



Charles County Board of Appeals Meeting of November 18, 2014

Department of Planning and Growth Management Staff Report

**Project Name & Number: Telecom Capital Group. –
Board of Appeals - Docket #1327**

**Type of Project: Special Exception & Variance - Use 4.06.300 –
Tower more than 50 feet tall (Telecommunications Tower)**

**Prepared by Kirby R. Blass, Planning Division
For questions, contact the Planning Division at 301-645-0540**

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I. Applicant & Project Information:

Applicant: Telecom Capital Group, LLC, 6150 Sheridan Point Road, Price Frederick, Maryland 20678

Property Owners: Mt. Tirzah Family Limited Partnership, P.O. Box 7, Mount Victoria, Maryland 20661

Agent / Attorney: Manny Dureja & Richard R. Page Wyrrough, Esq.

Specific Request: The Applicant, Telecom Capital Group, LLC, is seeking special exception use approval of a Telecommunications tower more than 50 feet tall, Use # 4.06.300. The telecommunications facility will be comprised of a 195' tall monopole tower with a 4' lighting rod (199' total). Telecom Capital Group has confirmed that the tower will be designed to support colocation of panel antenna arrays for five (5) tenants.

The telecommunications facility will be located within a fenced-in compound approximately 100' x 100' in size. The 100' x 100' compound will be fenced-in by a 10' tall chain-link fence and a 12' wide access gate. The facility will be accessed by authorized personnel via a proposed 10' wide gravel driveway, which accesses onto Guy Washington Road, as illustrated on the provided conceptual site development plan. The entirety of the proposed tower parcel is approximately 0.3059 acres including the flag access to Guy Washington Road.

The Applicant is additionally seeking approval of a variance request from one of the special exception use criteria found under Use 4.06.300. The variance is specifically requested for Use # 4.06.300, criteria C., related to required setbacks from all property lines relative to the proposed height of the tower. A full analysis of the special exception and variance requests are detailed within this report for your consideration.

Subject Property: The location of the project site, known as "Mt. Victoria", is located off of the west side of Guy Washington Road in Newburg, Maryland. Tax ID: 05-038731. The property in question is within the 5th Election District and is identified as Parcel 108 on Tax Map 83 within Grid 10, and is located within the Agricultural Conservation (AC) Zone. Upon approval of the Special Exception & Variance requests, a boundary line adjustment plat will be recorded to adjust the property lines of parcels owned by Mt. Tirzah Family Limited Partnership to configure the tower parcel, totaling approximately 0.3059 acres, as proposed on the conceptual site development plan.

Impact on Surrounding Uses: The existing property is currently completely forested and adjacent properties, in all directions, are either vacant forest or residentially developed and zoned Agricultural Conservation (AC). Please reference the attached aerial, location, and zoning maps provided within the appendices for a neighborhood overview.

Zoning: Agricultural Conservation (AC)

II. Criteria for Approval and Findings:

According to the current ordinance, the proposal as detailed in the application would require a special exception in the AC – Agricultural Conservation Zone in accordance with Figure IV-1 Table of Permissible Uses, Use #4.06.300 – Telecommunications tower more than 50 feet tall.

The Applicant is additionally requesting a variance request from one of the Special Exception use criteria found under Use # 4.06.300. The variance is specifically requested for criteria C. related to required setbacks from all property lines relative to the proposed height of the tower. The Applicant is unable to meet the setback distance required to be conforming along the northern property line abutting the Canes Purchase, LLC property, designated as Parcel 28 on the plat of special exception / variance and conceptual site development plans submitted for review.

In order to be conforming with the current ordinance, the proposed tower must be located on the property in such a way that it meets all the minimum requirements as found in the AC – Agricultural Conservation Zone; the standards set forth in Article XXV, §297-415 on Special Exceptions; the standards set forth in Article XXV, §297-416 on Variances, the applicable minimum standards in Article XIII, §297-212; and, any performance guarantees and conditions imposed by the Board.

