



# STAFF REPORT

Planning Commission Meeting Date:	April 16, 2024
Agenda Title:	ZOTA-23-1 Zoning Ordinance Text Amendment to Reduce the Setback Requirement for Telecommunication Towers ( <b>REVISED</b> )
Requested Action:	Hold a Public Hearing
Department / Agency Lead:	Community Development
Staff Lead:	Heather Jenkins, Zoning Administrator

## EXECUTIVE SUMMARY

Article 9, Section 9-18 *Telecommunications Facilities*, regulates the height, location, and appearance of telecommunication towers within Town boundaries. Section 9-18.10 *Setbacks*, requires that all towers 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.

Mr. James Downey, on behalf of his client Arcola Towers, LLC (the Applicant), is requesting that Ordinance Section 9-18.10 *Setbacks* be revised so that the setback requirement is reduced for telecommunication towers in all Zoning Districts. Previously, this text amendment was proposed to apply only within the Public-Semi-Public (PSP) District, however due to the recommendations provided by the Town’s telecommunication consultant CityScape regarding potential claims of discrimination, the text amendment has been revised by the applicant to apply to all Zoning Districts within the Town. In order to qualify for the setback reduction, the applicant is proposing that the tower must be constructed so as to meet a lesser setback, as certified by a Virginia licensed Professional Engineer as less than the full height of the tower.

The specific site where Arcola Towers, LLC would like to establish a telecommunication tower is located within the public right-of-way area at the intersection of the Eastern Bypass, US 17 Spur, East Lee Highway and Lee Highway. However, should a text amendment to Section 9-18.10 *Setbacks* be adopted by Town Council, the setback reduction would apply to all zoning districts.

## BACKGROUND

The Applicant is proposing to construct a 150-foot-tall telecommunication tower on a parcel of land leased from the Virginia Department of Transportation (VDOT), within the Eastern Bypass U.S. Route 17 Spur. The proposed location for the tower, adjacent to an existing stormwater management facility that is maintained by VDOT, will not meet the required 100-percent setback requirement that is equal to the height of the 150-foot tower. A copy of the original application documents that depict the proposed tower location have been included with this staff report as Attachment A.

Telecommunication towers are allowed in all Zoning Districts as a Permissible Use that requires the approval of a Special Use Permit by Town Council following a public hearing before both the Planning Commission and Town Council. Zoning Ordinance Section 9-18 *Telecommunications Facilities* regulates towers that are constructed within the Town boundaries, and includes both minimum standards that all towers must meet, as well as factors that must

be considered as a part of all Special Use Permits for towers. A copy of Section 9-18 of the Ordinance has been included with this staff report as Attachment B.

Zoning Ordinance Section 9-18.10 *Setbacks* requires that a tower be located no closer to any property line than the full height of the tower. This fall zone ensures that a tower collapse will be completely contained within the property boundaries. The fall zone setback required by Section 9-18.10 cannot currently be waived or modified by Town Council as a part of the Special Use Permit process. Zoning Ordinance Section 9-18.10 *Setbacks* states:

*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.*

Local jurisdictions in the area differ in setback requirements for telecommunications facilities, as shown in the table below. Generally speaking, about half of local jurisdictions require a setback equal to the full height of the tower without the ability to reduce the setback; about half of jurisdictions surveyed allow for a setback that is less than the full height of the tower, most often with engineering certification provided to demonstrate the actual fall zone radius.

<b>Telecommunications Facilities – Setback Requirements</b> <i>Setback reduction allowed to less than the full height of the tower.</i>		
<b>Jurisdiction</b>	<b>Setback Reduction Allowed</b>	<b>Setback Requirements</b>
<b>Fairfax City</b>	Yes	Minimum setback equal to 110% of the tower height, except for monopoles certified by an engineer where the setback is reduced to the minimum setback for the district.
<b>Fauquier County</b>	Yes	Towers must be set back a distance equal to the height of the tower, except where the setback is reduced to no less than the fall zone as determined by an engineering design as a part of the legislative approval process.
<b>Culpeper County</b>	No	Towers must be designed to collapse within the lot lines.
<b>Town of Culpeper</b>	No	Towers must be set back at least the minimum setback for the district, and must be designed to fall within the boundaries of the property, except where a permanent easement is obtained from an adjoining property owner. No habitable structure shall be located within the fall zone.
<b>Prince William County</b>	No	Setback of twice the tower height for all property lines that abut residential or agricultural properties; minimum setback of 200 feet from all public streets, with an additional setback equal to the tower height for all towers over 200 feet in height. The tower must be designed to collapse within the property boundaries.
<b>Rappahannock County</b>	No	For any tower over 50 feet in height, a minimum setback equal to 110% of the tower height is required, and must be contained entirely within the subject property. Within the setback, the property owner may erect structures at their own risk.
<b>Spotsylvania County</b>	Yes	Towers must be set back from property lines at least the minimum setback for the district. A certified engineering statement must be provided to specify the tower design, including breakpoints.

Loudoun County	Yes	Public towers must be set back equal to the height of the tower. Commercial monopoles and towers must be set back 1 foot for every 5 feet of tower height.
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During the public hearing on February 20, 2024, the Planning Commission discussed the recommendations provided by the Town’s telecommunications consultant CityScape, As a part of the letter provided by CityScape, the consultant advised that allowing a setback reduction in one Zoning District, but not equally in all Districts, could pose a claim of discrimination under 47 USC §332. The CityScape memo is included with this staff report as [Attachment C](#). Following this discussion, the applicant’s representative requested a deferral so that the proposed text amendment could be revised so that it would apply throughout the Town, and this deferral was granted unanimously.

