

## Heather Jenkins

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**From:** James Downey <jd@jamesdowneylaw.com>  
**Sent:** Thursday, February 29, 2024 11:10 AM  
**To:** Heather Jenkins  
**Cc:** Jonathan Yates  
**Subject:** RE: Arcola

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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Statement of Justification for the amendment to Ordinance Section 9-18.10, "Setbacks" or Telecommunication Facilities.

In previous worksessions and public hearing, the proposal was for an amendment to the PSP District regulations which would govern the site where the proposed facility would be located. The proposed location was zoned PSP, which seemed to make an amendment to that district a logical way to modify the regulations, minimally, to accommodate this application and any others that would be made for a special permit for this use in that district. The applicant has been advised by the Town Attorney of issues with the federal communications act, if the amendment pertains only to the one district, instead of all zoning districts where the use would be allowed. This amendment is intended to ensure that no issues of "discrimination" among districts are presented, by making the amendment applicable to all zoning districts. Accordingly, any proposed telecommunication tower would be eligible to have its setback shortened to less than the full height of the tower, in all zoning districts, upon a demonstration of the actual "fall zone" of the tower by a certified professional engineer. Any proposed tower would remain subject to all criteria for a special permit in the location where proposed. This amendment would appear to avoid any problems of discrimination and does not imply any preference for a telecommunications tower to be located in any particular district, making the decision on a special permit fully subject to all site-specific considerations.

James P. Downey, Esq.  
James P. Downey, P.C.  
298 Falmouth Street  
Warrenton, Virginia 20186  
540-347-2424  
540-349-1705 {fax}

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**From:** Heather Jenkins <hjenkins@warrentonva.gov>  
**Sent:** Thursday, February 29, 2024 10:36 AM  
**To:** James Downey <jd@jamesdowneylaw.com>  
**Subject:** RE: Arcola

Good morning, Mr. Downey. I read through your revised language. To help with the review of the new language by staff and the planning commission, could you please provide a statement of justification and/or analysis?  
Thank you,  
Heather

**Heather E. Jenkins, PLA, CZA**  
Zoning Administrator  
Community Development Department



21 Main Street  
Warrenton, VA 20186  
(540) 347-1101 x312  
[warrentonva.gov](http://warrentonva.gov)

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**From:** Heather Jenkins  
**Sent:** Wednesday, February 28, 2024 4:31 PM  
**To:** James Downey <[jd@jamesdowneylaw.com](mailto:jd@jamesdowneylaw.com)>  
**Subject:** RE: Arcola

Received, thank you. I will let you know once the revised language has been reviewed by staff and a work session can be scheduled for the Planning Commission.

**Heather E. Jenkins, PLA, CZA**  
Zoning Administrator  
Community Development Department



21 Main Street  
Warrenton, VA 20186  
(540) 347-1101 x312  
[warrentonva.gov](http://warrentonva.gov)

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**From:** James Downey <[jd@jamesdowneylaw.com](mailto:jd@jamesdowneylaw.com)>  
**Sent:** Wednesday, February 28, 2024 3:39 PM  
**To:** Heather Jenkins <[hjenkins@warrentonva.gov](mailto:hjenkins@warrentonva.gov)>  
**Subject:** FW: Arcola

**[EXTERNAL EMAIL]** DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Heather, attached is an ordinance amendment proposed in lieu of the previous one, which I believe will avoid the “discrimination” issue cited by the Town Attorney. Of course, this should be reviewed by him as well.

James P. Downey, Esq.

James P. Downey, P.C.  
298 Falmouth Street  
Warrenton, Virginia 20186  
540-347-2424  
540-349-1705 {fax}

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**From:** Cyndy Hildebrandt <[ch@jamesdowneylaw.com](mailto:ch@jamesdowneylaw.com)>

**Sent:** Wednesday, February 28, 2024 3:36 PM

**To:** James Downey <[jd@jamesdowneylaw.com](mailto:jd@jamesdowneylaw.com)>

**Subject:** Arcola

**PROPOSED TEXT AMENDMENT TO  
9-18 TELECOMMUNICATIONS FACILITY**

**EXISTING LANGUAGE**

9-18.10 Setbacks

Towers shall be set back a distance of at least one hundred (100) percent of the height of the tower from the boundaries of the property on which the tower is located.

**PROPOSED LANGUAGE**

9-18.10 Setbacks

Towers shall be set back a distance of at least one hundred (100) percent of the height of the tower from the boundaries of the property on which the tower is located. On properties located in a PSP District (Public-Semi-Public Institutional District), towers shall only be required to be setback a distance of at least one hundred (100) percent of the certified fall zone, as certified by a Virginia Professional Engineer in a letter which includes the Professional Engineer's signature and seal.