III. Minimum Zoning Requirements: (Findings by Staff and the Applicant have been annotated in *italics*):

The request for Special Exception (Docket #1327) was evaluated based upon the standards set forth in Article XIII Section 297-212 and Use #4.06.300 of the Charles County Zoning Ordinance. Findings of the Staff and the Applicant have been annotated in *italics*.

- A. All structures shall be located at least 200 feet from an existing dwelling or residential zone.

Staff Finding: *Compliance with this standard is verified on the conceptual site development plan submitted by Lorenzi, Dodds, and Gunnill. The closest residential dwelling is approximately 527 feet from the proposed monopole location.*

Per the Applicant: *No existing dwellings are within 200 feet of the proposed monopole location. The closest residential dwelling is approximately 527 feet from the pole location. The Mt. Victoria tower parcel and adjacent parcels are all zoned Agricultural Conservation (AC).*

- B. A minimum ten-foot landscape strip will be around all property lines exterior to any fence or wall.

Staff Finding: *Compliance with this standard is verified on the conceptual site*

development plan. A minimum ten-foot landscaping strip will be provided around the 100' x 100' fenced compound. Part of the landscaping strip will include rain gardens. If the Board so chooses they can specify the use of evergreens, etc. by way of a condition of approval.

Per the Applicant: A ten-foot landscape strip will be provided around the Mt. Victoria Tower Parcel, excluding the access flag.

- C. Any proposed tower will have a setback of one foot from all property lines for every foot of height of the tower. Any broadcasting tower lawfully existing prior to the effective date of this chapter shall be exempt from the setback limitations imposed by this subsection and may be continued, structurally altered, reconstructed or enlarged, provided that no structural change, repair, addition, alteration or reconstruction shall result in increasing the height of such tower above the then-existing structurally designed height.

Staff Finding: *The Applicant has submitted a variance request to this condition. The justification for this variance request is provided below in accordance with Chapter §297-416 Variances (Criteria 1-6) within the Charles County Zoning Ordinance. The Applicant is currently requesting a variance of 155'; however in similar previous variance requests the Board of Appeals has determined that the lighting rod is included as part of the overall tower structure, therefore the variance requested must be 159' to encompass the 4' lighting rod height. The Applicant may revise their request at the meeting in response to this determination.*

The request for a variance is necessary due to the Applicant being unable to meet the setback distance required to be conforming along the proposed northern property line abutting the Canes Purchase, LLC property, designated as Parcel 28 on the plat of special exception / variance and the conceptual site development plan submitted for review. The Canes Purchase, LLC property is currently undeveloped and heavily forested. Please reference the aerial view of the subject property provided within the appendices. The creation of the proposed 0.3059 acre tower parcel will not cause an issue with the setback requirement on the adjacent Parcel 122. The proposed tower Parcel 108 will be considered to be contiguous since they will both share the same owner Mt. Tirzah Family Limited Partnership.

Per the Applicant: *Telecom Capital Group (TCG) is requesting a variance to this condition. TCG will provide 40' from the center of the tower to the property lines, and is requesting a variance for the remaining 155'. The adjacent property affected by the variance request is owned by parties related to Mt. Tirzah. Waivers of the setback requirements will be provided from the owners of the adjacent and affected property(ies).*

The request for Variance (Docket #1327) was evaluated based upon the standards set forth in Article XXV Section 297-416 (C) of the Charles County Zoning Ordinance. Findings of the Staff and the Applicant have been annotated in italics.

(1) That special conditions or circumstances exist that are unique to the subject property or structure and that a strict enforcement of the provisions of this chapter would result in unwarranted hardship which is not generally shared by owners of property in the same land use classification.

Staff Finding: *Staff does not find that special conditions or circumstances exist that are unique to the subject property or structure and that a strict enforcement of the provisions would result in unwarranted hardship which is not generally shared by owners of property in the same land use classification. If there are special conditions or circumstances existing on the subject property the Applicant must provide that justification / rationale to the Board of Appeals for consideration.*

Per the Applicant: *The need to provide wireless coverage to all areas of the County dictates the locations of proposed tower facilities. Strict enforcement of the chapter provisions would result in hardship to the applicant by preventing the location of a tower on the parcel and hardship to the community by limiting the development of a modern communication system.*

(2) That strict enforcement of the provisions of this chapter would deprive the property owner of rights commonly shared by other owners of property in the area.

