

Sumter City-County Planning Commission

August 24, 2016

OA-16-05/OA-16-06, Cellular Tower Setbacks (City/County)

I. THE REQUEST

Applicant: Jonathan L. Yates, Hellman Yates & Tisdale

Request: *City:* Request to Amend Article 5, Section 5.b.4.e.10. *Minimum Setbacks*, to permit a change in tower setbacks to the certified fall zone for all non-residentially zoned properties.

County: Request to amend Article 5, Section 5.b.4.e.10. *Minimum Setbacks*, to permit a change in tower setbacks to the certified fall zone for all non-residentially zoned properties.

II. BACKGROUND

This Ordinance amendment has been initiated by Jonathan Yates, Hellman Yates & Tisdale on behalf of a Cellular Tower Industry client. The applicant seeks to reduce the required setback from a full 100% of the tower height to an engineer certified fall zone. The purpose of the amendment is to *improve the rapid deployment of wireless infrastructure throughout the City of Sumter and Sumter County.*

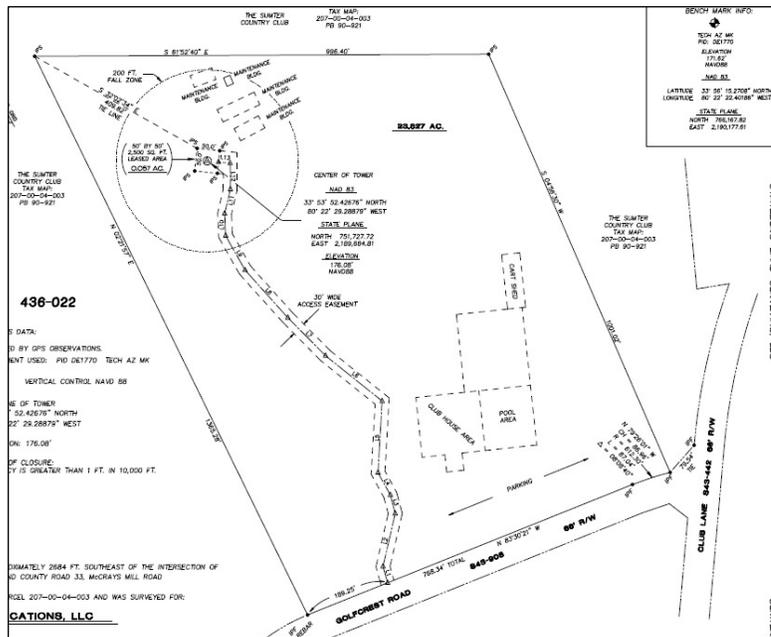
According to an August 2015 report by the Pew Research Center¹, roughly nine-in-ten Americans own a cell phone, nearly two-thirds own a smart phone with data capabilities. Additionally, the U.S. government shows that almost 43% of adults live in a cellphone-only household. This demand for cellular and wireless data service has spurred the cellular tower industry to increase its infrastructure capacity to accommodate both the rise in data usage as well as improve in-structure coverage.

In order to accomplish the two-fold task of increasing capacity and improving in-structure coverage, additional tower facilities are needed in the more densely developed areas of the community. Currently, the Ordinance requires the following:

Article 5, Section 5.b.4.e.10. Minimum Setback: *A tower must be set back from all lot lines by distances equal to the district setback requirement or one hundred (100%) percent of the tower height, whichever is greater.*

¹ *Americans' Views on Mobile Etiquette*, August 26, 2015; <http://www.pewinternet.org/2015/08-26/chapter-1-always-on-connectivity/> accessed August 8, 2016.

The graphic to the right is an example of a 200 ft. tall cellular tower site plan developed according to the current regulations. As shown on the plan, the fall zone (dotted line circle) correlates to the height of the tower. Additionally, the tower is further than 200 ft. from the property lines.



In the suburban fringe areas of the community, it is often easier to find properties with enough width and depth to accommodate a 100% setback based on tower height, however in the denser urban core of the community, there are few, if any properties, that lend themselves to siting a 100-200 ft. tall tower based on this setback standard simply due to development density. It is for this reason that the applicant is requesting to amend the language of the Ordinance to change the setback standards for non-residentially zoned parcels to an engineer certified fall zone of the district setback, whichever is greater.

III. ZONING ORDINANCE SUBCOMMITTEE – JULY 12, 2016

At the Zoning Ordinance Subcommittee meeting, the applicant Mr. Yates, members of Planning Staff and the Planning Commission Ordinance Subcommittee discussed the applicant’s request in detail.

As a result of the discussion, the general consensus of the Committee was that the proposed amendment makes sense. The Committee requested that staff reach out to other jurisdictions across the state to determine how cellular tower setbacks are handled to verify that this request does not deviate from how tower setbacks are regulated in other communities.

In reviewing this request, Planning Staff researched and reached out to other jurisdictions in South Carolina to determine how cellular tower setbacks are handled. The table on the following page details how other communities/counties regulate cellular tower setbacks. Multiple jurisdictions permit towers to be closer to the property line than the height of the tower. In fact, a majority of communities either use the district setback standards or a certified fall zone, as well as permitting encroachment onto adjacent parcels with approval of the affected property owner. Several jurisdictions prohibit residential/habitable structures within the fall zone and require recordable documents from the property owners/tower owners stating that no structures will be constructed within the certified fall zones or setbacks.

