

**FREDERICK COUNTY BOARD OF APPEALS**  
**STAFF REPORT FOR MAY 27, 2021 @ 7pm**

<u>Case Number:</u>	B-20-26, (B260347)
<u>Applicant:</u>	First Energy (Potomac Energy)
<u>Appeal:</u>	Reconsideration by the Board of Appeals, of the March 25, 2021 approval of a Special Exception for a tower, located at 9450 Gambrill Park Road. The applicable provisions for a Communications Tower in an RC Zone are Sections 1-19-3.210, 119-8.332 and 1-19-8.420 of the Frederick County Code. The Applicant requested to allow First Energy to replace the existing 130' self-supporting tower, with a new 180' monopole.
<u>Location:</u>	The property is described as 9450 Gambrill Park Road, Frederick MD 21702. Tax Map 47, Parcel 0110, Tax ID# 21432997 Zoning, Resource Conservation (RC) Size 16.83 Acres
<u>Planning Region:</u>	Frederick
<u>Zoning District:</u>	Resource (RC)
<u>Comp. Plan Designation:</u>	Public Parkland/Open Space
<u>Applicable Ordinances:</u>	<b>Sec. 1-19-3.210 Special Exceptions</b> <b>Sec. 1-19-8.332 Communication Towers in RC and A Districts</b> <b>Sec. 1-19-8.420 Communication Towers</b>

**Background:**

At the March 25, 2021, BOA Hearing, the Board voted (4-1) to approve a special exception request to allow FirstEnergy to replace the existing 130' self-supporting tower, with a new 180' monopole. Soon after the Hearing, it was brought to the County's attention that at least 2 members of the public attempted to offer comment during the Hearing but were unable to, due to possible issues regarding the public input system used for online BOA Hearings.

At the April 22, 2021 BOA Hearing, a Motion for Reconsideration was made, and the Board voted (5-0) to approve the motion for reconsideration of the approval of a Special Exception for a monopole tower, located at 9450 Gambrill Park Road. At the Board's discretion, additional public testimony and cross-examination may be allowed as part of the reconsideration.

### **General Criteria – Special Exception:**

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

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.

The Applicant stated that the City of Frederick is the owner of the property, First Energy is the owner of the Tower and Applicant. Melham Associates, PC are contracted by First Energy as the Engineering Consultants including submitting the Special Exception Application. The Applicant and City of Frederick have a signed lease agreement for this site.

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

This use should not have any impact on the intent of the Livable Frederick Master Plan. Towers such as this one are typically found in the County rural areas. This property has been used as a Tower site for many years.

(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 stated that this use will have no adverse impact on the community and the quite nature of the tower is in harmony with the surrounding community

(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 stated that this use shall not have an adverse effect such as noise, fumes, vibration or other characteristics on neighboring properties. Tower operations are quiet and clean

(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 stated that they understand this requirement

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

The Applicant stated that they understand this requirement

**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.**

The following provisions shall apply to communication towers in RC and A Districts.

(A) 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.

The Applicant stated that they are aware of this requirement and is requesting a maximum of height of 180 ft.

(B) All applications for a special exception shall include:

- (1) Computer modeling information used in selecting the site;
- (2) Listing of alternative sites considered and why not selected;
- (3) Photographs of the existing conditions of the site and area;
- (4) Photo documentation that a balloon test has taken place at the proposed site location.

The Applicant stated that all of (B) including 1, 2, 3 and 4 are provided in the application packet.

(C) All applications for a tower shall be accompanied by a non-binding 5 year plan of the applicant or the locating provider, showing the existing and proposed communications network within the county.

The Applicant stated that this information is provided in their application packet.

(D) A NEPA (National Environmental Policy Act) checklist prepared in accordance with section 106 of NEPA shall be provided as part of all applications.

The Applicant stated that this information has been provided in their application packet.

(E) The applicant must publicize the proposal, using a block advertisement of a size acceptable to staff, which includes a map showing the site and a 1 mile radius and must hold an informational meeting in the area of the tower within 2 weeks after submitting the application. Written notice of such meeting shall be provided to all abutting property owners of the property on which the site is located and any homeowners/community associations within the 1 mile radius.

The Applicant stated that the information is provided in their application packet.

(F) Setbacks for communications towers shall be as follows: setback from all property lines shall be a distance not less than 1 foot for every foot of tower height, but in no case less than 300 feet from any adjoining residential structure. This setback distance may be modified by the Board of Appeals.

This Applicant stated that this information is provided for in the site plan and included in their submission packet.

(G) The zoning certificate issued for a special exception shall be valid for a period of 5 years from the date that the decision of the Board of Appeals is signed. This zoning certificate shall be renewed for additional 5 year periods after review by the Board of Appeals at a regular meeting. The following are the only grounds on which renewal of a certificate may be denied.