Staff Finding: *Strict enforcement of the provisions of this chapter will not deprive the property owner of rights commonly shared by other owners of property in the area. The Applicant must provide a justification / rationale to the Board of Appeals as to why the tower compound could not be relocated on the subject property in such a way as to reduce or eliminate the need for the requested variance.*

Per the Applicant: *Strict enforcement of the setback to property line provision could deprive the owner a tower in this location and reduce the effectiveness of the proposed coverage network.*

(3) That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the same zone/land use classification.

Staff Finding: *The granting of the requested variance could confer upon the applicant special privilege that would be denied to other owners of like property and/or structures within the same zone/land use classification. A 159' variance is substantial. This application is requesting a variance that would be for 159' out of the total 199' tower structure height, equating to 79.9% of the required setback from the property line stipulated in Use #4.06.300 criteria C.*

Per the Applicant: *Approval of this variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the same zone/land use classification.*

(4) That the variance request is not based upon conditions or circumstances which are self-created or self-imposed.

Staff Finding: *Since the parcel onto which the tower compound has yet to be created out of the larger parent parcel the Board could find that the requested variance is self-created or self-imposed since the Applicant is choosing to locate the tower compound so close by the adjacent property boundary, thus not meeting the required setback distance. Staff recommends that the Board question the Applicant as to why the tower has to be located in this exact proposed location on the sizeable parent parcel acreage, thus necessitating the variance request. There could be topographical or environmental restrictions, etc., which have necessitated the proposed location as illustrated; however the Applicant has not detailed their justification / rationale at this time.*

Per the Applicant: *The applicant has not initiated work or completed any actions that could be construed to have created conditions or circumstances which are self-created or self-imposed.*

(5) That greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient justification for a variance.

Staff Finding: *The applicant is not claiming greater profitability or lack of knowledge of the restrictions.*

Per the Applicant: *Greater profitability or lack of knowledge of the restrictions is not the justification for this variance request.*

(6) That the proposed variance is consistent with the Charles County Comprehensive Plan.

Staff Finding: *The subject property is located in an area designated as Agricultural Conservation (AC) in the 2006 Comprehensive Plan. Staff finds that the proposed Variance for this property is not inconsistent with the 2006 Charles County Comprehensive Plan. We do not anticipate any adverse impacts to the surrounding area from the proposed variance.*

Per the Applicant: *The proposed variance is consistent with the Special Issues, Broadband section of the 2006 Charles County Comprehensive Plan.*

D. The application submitted by the applicant to the Board of Appeals shall include the following:

- (1) A system design plan that shall include, at a minimum, radio frequency parameters, tower height, number and location of antennas on the tower, radio frequency output, effective radiated power and azimuth antenna type.

Staff Finding: *This information has been provided within the Applicant's submittal materials.*

Per the Applicant: The “Charles County, County Wide Comprehensive Build-Out Plan” prepared by TCG, December 17, 2013 (Attachment 6) and the FAA Determination of No Hazard to Air Navigation provide the requested information (Attachment 6).

(2) Coverage map of the area to be served by the proposed tower.

Staff Finding: This information has been provided within the Applicant’s submittal materials.

Per the Applicant: The “Charles County, County Wide Comprehensive Build-Out Plan” prepared by TCG, December 17, 2013, illustrates the area served by this tower.

(3) Coverage map showing coverage available under existing towers, towers proposed to be constructed for the county’s public communication system and other appropriate structures.

Staff Finding: This information has been provided within the Applicant’s submittal materials.

Per the Applicant: The “Charles County, County Wide Comprehensive Build-Out Plan” prepared by TCG, December 17, 2013, illustrates existing towers, future proposed TCG towers and the area served by these facilities.

(4) An evaluation of the tower’s relationship to other antenna sites, existing buildings taller than 50 feet and communications towers and water tanks within ½ mile of a proposed tower which is less than 150 feet tall and within one mile of a proposed tower which is greater than 150 feet tall.

