

**Thompson's Station Board of Zoning Appeals
Staff Report - Item 1 (BZA 2021-001)
January 6, 2021**

Administrative Review of the Staff determination relating to the permitted use location for Wireless Communications Facilities within the Town of Thompson's Station.

REQUEST

The appellant, Vogue Towers Partners VII, LLC, requests that the Board of Zoning Appeals (BZA) hold an administrative review hearing related to the Staff determination, dated November, 9, 2020, based on zoning provisions within the Land Development Ordinance (LDO), as to the permitted use location for Wireless Communications Towers.

Background

The appellant seeks to locate a Wireless Communications Tower on property at 4561 Columbia Pike, which is zoned Community Commercial (CC) and asks the BZA to provide an administrative review of the Staff determination concluding that Wireless Communication Facilities are only permitted in the Medium Industrial (IM) zone, per LDO Section 4.11.7(b), and that Wireless Communication Facilities are not permitted in Community Commercial (CC), Light Industrial (IL), and Medium Industrial (IM) zoning districts, per LDO Table 4.4.

This matter was heard by the BZA at the November 4, 2020, meeting and the request was dismissed. The BZA directed staff to issue a written Staff Determination on this matter to the appellant. The written Staff Determination was provided to the appellant on November 9, 2020. This Administrative Review request is based on the November 9th Staff Determination. A text amendment addressing the conflicting standards will be on the January 26, 2021, Planning Commission agenda.

STAFF ANALYSIS

In the review and determination by Staff, the Wireless Communications Facilities Use Condition in Section 4.11.7(b) is both more specific and detailed in narrowing the permitted location of these facilities to the Medium Industrial (IM) zone. Therefore, this standard was interpreted by Staff to be the overriding and controlling expression of the intent of the BOMA in the permitted locations for Wireless Communications Towers. Staff recommends that the BZA uphold the Staff determination, as more fully outlined in the Staff Determination Letter.

In summary, Staff determined that Section 4.11.7(b), which permits Wireless Communications Facilities only within the Medium Industrial (IM) zone, is the appropriate and controlling standard for the permitted location of Wireless Communications Facilities within the Town. Therefore, the appellant is unable to submit a site plan for Planning Commission review at 4561 Columbia Pike, as that property is zoned Community Commercial (CC).

Conflicting Standards within the LDO:

Table 4.4 Permitted Use Table, allows Wireless Communications Facilities in the Community Commercial (CC), Light Industrial (IL), and Medium Industrial (IM) zoning districts.

Table 4.4 O2, G1, G2 USE ZONES LAND USE							
USE	D1	D2	D3	NC	CC	IL	IM
INSTITUTIONAL							
Wireless communications facility					P	P	P

KEY: "P" = Permitted by Right; "S" = Special Exception (BZA Approval required); " " = Prohibited

Section 4.11.7 Wireless Communications Facilities contains the Use Conditions for this all wireless communications facilities within the Town and lists only Medium Industrial (IM) as the permitted zoning district.

4.11.7 Wireless Communications Facilities

These standards govern the development of wireless communications facilities.

...

b. Permitted Locations. WCTs are permitted within the IM zoning district subject to these standards; however, the placement of such towers in areas and specific locations to minimize the visual impact of WCTs is strongly encouraged.

...

The Board of Zoning Appeals has jurisdiction over this request per section 5.5.4 (c)(i) which gives administrative review authority to the BZA “to hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, permit, decision, determination or refusal made by the Town Planner or other administrative official in the carrying out of enforcement of any provision of this ordinance.”

PLANNING COMMISSION ADVISORY OPINION

At the October 27, 2020, Planning Commission Meeting, the Planning Commissioners determined to offer the following advisory opinion to the BZA on this case:

By a unanimous vote, the Planning Commission advised that the BZA should defer action on this request and instead allow the BOMA, as the Town’s legislative body, to remedy this conflict through an LDO text amendment and the regular legislative process.

RECOMMENDATION

Staff recommends that the Board of Zoning Appeals review the LDO conflicting standards and render a decision to uphold the Staff determination, based on LDO Section 4.11.7(b), that Wireless Communications Towers are permitted exclusively within the Medium Industrial (IM) zone.