic features impacted by the project, and no County-designated Historic Sites or Scenic Byways near the Property. Only one (1) of several properties in the area that have been designated as eligible for historic status by the Maryland Inventory of Historic Properties has actually been recommended for historic status: The Lily Homestead, which is located on the north side of Jefferson Pike. As shown in the photograph included in the Land Planning Report, the Lily Homestead sits in a wooded area and any view of the subject site is screened by these existing trees and hedgerows.

- P. Towers may be permitted within the Mineral Mining (MM) and non-residential Mixed Use Development (MXD) floating zones with the approval of the Planning Commission. Towers shall not be permitted within residential, PUD or residential MXD Districts.

The applicant states that the proposed Tower would not be located within the Mineral Mining (MM), nonresidential Mixed Use Development (MXD) floating zones, residential, PUD or residential MXD Districts.

- Q. Communications towers in existence on the effective date of this ordinance (Ord. 99-14-241) shall not be required to comply with these provisions, except in the event they increase the height; provided, however, that any such tower which has ceased to be used for communications purposes for a period of 12 consecutive months, must comply with the existing requirements of the zone in which it is located before such tower may be used for telecommunication purposes. For purposes of this subsection (Q), the proposed installation of 1 or more antennae on a tower which has ceased to be used for communications purposes for a period of 12 consecutive months shall be deemed a use which must comply with the existing requirements of the zone in which it is located, and shall not be treated as an accessory use pursuant to § [1-19-8.205.2](#).

The applicant states that the proposed Communications Tower has not been constructed and therefore was not in existence on the effective date of the ordinance (Ord. 99-14-241).

- R. Except as provided in § [1-19-8.332](#)(F) setbacks for communications towers shall be as follows.

The applicant states that the proposed Communications Tower meets the setbacks for communications towers as provided in § 1-19-8.332(F). The proposed Tower is situated 471' from the property line in all directions, and sits at least 850 feet across I-70 from the closest existing residence. These distances exceed the 1 foot for every foot of tower height setback, the minimum 300 feet from the nearest residence setback, and fall zone requirements.

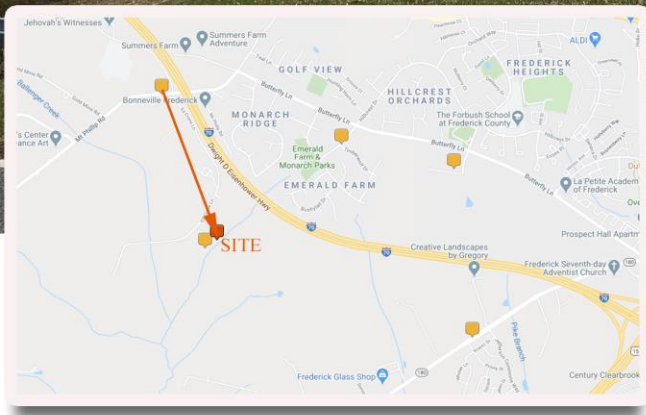
Action Needed:

Staff requests that the Board review the request for Special Exception as per Sections 1-19-3.210 (*Special Exceptions*), 1-19-8.332 *Communication Towers in RC and A Districts*) and 1-19-8.420 (*Communication Towers*) and render a decision on the Applicant's request.