- (1) The permittee has failed to comply with the conditions of the special exception approval.
- (2) The facility has not been maintained in a safe condition.
- (3) The Board of Appeals determines that the use of the tower for wireless communications has ceased for a period of 6 months.

The Applicant stated that they understand this requirement

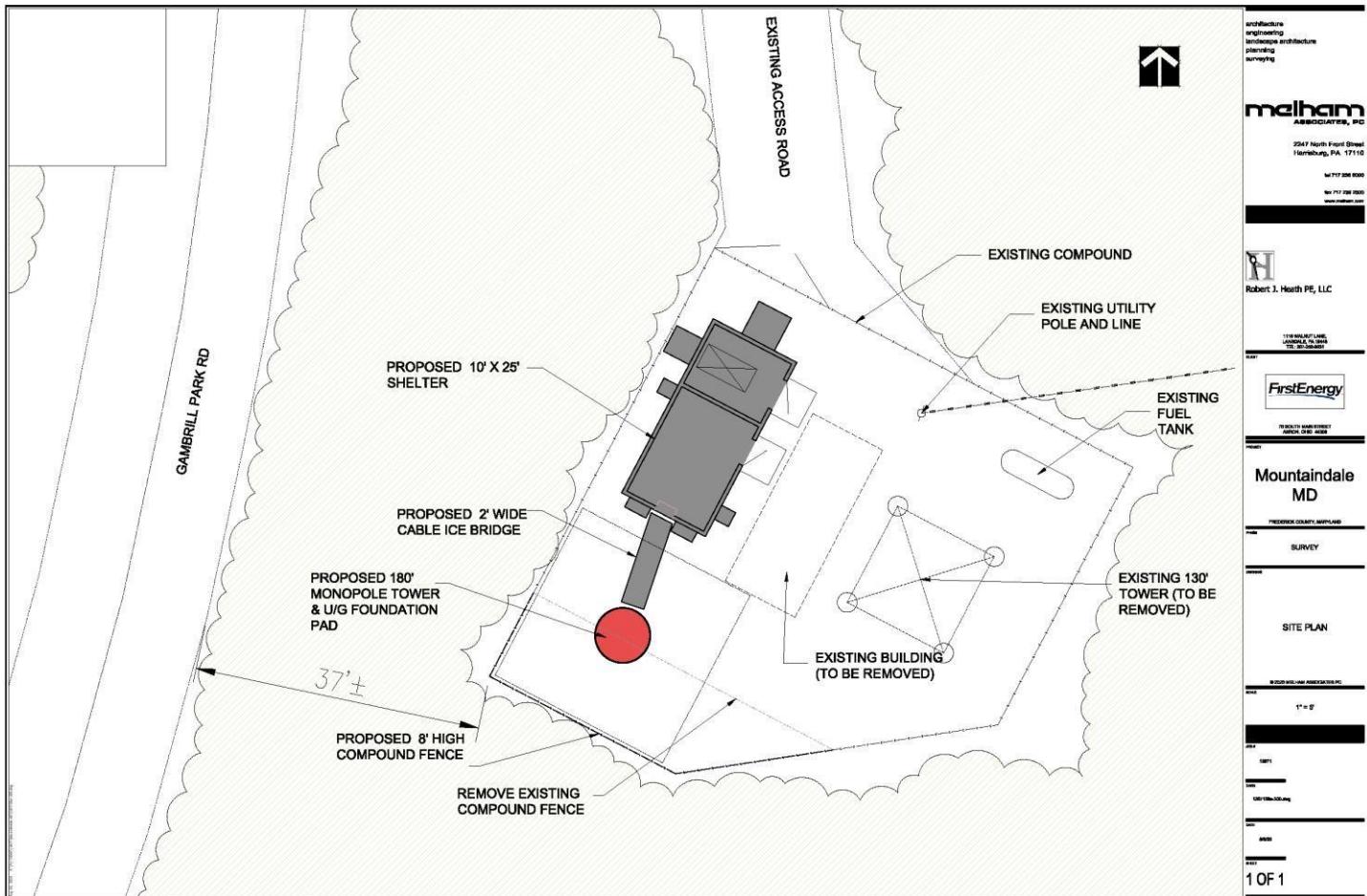
(H) All special exception approvals must also comply with the requirements of § [1-198.420.2](#) of the Frederick County Code.

The Applicant stated that they understand this requirement.

#### **Action Needed:**

The Board should determine whether or not to take additional public testimony, cross examination, and rebuttal testimony prior to voting on whether or not to approve the Applicant's request for special exception.

#### **Site Plan**



## GIS Maps