Staff Finding: Per the RCC Consultant, Mr. Gary M. Whitley, “Telecom Capital Group has sufficiently searched the FCC database and other commercial data bases, and performed a physical search of the area to assess the need for a communications tower at the proposed location”.

Per the Applicant: No known antennas. Buildings taller than 50 feet, communication towers or water tanks are known to occur within ½ mile of the Mt. Victoria Tower site.

E. Co-location.

(1) The applicant for a new communications tower shall demonstrate to the Board of Appeals that co-location on existing towers or other appropriate structures is not feasible. Feasibility shall be demonstrated by an analysis and explanation prepared by the applicant which identifies all reasonable, technically feasible, alternative locations and/or facilities which would

provide the proposed communication service and a structural analysis indicating that no existing or proposed tower can be structurally modified to accommodate the applicant's use.

Staff Finding: *Per the RCC Consultant, Mr. Gary M. Whitley, "Telecom Capital Group has sufficiently searched the FCC database and other commercial data bases, and performed a physical search of the area to assess the need for a communications tower at the proposed location".*

Per the Applicant: *The "Charles County, County Wide Comprehensive Build-Out Plan" prepared by TCG, December 17, 2013, illustrates existing towers, future proposed TCG towers and the area served by these facilities. This plan identifies shortcomings in existing service within Charles County and offers a comprehensive solution to developing a long-term, County-wide plan to provide tower locations for multiple providers and County emergency communications.*

- (2) The intention of the alternatives analysis is to present alternative strategies which would minimize the number, size and adverse environmental and public safety impacts of facilities necessary to provide the needed services to the county. The analysis shall address the potential for co-location at an existing or a new site and the potential to locate facilities as close as possible to the intended service area. It shall also explain the rationale for selection of the proposed site in view of the relative merits of any of the feasible alternatives. Physical constraints and economic feasibility may be considered. Approval of the project is subject to the board making a finding that the proposed site results in fewer or less severe environmental impacts than any feasible alternative site.

Staff Finding: *Per the RCC Consultant, Mr. Gary M. Whitley, "Telecom Capital Group has sufficiently searched the FCC database and other commercial data bases, and performed a physical search of the area to assess the need for a communications tower at the proposed location".*

Per the Applicant: *The applicant has conducted a detailed evaluation of the existing multi-band coverage within Charles County. The evaluation identified twenty-two sites within Charles County that would be necessary to provide a multi-band network. The Mt. Victoria site is the first site of the comprehensive program proposed by the Applicant. The Mt. Victoria site specifically has minimal environmental impact with no impacts to wetlands, streams, and other aquatic resources. Additionally, the site is relatively flat and will pose little erosion hazard during construction. The forest impacted will be minimized to the extent possible. TCG has conducted a NEPA Study of the site that further details these findings and is found as Attachment 7.*

- (3) Co-location is not deemed possible if the Board finds that:

- (a) Planned equipment would exceed the structural capacity of existing and approved towers or towers proposed to be constructed for the county's public communications system considering existing and planned use of those towers, and such towers cannot be structurally modified or reinforced to accommodate planned or equivalent equipment at a reasonable cost;

Per the Applicant: *The location of existing towers will not provide the desired coverage to the area of the Mt. Victoria site.*

- (b) Planned equipment will cause interference with other existing or planned equipment for the tower, and the interference cannot be prevented at a reasonable cost;

Per the Applicant: *No existing towers are within the desired vicinity of the Mt. Victoria site.*

- (c) Existing, approved towers, or towers proposed to be constructed for the county's public communications system do not have space on which planned equipment can be placed so as to function effectively; or

Per the Applicant: *The proposed Mt. Victoria site tower would be an optimal location for use by the County's Emergency Services for improved communication capabilities.*

- (d) Existing, approved towers, towers proposed to be constructed for the county's public communications system will not provide effective signal coverage sought by the applicant.

Staff Finding: *There are no existing or proposed towers, or existing structures from which the desired coverage can be provided.*

Per the RCC Consultant, Mr. Gary M. Whitley, "Telecom Capital Group has sufficiently searched the FCC database and other commercial data bases, and performed a physical search of the area to assess the need for a communications tower at the proposed location".