Revised text amendment language and a statement of justification were submitted by the applicant’s representative; these materials are included with this staff report as [Attachment D](#). The Applicant has proposed new language for Section 9-18.10, where the tower setback from property lines shall be equal to the certified fall zone, to state:

*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. The required setback distance may be reduced to 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.*

A *fall zone* is the maximum distance that a tower will fall as measured from the center point of the tower, or, the largest expected radius in which a telecommunication tower could potentially collapse in the event of a failure. A *certified fall zone* is determined by a Professional Engineer, where the Engineer determines that due to the physical properties of the tower, that in the case of a failure the tower will collapse within a radius that is smaller than the full height of the tower.

The applicant has provided a copy of a fall zone certification letter prepared by an engineer as an example of the engineering certification that could be provided as a part of an application to justify a fall zone that is less than 100% of the tower height, included with this staff report as [Attachment E](#).

**AGENCY REVIEW**

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The specific location where the Applicant desires to construct a telecommunications tower is located on property associated with the U.S. Route 17 Spur, owned by VDOT. VDOT has reviewed the proposed tower, and approved a location adjacent to an existing stormwater management facility. The tower location as approved by VDOT will not allow the proposed 150-foot-tall telecommunications tower to meet the setback as required by Ordinance Section 9-18.10 – *Setbacks*. The proposed tower is located 75 feet away from the north-eastern property boundary, which equals a setback from the property line of 50% of the tower height. A map showing the tower location approved by VDOT overlain on aerial imagery data is included as [Attachment F](#).

The drawings depicting the specific location where the Applicant desires to construct a telecommunications facility were provided for review to both the Town of Warrenton Public Works Department and to the VDOT Warrenton Residency Office. Responses as provided from both agencies have been included with this staff report as [Attachment G](#).

Responses provided by the local VDOT office and the Town Public Works Department are advisory in nature, and will apply to future approvals should this text amendment be adopted by Town Council. Should the text amendment

be adopted, the telecommunications facility will be required to obtain the approval of a Special Use Permit from Town Council per Ordinance Section 3-4.9.3 *Permissible Uses* and the standards found in Section 9-18 *Telecommunications Facilities*, followed by approval of a Site Development Plan per Ordinance Article 10 *Site Development Plans*, and Building, Zoning and Land Disturbing Permits to authorize construction.

The Applicant has provided a letter prepared by Alexander J. Leadore, P.E. of Morris and Ritchie Associates, Inc., dated December 11, 2023, that certifies that the proposed 150-foot-tall tower has been designed so as to fail at the midpoint of the tower, creating a certified fall zone of 75 feet from the center point of the tower. This letter, which includes a description of how the tower has been designed to break and fall in on itself, has been included with this staff report as Attachment H.

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## **PROCESS**

On February 20, 2024, the applicant’s representative requested that the Planning Commission defer action on this matter. Zoning Ordinance 11-3.9.8 *Report by Planning Commission* requires that the Planning Commission make a recommendation of approval or denial to Town Council within 100 days after the first meeting of the Commission. As the first Commission meeting for this application was held on November 28, 2023, the 100-day deadline for Commission action fell on March 7, 2024. So as to satisfy Ordinance Section 11-3.9.8, the applicant’s representative Mr. James Downey waived the 100-day deadline for Commission action as a part of his request for deferral.

On March 19, 2024, the Planning Commission held a work session on the revised application request that seeks to amend the Zoning Ordinance to apply to all zoning districts. The application was subsequently advertised for a Planning Commission public hearing on April 16, 2024. No new materials were submitted by the applicant after the work session for the Planning Commission consideration.

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### **Service Level / Collaborative Impact**

None

### **Fiscal Impact**

A fiscal impact analysis has not been conducted.

### **Legal Impact**

Any amendment to the setback requirement found in Section 9-18.10 will apply to all properties within the Town, unless specifically restricted to the PSP District as a part of the amended ordinance language.

A reduction in the required setback to property boundaries to less than 100-percent of the tower height may impact neighboring properties and roadways that are located within the 100-percent setback area.

Telecommunication towers are listed as a Permissible Use in all zoning districts, where towers require the approval of a Special Use Permit from Town Council, according to the standards found in Ordinance Section 9-18 *Telecommunications Facilities* and Section 11-3.10 *Special Use Permits and Waivers*, to include the 32 *Evaluation Criteria* listed in Section 11-3.10.3. Should the proposed text amendment be adopted by Town Council, all applications for a telecommunication tower will require the approval of a Special Use Permit, where the details of the specific tower and location will be evaluated for suitability.

## **ATTACHMENTS**

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1. Attachment A: Original Application Documents (PSP District Only)
2. Attachment B: Zoning Ordinance Section 9-18 Telecommunications Facilities
3. Attachment C: CityScape Memo Regarding Breakpoint Regulations, December 13, 2023
4. Attachment D: **REVISED** Application Documents (All Zoning Districts)
5. Attachment E: Example Fall Zone Certification Letter
6. Attachment F: Plan Showing Tower Location Overlain on GIS Aerial Imagery
7. Attachment G: Agency Review Comments - VDOT & Public Works
8. Attachment H: Certified Fall Zone Letter, Proposed Tower Site, December 11, 2023