

Regulatory Framework for Installing Wireless/Cellular Infrastructure – Vienna and Nearby Jurisdictions

Town of Vienna

Overview

The Town of Vienna has historically reviewed all proposed cellular installations on private property as Conditional Use Permits, reviewed by the Planning Commission for recommendation, with final approval by the Board of Zoning Appeals. All installations are subject to review by the Board of Architectural Review as exterior modifications.

Per available Town records, more than 40 applications for Conditional Use Permits have been reviewed for cellular facilities at 18 different addresses, with the earliest being approved in 1992. The majority of these requests were for equipment to be mounted on existing buildings or structures. The two addresses with the most Conditional Use Permit requests for cellular equipment within the Town are 301 Maple Avenue W, the White Oak office building; and 411 - 413 Tapawingo Road SE, the Town of Vienna-owned water tower.

Some of the CUP applications were to install antennae on utility poles within the right-of-way. Under Virginia law, such installations are no longer permitted to be considered under a Special Exception (Conditional Use Permit) process. They are now, instead, by-right installations. Town-owned properties that are not in the right-of-way, such as water towers, are reviewed through the same process as private property.

Process Overview

All proposed wireless installations on property that is not right-of-way must adhere to the processes for Conditional Use Permits and exterior modifications. As such, a wireless installation must take the following steps to gain approval:

1. **Submit Application for Conditional Use Permit (CUP).**
2. **Review by staff.** Staff reviews the materials for compliance with the Town Code and application completeness. When the application is deemed complete, it moves forward to hearings.
3. **(Optional) Work Session with Board of Architectural Review.** The applicant may request a preliminary meeting with the Board of Architectural Review to discuss the design for screening and mounting of the equipment; however, the applicant is not required to have a work session.
4. **Planning Commission Review and Recommendation (on CUP application).** A public meeting with the Planning Commission is scheduled. The Planning Commission reviews the application and prepares a recommendation regarding the CUP for the Board of Zoning Appeals to consider in its deliberations.

5. **Board of Zoning Appeals Review and Decision on Conditional Use Permit.** The Board of Zoning Appeals holds a public hearing and makes a motion to approve, approve with conditions, or deny the application before them.
6. **Board of Architectural Review and Decision.** The project goes before the Board of Architectural Review for final review and design regarding the design.
7. **Building Permit.** Permits for the improvements are submitted to the Town of Vienna and Fairfax County for final review and issuance.

Relevant Town Code

The following Zoning Code and Subdivision Ordinance references are relevant to wireless/cellular installations:

Article 9 – Definitions

The Town has two definitions within the code that include telecommunication facilities. It is intended that “Wireless Facility” be the primary use for wireless cellular installations, but the “Utility Facility” definition does contain language that could be interpreted to include wireless cellular facilities. These definitions could be reviewed for clarity and revised for specificity.

Sec. 18-903. - Uses and Use Terms.

Utility facility means all lines and facilities related to the provision, distribution, collection, transmission, or disposal of water, storm and sanitary sewage, oil, gas, power, information, telecommunication and telephone cable, and includes facilities for the generation of electricity.

Wireless facility means telecommunications antennas and associated equipment that may or may not include a tower, dish or other supporting structure, designed to send and receive data signals.

Article 3 – Uses and Use Standards

The definitions within Article 9 are cross-referenced with the uses in Article 3 to determine which zones allow which uses, and if they are **Permitted** (also called “by-right”, denoted by P in the Uses tables) or require a **Conditional Use Permit** (denoted by C).

Sec. 18-304. - Principal Uses Table.

USE TYPES	DISTRICTS AND ZONES															SPECIFIC USE STANDARDS
	RESIDENTIAL				NON-RESIDENTIAL AND MIXED USES											
	RS-16	RS-12.5	RS-10	RMU	AW	AE	AC/AC-O	M	CS/CS-O	NM	T	GS	CP	PR	PC	
P = PERMITTED / C = CONDITIONAL / - = NOT PERMITTED (See Article 2 for Zone and District Names)																
High																
Utility Facility	C	C	C	C	-	-	-	C	-	-	-	-	C	-	-	

(Under *Public, Institutional, and Community Uses*)

Sec. 18-305. - Accessory Uses Table.

USE TYPES	DISTRICTS AND ZONES															SPECIFIC USE STANDARDS
	RESIDENTIAL				NON-RESIDENTIAL AND MIXED USES											
	RS-16	RS-12.5	RS-10	RMU	AW	AE	AC/AC-O	M	CS/CS-0	NM	T	GS	CP	PR	PC	
P = PERMITTED / C = CONDITIONAL / - = NOT PERMITTED (See Article 2 for Zone and District Names)																
Charging Station																
Wireless Facility	C	C	C	C	C	C	C	C	C	C	C	C	C	C	-	§ 18-353

At present, in the last column of the Use Table, there is a link to the use-specific standards that would apply to a Wireless Facility. The link leads the user to *Section 18-353, Wireless Facility – Reserved*, which is a placeholder for standards that have yet to be developed. During the Code Create process, standards for wireless facilities were noted as a “pinned item” for the Town Council to address at a future date.