Simulation Photos

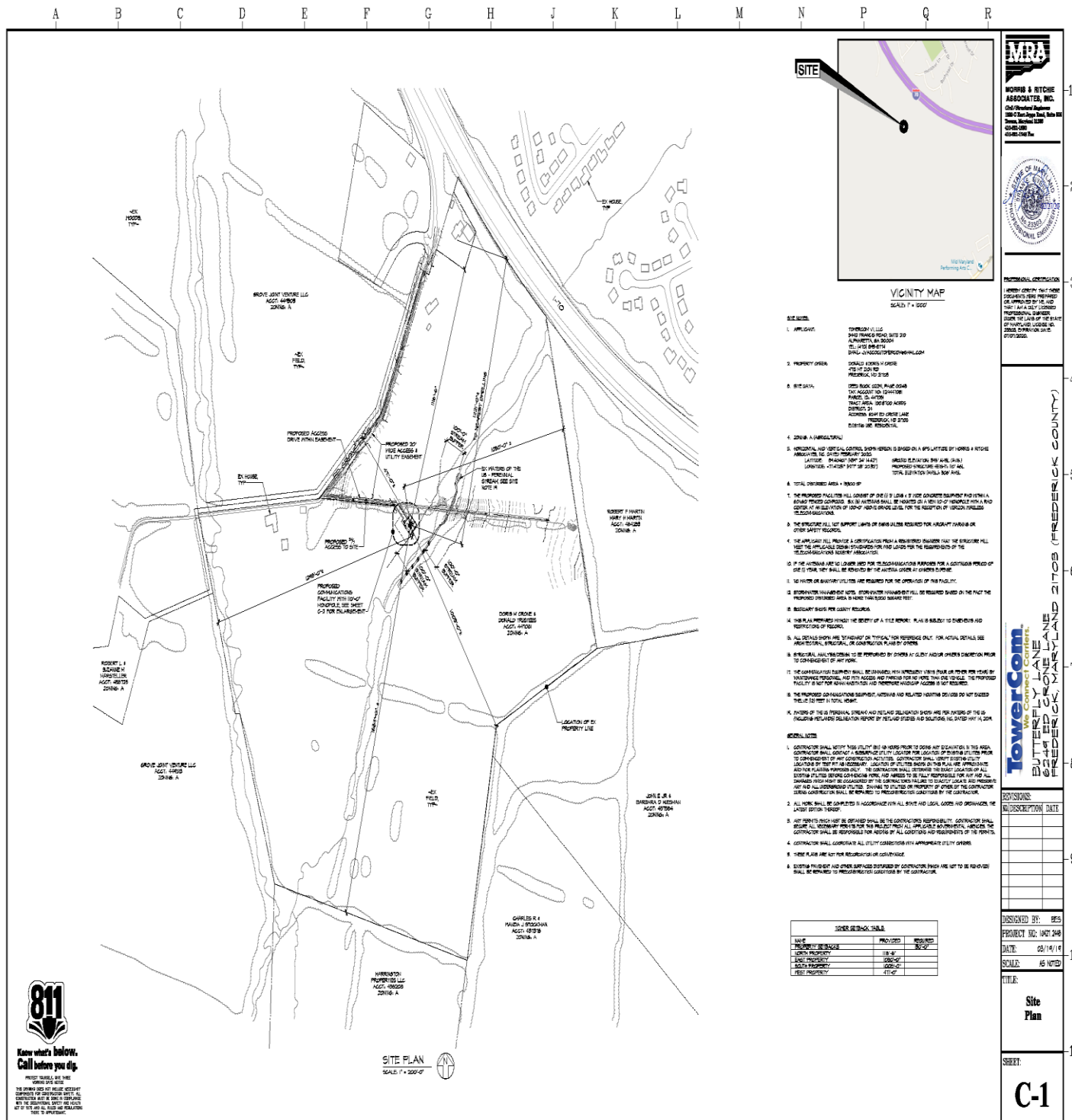


**BUTTERFLY LANE
PROPOSED MONOPOLE**



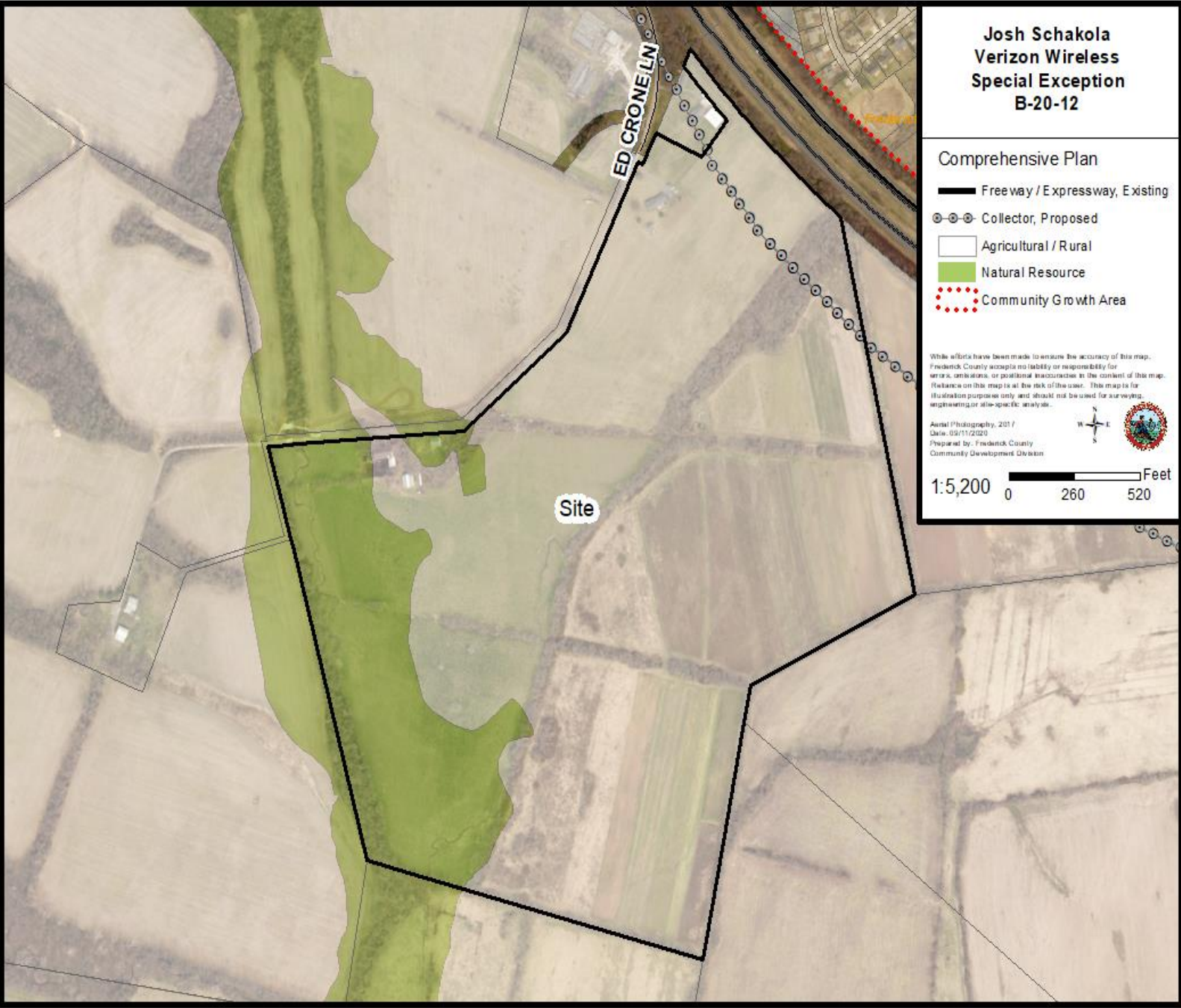
BUTTERFLY LANE PROPOSED MONOPOLE

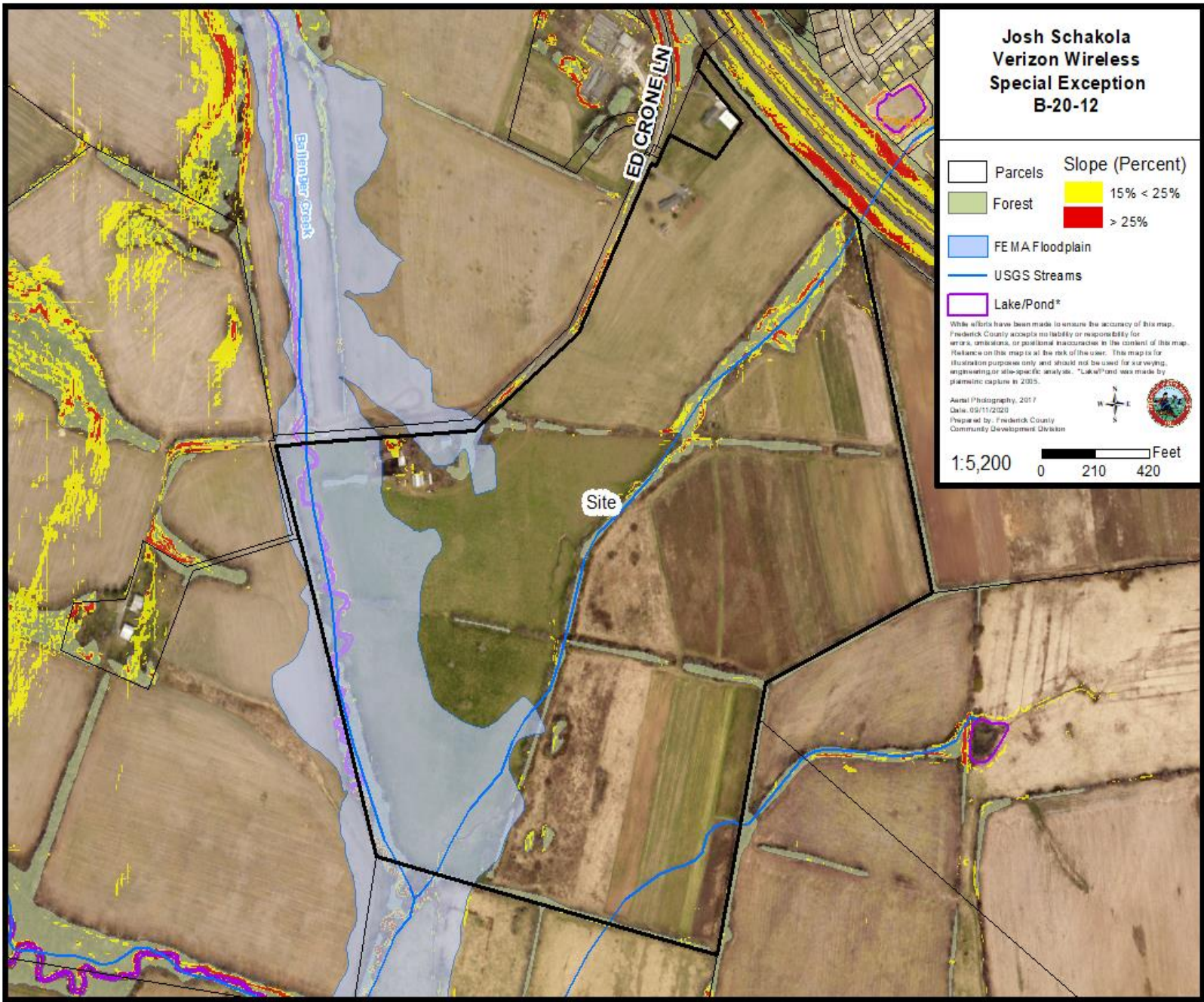
Site Plan