Per the Applicant: *The applicant is not aware of any proposed tower that would provide the effective signal as proposed by the Mt. Victoria site.*

- F. The tower shall be constructed so as to provide adequate capacity for future co-location of other commercial and/or government-operated antennas, unless the applicant demonstrates why such design is not economically or physically feasible. The system design plan shall delineate an area near the base of the tower to be used for the placement of additional equipment buildings for other users.

Staff Finding: *The proposed monopole tower satisfies this requirement as it is designed to accommodate future co-location opportunities for other carriers.*

Per the RCC Consultant, Gary Whitley, "Telecom Capital Group updated the site drawings and expanded the site compound to accommodate up to five tenants. A copy of the structural report of a 195FT tower in Calvert County was provided. The report shows that the tower will be designed to support colocation of panel antenna arrays for five tenants".

Per the Applicant: *The design of the tower will have capacity for both co-location and government-operated antennas.*

- G. The applicant shall submit a master plan for its proposed communications network for the entire county. The Department of Planning and Growth Management shall adopt a policy outlining the submittal requirements for such a master plan.

Staff Finding: *The submitted Master Plan (Attachment 5) is acceptable for the purposes of addressing use criteria G. The proposed locations of the other 21 identified tower sites within Charles County are to be seen as conceptual at this time. Approval of this tower location (Docket #1327 - Mt. Victoria) by the Board of Appeals does not constitute blanket approval of the additional 21 proposed locations. Each tower location must be submitted separately through the special exception application process and be approved or denied based upon their own merits. The Applicant was made aware of the Master Plan submittal requirements approved by Planning & Growth Management Director Peter Aluotto, which became effective April 8, 2014.*

Per the Applicant: *A proposed Master Plan was provided to Planning and Growth Management on December 17, 2013 and has been provided as Attachment 5. The proposed plan identifies 22 sites within Charles County for tower construction.*

The Mt. Victoria tower site and all of Telecom Capital Group's future planned locations must demonstrate compliance with the Master Plan submittal requirements for proposed towers more than 50 feet tall, as stipulated below:

1. Any cell tower Special Exception application is required to produce a signed lease or letter of intent with a service provider to occupy the site as part of the review and approval process.

Staff Finding: *The Applicant has provided a letter of intent from Verizon Wireless, from a Mr. Brian Stover, dated March 18, 2014, which confirms that Verizon is actively pursuing a lease arrangement with Telecom Capital Group (TCG) for colocation on the proposed "Mt. Victoria" telecommunications facility. A copy of this letter has been provided within the Staff report materials.*

2. The tower site must allow for other service providers to utilize the tower. Applicants should include letters of verification from at least two other

carrier/service provider companies (aside from that proposed) and confirm that they have been contacted for potential co-location on this site.

Staff Finding: *The Applicant has stated that the Mt. Victoria telecommunications facility will be capable of colocation of up to five (5) providers. The Applicant has committed to providing copies of letters sent out to two other service providers that have been contacted about co-locating on the tower, upon completion of tower construction.*

3. The tower must be occupied with a carrier/service provider within 6 months of the approval date of the site development plan, and provide Charles County with verification of such or the approval is null and void.

Staff Finding: *The Applicant has committed to the tower being occupied by a provider within 6 months of the approval date and verification will be provided. A condition of approval regarding this requirement has been recommended as condition 3.*

4. The design of the tower shall be constructed to meet current industry standards for strength and wind load.

Staff Finding: *The Applicant has committed to the tower being designed to meet current industry standards. A copy of the Structural Design Report has been included within the Applicant's submittal materials. This report is from a previously constructed tower in Calvert County; however the Mt. Victoria tower will be identical.*

5. The tower shall be designed to accommodate additional carriers.

Staff Finding: *The Mt. Victoria tower will accommodate up to five (5) carriers.*

6. The application shall include a physical plan showing existing and future tower locations within Charles County. The plan shall also demonstrate how the proposed site fits into the regional wireless network.