| Jurisdiction | Residential Zoning | Non-Residential Zoning | Additional Restrictions |
|-----------------------------|---|--|---|
| City of Myrtle Beach | Setbacks shall be equal to: (a) one (1 ft.) foot for every one (1 ft.) foot of wireless support structure height or, (b) one hundred (100%) percent of the wireless support structure's fall zone plus a safety factor of 10% | Setbacks shall be equal to: (a) one (1 ft.) foot for every one (1 ft.) foot of wireless support structure height or, (b) one hundred (100%) percent of the wireless support structure's fall zone plus a safety factor of 10% | -Fall zone shall be certified in the form of a signed/sealed letter from a licensed engineer and shall include original signature and seal. -Fall zone shall not encroach onto an adjacent property unless adjacent owner signs a waiver. -Waiver shall be a recordable document and shall require the owner of the wireless support structure to indemnify and hold the City of Myrtle Beach Harmless. -In no case shall a fall zone encroach into a public right-of-way. |
| City of Seneca | In residential districts setbacks shall be equal to 150% of the applicable district setback. | -On sites bordering residential uses, the bordering side of such site shall observe setbacks equal to 150% of the applicable district setbacks. -When not abutting residential uses, the setbacks of the respective zoning district shall apply. | -Special setback standards when abutting Historic and Architecturally Significant properties--must be setback 150% of tower height from designated properties, and must be setback from all other lot lines distances equal to the district setback requirement of 25% of the tower height, whichever is greater. |
| City of Simpsonville | | When a tower is adjacent to a residential zoning district, the minimum setback along that property line shall be increased by 1 ft. for each foot over 40 ft. in height. In no case shall the minimum setback exceed 200 ft. | |
| Aiken County | Zoning district setback or Fall zone + 10% setbacks from property lines habitable (residential) buildings, Right-of-way for roads and street whichever is greater | Zoning district setback or Fall zone + 10% setbacks from property lines habitable (residential) buildings, Right-of-way for roads and street whichever is greater | -No development of habitable (residential) buildings within fall zone or setback area. -Written proof that property owner where tower is constructed is notified of this limitation. Proof must be provided in application as a written and properly executed agreement between tower applicant and property owner. |
| City of Anderson | The greater of: (a) the normal setback of the district in which the tower is located or, (b) 25% of tower height from any residential districts and/or use as measured from the base of the tower. | The greater of: (a) setback for the district or, (b) 10% of the tower height where not abutting residential districts. | -In the case of a tower or structure located on a building, the height of the tower shall be measured from the base of the building to the top of the tower. -No communications towers may be located within 50 ft. of any public street right-of-way except in the Industrial districts. |
| Collection County | Setback based on tower fall zone - tower's fall zone may not encroach on an adjoining property without a recorded easement. | Setback based on tower fall zone - tower's fall zone may not encroach on an adjoining property without a recorded easement. No structures may be built within fall zones. | -Recorded easement must be prepared and signed by the adjacent property owner to ensure no structures will be built within the fall zone. |
| Dorchester County | Tower shall be located such that fall zone does not encroach on adjoining properties. | Tower shall be located such that fall zone does not encroach on adjoining properties | -Fall zone shall be determined by a SC Licensed structural engineer. -Fall zone may be described in a letter or shown on a sight plan that is signed and sealed by said engineer. -Should Fall zone encroach on adjacent property a recorded easement will be prepared and signed by adjacent property owner to ensure no structures will be built within the Fall zone. |
| Edgefield County | Setback based on tower fall zone - tower's fall zone may not encroach on an adjoining property without a recorded easement. | Setback based on tower fall zone - tower's fall zone may not encroach on an adjoining property without a recorded easement. No structures may be built within fall zones. | -Recorded easement must be prepared and signed by the adjacent property owner to ensure no structures will be built within the fall zone. |
| Richland County | Setbacks for towers abutting residential zoned parcels shall be equal to: (a) one (1 ft.) foot for every one (1 ft.) foot of wireless support structure height or, (b) one hundred (100%) percent of the wireless support structure's fall zone plus a safety factor of 10% | -Towers abutting non-residential zoned parcels with a habitable dwelling shall have a minimum setback of 50 ft. -Towers abutting a non-residential zoned parcel without a habitable residential dwelling shall observe the setbacks of the district in which it is located. | -Fall zone shall be certified in the form of a signed/sealed letter from a SC licensed engineer and shall include original signature and seal. -Fall zone shall not encroach onto structures on any property. Fall zone shall not encroach onto an adjacent property unless adjacent owner signs a waiver. -Waiver shall be a recordable document and shall indemnify and hold Richland County harmless. -The owner of the tower shall agree in writing to indemnify and hold Richland County harmless from and against any liability arising out of damage to real or personal property or injury to any person or in any way connected with the construction or, erection of, maintenance of, and/or collapse of the tower and antenna. -In no case shall a fall zone encroach into a public right-of-way. |

IV. DRAFT ORDINANCE AMENDMENT

The following is a strike-through version of the proposed amendment. New text is in **underlined bold typeface**.

5.b.4.e.10. *Minimum Setback:*

- a. **Residential Zoning:** A tower **on residentially-zoned properties** must be set back from all lot lines by distances equal to the district setback requirement or one hundred (100%) percent of the tower height, whichever is greater.
- b. **Non-Residential Zoning: Towers located on non-residentially zoned properties must be set back from all lot lines by distances equal to the district setback requirement or the tower's fall zone, whichever is greater. Fall zones shall be determined by an engineer licensed in the state of South Carolina in a letter that includes the engineer's signature and seal,**

V. STAFF RECOMMENDATION

In reviewing the request and researching other jurisdictions, Planning Staff believe this request to be reasonable.

V. PLANNING COMMISSION – AUGUST 24, 2016

The Sumter City-County Planning Commission at its meeting on Wednesday, August 24, 2016, voted to recommend approval for this request.

VI. COUNTY COUNCIL – SEPTEMBER 13, 2016 – FIRST READING

VII. CITY COUNCIL – SEPTEMBER 20, 2016 – FIRST READING/PUBLIC HEARING