Article 2 - Zones, Districts, and Dimensional Standards

All uses and the structures built in Vienna are subject to the maximum height limits defined in Article 2 of the code. Maximum heights are generally 35 feet in most zones in Town, though certain locations allow more height either by right or if certain conditions are met. Such areas include the Mill District, Corporate Park, Avenue Center, Gateway South and Church Street (for parking garages, if built). The tallest permitted heights other than projects previously approved under prior zoning regulations (e.g., the Maple Avenue Corridor Overlay), are 45 feet.

The Town has traditionally interpreted the heights of cellular equipment on rooftops to be subject to the following allowance above the building height, where not otherwise prohibited:

Sec. 18-212. - Structure dimensions.

1. Building height.

B. Penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans, or similar equipment required to operate and maintain the building, and fire or parapet walls, skylights, towers, steeples, flagpoles, water tanks, silos, or similar structures which are part of the principal building may be erected above the height limits herein described to a maximum of nine (9) feet above the roof level, but no penthouse or roof structure, or any space above the height limit shall be allowed for the purpose of providing additional floor space.

There is no allowance for free-standing structures to exceed the height limits within Article 2, meaning that cellular towers are subject to the same height limits as any other building.

Article 5B – Public, Institutional, and Community Uses

Article 5B requires mechanical and utility equipment to be screened:

Sec. 18-585. - Mechanical and Utility Equipment.

1. All rooftop equipment (such as air handling units, exhaust fans, and other mechanical systems and equipment) shall be placed as close to the middle of the roof as possible, to maximize the likelihood that the equipment will not be visible from the right-of-way or from adjacent properties.
2. All rooftop equipment on any building shall be fully screened from view from the right-of-way and adjacent properties by use of screening material that is consistent with the material found on the building façade.
3. Mechanical equipment located on the ground should be screened, whenever possible, with fencing, walls, mural wraps, and/or landscaping.

Article 8 – Administration, Procedures, and Enforcement

All proposed wireless installations in Vienna are considered as Conditional Use Permit applications, . Most significant to this process is *Section 18-824. - Conditional Use Permit*, which governs that review.

Sec. 18-824. - Conditional Use Permit.

1. **Conditional Use Permit Required.** Any use that is indicated within Article 3 of this Chapter and is marked with a "C" on the Principal Uses or Accessory Uses Tables requires the approval of a Conditional Use Permit by the Board of Zoning Appeals prior to the issuance of a Building Permit or Certificate of Occupancy.
3. **Conditions for Approval.** The Board of Zoning Appeals may issue a use permit for any of the uses indicated, within Article 3, with a "C" (conditional) on the Use Table, provided the use for which the permit is sought:
 - A. Will not affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
 - B. Will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood;
 - C. Will be in accordance with the purposes of the Town's comprehensive plan; and
 - D. Meets use-specific standards outlined in Article 3 of this chapter.

Comparison of Vienna with Nearby Jurisdictions

There is a variety of approaches in localities in Northern Virginia, both in terms of maximum heights and process. Some have fully incorporated the Code of Virginia's requirement that all installations that are no higher than 50 feet be considered as by-right administrative applications, and others have not done so. The following table provides an overview of telecommunications facilities for selected nearby Northern Virginia municipalities.

Jurisdiction	Zones Where Telecom Facilities are Allowed by-Right (Admin Review)	Zones Where Telecom Facilities are Allowed by Special Exception	Maximum Allowable Facility Height	Administrative Process (no board or elected body)	Architectural Review Board Approval Required?
Vienna	None	As principal use: RS-16, RS-12.5, RS-10, RMU, M, CP; As accessory use: all zones except PC	For free-standing (towers): Max building height for zone - generally 35' but up to 45' in Corporate Park. For rooftop antennae: generally 9 feet above max building height.	No	Yes
Alexandria	All zones where project is administrative-review eligible	All zones where proposed facilities are 50' or taller. Small cell facilities never require special exceptions, special use permits, or variances notwithstanding any other provisions of the zoning ordinance.	Not established	Yes, for facilities under 50'	In the Old and Historic Alexandria and Parker-Gray districts
Arlington	All zones where project is administrative-review eligible	All zones where proposed facilities are 50' tall or greater	Not established	Yes, for facilities under 50'	In Local Historic Districts
Falls Church	None	Low- and medium-density residential districts, multifamily residential district (if cellular towers are classified as a public utility structure)	Zoning district maximum height plus 20'	No	Yes
Fairfax City	All zones where project is administrative-review eligible	All zones where facilities are not administrative-review eligible projects	As approved by City Council	Yes, per Code of Virginia definition and standards	Yes

Fairfax County	All zones, unless any applicable condition expressly prohibits those facility	All zones where facilities are not administrative-review eligible projects	Generally 80' in SFH zones, 100' in all other zones, and height of existing pole plus 15' for pole replacements	Yes, for new utility distribution or transmission poles ("new poles") and new structures that are not more than 50 feet in height with attached wireless facilities and are designed to support small cell facilities	In Historic Overlay Districts
Herndon	None	All residential and business districts. Use allowed subject to zoning map approval in planned development districts.	125' for towers, 50' for small cell facilities	No	Yes
Leesburg	Some, depending on facility type and specific circumstances	Some, depending on facility type and specific circumstances	150'	Unclear	In the Old and Historic District, Gateway District, and proffered properties in the H-2 Corridor