Staff Finding: *A proposed Master Plan was provided to Planning and Growth Management on December 17, 2013 and has been provided as Attachment 5. The proposed plan identifies 22 sites within Charles County for future tower construction.*

H. The applicant shall demonstrate that the proposed tower will not interfere with existing lines of communication used for public safety purposes.

Staff Finding: *Per the RCC Consultant, Mr. Gary M. Whitley, "Telecom Capital Group has included a statement that the proposed tower will not interfere with existing lines of communications for public safety purposes. Telecom Capital Group*

performed a survey of the existing Microwave path from Glasva to Breeze Farm and confirmed that the proposed tower will not block or interfere with this path. There are no confirmed cellular carrier antenna installations being proposed at this time. In order to determine the potential for radio frequency interference, specific information pertaining to the design of the antenna system is required (Antenna type, frequencies, transmit power, etc.). Therefore RCC cannot assess the impact of interference with public safety. However, the permitting process requires each cellular carrier to demonstrate that their communications system will not cause interference with public safety lines of communications". A condition of approval regarding this requirement has been recommended as condition 2.

Per the Applicant: *The proposed tower will not interfere with existing lines of communication used for public safety purposes, and may provide an opportunity to improve the County's emergency communication system.*

- I. No signals, lights or illumination shall be permitted on the tower unless required by the Federal Communications Commission (FCC), the Federal Aviation Administration (FAA) or the County.

Staff Finding: *Per the RCC Consultant, Mr. Gary Whitley, "Telecom Capital Group provided a letter from the FAA for "Determination of no Hazard to Air Navigation". They have also obtained a letter from the Maryland Aviation Administration stating their concurrence with the findings of the FAA".*

Per the Applicant: *No signals, lights or illumination will be placed on the monopole unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.*

- J. No commercial advertising or other signage shall be permitted on the tower.

Staff Finding: *Telecom Capital Group, LLC agrees to comply with this requirement. Only appropriate danger / warning signage, required by law, are permissible.*

Per the Applicant: *No commercial advertising or other signage will be located on the monopole.*

- K. The applicant shall demonstrate that a tower shall not unreasonably interfere with the view of, or from, sites of significant public interest such as a public park, a state-designated scenic road, a structure on the historic sites surveyor or an historic district.

Staff Finding: *Community Planning staff members reviewed the proposed monopole location and provided the following comment related to Historic Preservation:*

- *The recent balloon test conducted by NB&C demonstrated that the tower will not be visible from any cultural resources of concern for Charles County including Crain's Lot (CH-36), Society Hill (CH-37), Hard Bargain (CH-41), and Black Friars (CH-42).*

Per the Applicant: *The attached NEPA Study (Attachment 7) reviewed the proposed site and found that the construction of the tower will not interfere with views, parks, scenic roads, or historic sites.*

- L. All obsolete or unused facilities shall be removed within 12 months of cessation of operations without cost to the county.

Staff Finding: *The abandonment of towers, as induced by obsolescence, results in potential adverse effects to the public. They are unsafe to the public, due to cessation of maintenance and surveillance, and contribute to adverse visual impact, thereby resulting in incompatibility with surrounding communities and landscapes. Telecom Capital Group, LLC agrees to comply with this requirement.*

Per the Applicant: *Any obsolete or unused facilities will be removed from the monopole within 12 months of cessation of operations without cost to the county.*

- M. No tower or fixture attached thereto shall be taller than 300 feet above existing grade.

Staff Finding: *Telecom Capital Group, LLC agrees to comply with this requirement. The proposed tower will possess a height of 199' (195' with the 4' lightning rod).*

Per the Applicant: *No tower or fixture attached to the monopole will be taller than 300 feet above existing grade.*

The request for Special Exception (Docket #1327) was additionally evaluated based upon the standards set forth in Article XXV Section 297-415 (H) and Use #4.06.300 of the Charles County Zoning Ordinance. Findings of the Staff and the Applicant have been annotated in italics. This use

- (1) Will not be detrimental to or endanger the public health, safety and general welfare.