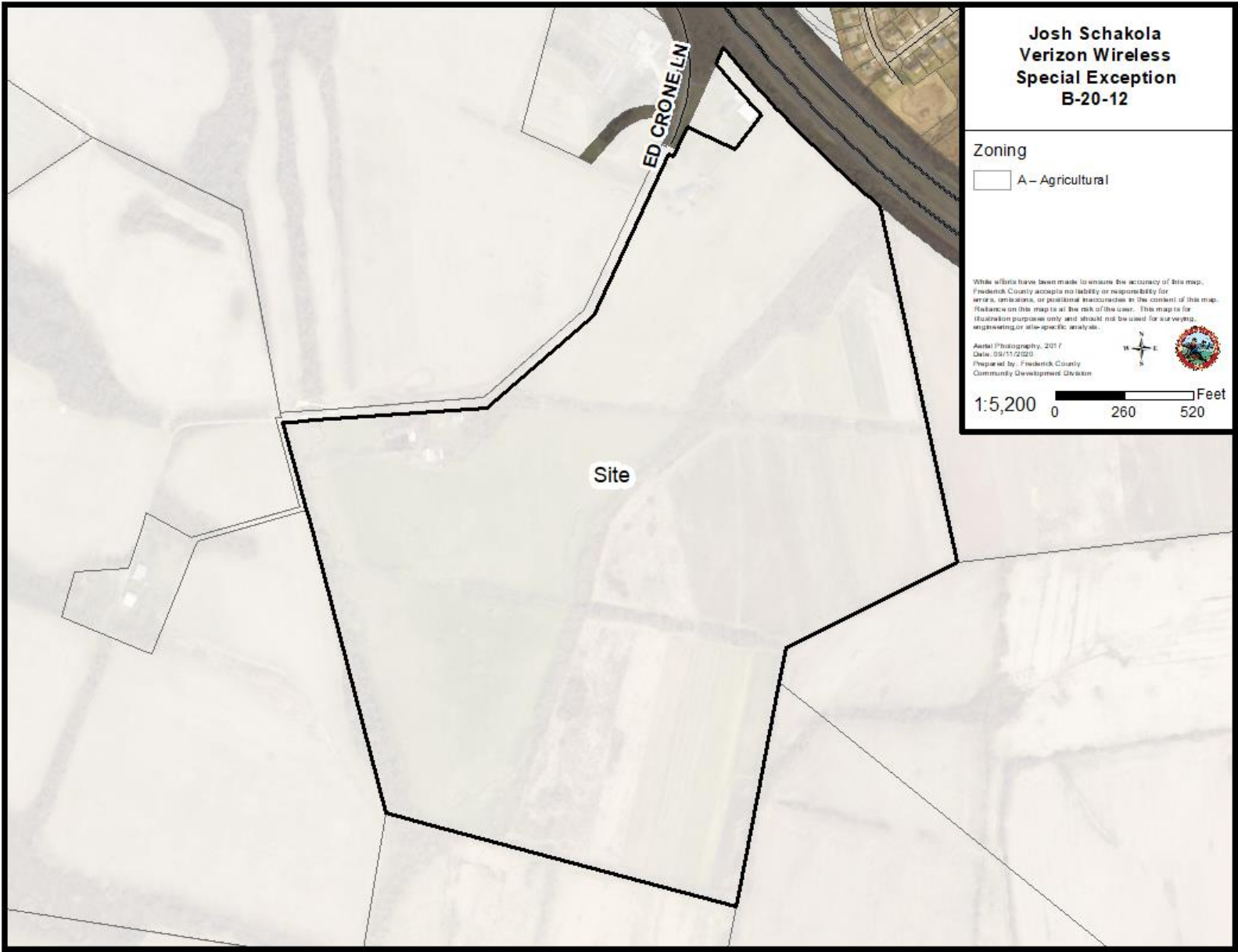


Site Maps:









Josh Schakola
Verizon Wireless
Special Exception
B-20-12

Zoning

☐ A – Agricultural

While efforts have been made to ensure the accuracy of this map, Frederick County accepts no liability or responsibility for errors, omissions, or positional inaccuracies in the content of this map. Reliance on this map is at the risk of the user. This map is for illustration purposes only and should not be used for surveying, engineering, or site-specific analysis.

Aerial Photography, 2017
Date: 09/11/2020
Prepared by: Frederick County
Community Development Division



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