Staff Finding: *Staff finds that based upon the application materials submitted for review; that the proposed use will not be detrimental to or endanger the public health, safety and general welfare. The use will be subject to compliance with all applicable County, State, and Federal regulations, including, but not limited to, the following local regulations: Charles County Zoning Ordinance, Grading and Sediment Control Ordinance, Road Ordinance, Storm Water Ordinance, Forest Conservation Ordinance, and Floodplain Ordinance.*

Per the Applicant: *The Mt. Victoria Tower project will not be detrimental to, or endanger the public health, safety and general welfare.*

- (2) Is a permissible special exception in the zone.

Staff Finding: *The subject property is Zoned AC, Agricultural Conservation, and the requested use of a telecommunications tower more than 50 feet tall (Use # 4.06.300)*

is permitted by Special Exception in the AC, Agricultural Conservation Zone.

Per the Applicant: A cellular tower is a permissible special exception in the AC Zone.

- (3) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.

Staff Finding: Based upon the Applicant's submittal materials it appears that the proposed tower will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood. Little to no impact is envisioned to be imposed upon the residencies / properties neighboring the proposed tower.

Per the Applicant: The proposed cellular tower will not be a detriment to the use, peaceful enjoyment, economic value, or development of the surrounding properties of the general neighborhood.

- (4) Complies with the standards and requirements set forth in Article XIII.

Staff Finding: The proposed use complies with the Standards and Requirements set forth in Article XIII for this use, except for Section C. related to required setbacks from all property lines relative to the proposed height of the tower. The Applicant has submitted a variance application in order to seek relief from this requirement. The variance must grant a 159' reduction to the setback requirement for the 199' tower structure (195' monopole tower and a 4' lighting rod). Approval of the special exception application is contingent upon approval of the variance application.

Per the Applicant: The proposed cellular tower complies with Article XIII, except for Section C. where a variance has been requested.

- (5) Will cause no objectionable impact from traffic, noise, type of physical activity, fumes, odors, dust or glare.

Staff Finding: Based upon the Applicant's submittal materials the proposed use will not cause an impact on traffic nor cause objectionable noise, type of physical activity, fumes, odors, dust or glare. Once construction is complete the site will un-manned except for a routine service/inspection visit by authorized personnel. The use was reviewed by Charles County's Resource and Infrastructure Management Division and a determination was made that the proposed site will generate less than 14 peak hour vehicle trips on an average day. A Preliminary Adequate Public Facilities (PAPF) Application was submitted for review by the engineering company Lorenzi, Dodds, and Gunnill, Inc.

Per the Applicant: The proposed Mt. Victoria Tower will cause no objectionable impact from traffic, noise, type of physical activity, fumes, odors, dust or glare.

- (6) Will provide adequate utilities, water, sewer or septic system, access roads, storm drainage

and/or other necessary public facilities and improvements. If a use requires an adequate public facilities review by the Planning Commission, such review shall be made a condition of the granting of the special exception by the Board.

Staff Finding: *The 100' x 100' facility compound will be accessed via a proposed 10' wide gravel drive with access onto Guy Washington Road. The use was reviewed by Charles County's Resource and Infrastructure Management Division and a determination was made that the proposed use (cell tower) will not require a full traffic study and therefore, "an adequate public facilities review" does not need to be "made a condition of the granting of the special exception by the Board".*

Per the Applicant: *The Mt. Victoria Tower project will provide adequate utilities, water, sewer or septic system, access roads, storm drainage and/or other necessary public facilities and improvements. The PAPF has been approved by PGM and has been included within this SE application.*

(7) Will provide adequate ingress and egress and be so designed as to minimize traffic congestion in the public streets.

Staff Finding: *Adequate ingress and egress to the site was reviewed by County staff members for compliance with Transportation related requirements pertaining to the access point onto Guy Washington Road. At time of future Site Development Plan (SDP) review applicable requirements associated with safe ingress and egress onto Guy Washington Road will be confirmed prior to approval.*

Per the Applicant: *The Mt. Victoria Tower project will provide adequate ingress and egress and be so designed as to minimize traffic congestion.*

(8) Is in accordance with the objectives of the Charles County Comprehensive Plan.

Staff Finding: *Community Planning staff members reviewed the proposed use for compliance with the Comprehensive Plan's goals and objectives and found no non-conforming issues in which to comment on. The Applicant did not cite any specific objectives of the Comprehensive Plan related to the expansion of telecommunications, broadband, etc.; however they can go into greater detail at the November 18, 2014 meeting date if the Board so chooses.*

Per the Applicant: *The Mt. Victoria Tower project is in accordance with the objectives of the Charles County Comprehensive Plan.*

(9) Conforms to the applicable regulations of the zone in which it is located and to the special requirements established for the specific use.

Staff Finding: *The proposal conforms to the applicable regulations of the AC, Agricultural Conservation Zone and other special requirements established for the specific use, except for Section C. related to required setbacks from all property lines*

relative to the proposed height of the tower. The Applicant has submitted a variance application in order to seek relief from this requirement. The variance must grant a 159' reduction to the setback requirement for the 199' tower structure (195' monopole tower and a 4' lighting rod). Approval of the special exception application is contingent upon approval of the variance application.

Per the Applicant: The Mt. Victoria Tower project conforms to the applicable regulations of the AC zone and to the special requirements established for the 4.06.300 use.

IV. Recommendation & Proposed Conditions of Approval:

Planning Staff recommends that Docket #1327 be approved with the following **Conditions of Approval**, for the purpose of adequately and completely addressing the requirements of the *Zoning Ordinance*:

1. The Applicant will provide a structural analysis with the final building permit application to confirm that the proposed tower structure is capable of supporting the proposed and speculative antenna loads.
2. Telecom Capital Group, LLC will be required to provide an Interference Analysis prior to building permit approval in order to demonstrate that the tower or antenna system(s) will not cause RF interference with Charles County Public Safety Communications. Any interference will be resolved at the sole expense of the Applicant.
3. In accordance with the Charles County Master Plan requirements for Towers more than 50 feet tall, the tower must be occupied with a carrier/service provider within 6 months of the approval date of the Site Development Plan, and provide Charles County with verification of such or the approval is null and void.
4. The approved tower, antennas and ground support equipment, or future installation of any additional ground equipment and/or antennas, shall require the approval by the Department of Planning and Growth Management of a Site Development Plan and Building Permit, consistent with the requirements of the *Charles County Zoning Ordinance* and other applicable County regulations, and demonstrating continued conformance with the approved Special Exception.
5. Any future changes in height to the tower shall require approval, by the Board of Appeals, of a Modification to this Special Exception.
6. A minimum ten-foot landscape strip will be provided around the 100' x 100' telecommunications facility compound in accordance with Use #4.06.300 criteria B. The inclusion of this buffer will be confirmed at time of future Site Development Plan application.

7. Upon approval of the Special Exception & Variance requests, a boundary line adjustment plat will be recorded to adjust the property lines of parcels owned by Mt. Tirzah Family Limited Partnership to configure the tower parcel, totaling approximately 0.3059 acres, as proposed on the conceptual site development plan.
8. Based upon existing Maryland case law – Friends of the Ridge et al. v Baltimore Gas and Electric, Parcel 122 and the future tower Parcel 108 are considered to be contiguous since they will share the same owner Mt. Tirzah Family Limited Partnership. This determination negates the requirement to obtain a variance for the tower setback requirement of one foot from all property lines for every foot of height of the tower from Parcel 122's property lines abutting the future tower Parcel 108. If the Mt. Tirzah Family Limited Partnership should ever sell adjacent Parcel 122, they shall notify the County and the buyer of this special exception and variance. If Mt. Tirzah Family Limited Partnership should ever develop or subdivide adjacent Parcel 122, they shall notify the County of this special exception at time of preliminary subdivision plan application.
9. The approval and continued effect of this Special Exception is contingent upon compliance with all applicable County, State, and Federal regulations, including, but not limited to, the following local regulations: Charles County Zoning Ordinance, Grading and Sediment Control Ordinance, Road Ordinance, Storm Water Management Ordinance, Forest Conservation Ordinance, and Floodplain Ordinance.

V. Appendices: Attached.

